

(2014) 08 KAR CK 0085

In the Karnataka High Court

Case No : Writ Appeal Nos. 200421-200422/2014 (LB-RES)

S.N. Envirotech Pvt. Ltd.

APPELLANT

Vs

Managing Director of Karnataka

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 08 KAR CK 0085

Hon'ble Judges : S.N. Satyanarayana, J;N. Ananda, J

Bench : Division Bench

Advocate : Sanjeev Patil and Rajesh Ranjan, Advocate for the Appellant;
Gourish S. Khashampur, V.Y. Kumar, P.S. Malipatil, Advocates and Srivatsa,
Senior Advocate, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda, J.—The appellant's technical bid for construction of Sewage Treatment Plant for Gulbarga town was rejected by respondent No. 1. Therefore he was before the learned Single Judge in W.P. No. 59146/2013. The learned Single Judge by order dated 14.03.2014 set aside the order of rejection and directed respondent No. 1 to reconsider the technical bid of the appellant with reference to the certificate issued by the Project Manager/Executive Engineer, North Karnataka Urban Sector Investment Program (NKUSIP) Cell (for short Project Manager). Thereafter, there was reconsideration of the matter by bid evaluation Committee consisting of the following members and representatives of the bidders:

Bid Evaluation Committee:-

1. Executive Engineer, NKUSIP-KUIDFC, Gulbarga Division Office, Gulbarga-Chairperson.
2. Executive Engineer, City Corporation, Gulbarga-Member.

3. Assistant Executive Engineer, NKUSIP Cell, City Corporation, Gulbarga-Member.
4. Account Superintendent, NKUSIP Cell, City Corporation, Gulbarga-Member.
5. Team Leader, M/s. Haskoning DHV Consulting Pvt. Ltd., Gulbarga-Member.
6. Procurement Specialist, M/s. Haskoning DHV Consulting Pvt. Ltd., Gulbarga-Member.

Representative of Bidder:

1. Mr. Subrata Bhattacharya, Sr. Manager (Proposal) M/s. SN Enrivo-Tech Pvt. Ltd. New Delhi.
2. Mr. Rajesh Ranjan, Consultant, M/s. SN Enrivo-Tech Pvt. Ltd. New Delhi.
3. Mr. R.K. Bijlani, Director-Marketing, M/s. SFC Environmental Technologies Pvt. Ltd. Mumbai.

2. The Committee by order dated 07.04.2014 has held that the certificate issued by the Project Manager does not stand to reason and the certificate does not qualify the technical bid of the appellant. The contents of the certificate which was issued one year before the completion of the project stating that the appellant has substantially completed the project are not correct and confirmed the order of rejection of the bid.

3. Aggrieved by the same, the appellant was before this Court in W.P. Nos. 21308-21309/2014. The learned Single Judge on consideration of the rival contentions raised by the parties and also on consideration of documents relied upon by parties dismissed the writ petition by order dated 16.07.2014.

4. We have heard Sri Rajesh Ranjan, learned counsel for the appellants, Sri V.Y. Kumar, learned counsel for respondent No. 1, Sri P.S. Malipatil, learned counsel for respondent No. 2 and Sri Srivatsa, learned Senior Counsel for respondent No. 3.

5. It is not in dispute and cannot be disputed that the first respondent had undertaken the construction of Sewage Treatment Plant of 40 MLD capacity in Gulbarga city and invited bids in terms of notification dated 24.05.2013. The appellant herein was one of the bidders who had tendered his technical and financial bids. In terms of clause-2.4.2(a) of the notification, technical qualifications for the bidders are that he should have been prime contractor in atleast 1 contract within in the last 5 years, that has been successfully or substantially completed, and that include design, construction, and commissioning of a sewage water treatment plant (for short STP) with capacity more than 30 MLD.

6. The learned counsel for appellants would submit that as per the certificate issued by the Project Manager on 15.06.2013 the appellant had completed the STP entrusted to him by Hubli-Dharwad Municipal Corporation. Hubli-Dharwad Municipal Corporation did not bother to take steps to lead the sewage water into

the plant. Therefore, the machinery was not installed and the plant was not commissioned. Nevertheless, there was substantial completion of the project which qualified the technical bid of the appellants.

7. The learned counsel for respondents would refute these submissions, by contending that the certificate issued by the Project Manager on 15.06.2013 was one year before the date fixed for the completion of the project viz. 01.05.2014. The Committee while reconsidering the technical bid of appellants has prepared a chart indicating the nature of work executed by the appellants and the amount spent for the work. The learned counsel would submit that the appellants had not installed machinery for commissioning the plant. It is not possible to hold that there had been completion of the plant or substantial completion of the plant.

8. The learned Single Judge referring to the judgment of the Supreme Court reported in *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*, has held that the judicial review in respect of matters of this nature involves examination of question whether there was any infirmity in decision making process and if such process is seen to be reasonable, rational and non-arbitrary, the Courts will not interfere with such decision.

In the case on hand, the Committee consisting of qualified persons having technical knowledge had considered the experience of the appellant. The Committee after analyzing the nature of work executed by the appellant in STP project of Hubli-Dharwad Municipal Corporation has arrived at a conclusion that the appellant had not substantially completed the project with regard to design, construction and commission, though substantial amount has been spent. The Committee has rejected the certificate issued by the Project Manager. The Committee has assigned reasons to arrive at such decision.

9. The learned counsel for appellant would submit that the appellant had completed the construction and design work but the appellant could not install the machineries to commission the plant due to non-cooperation by the Hubli-Dharwad Municipal Corporation. In the circumstances, it cannot be held that the appellants had not substantially completed the STP project entrusted to it.

10. In the discussion made supra, we have referred to the judgment of the Supreme Court in *Raunaq International Ltd. Vs. L.V.R. Constructions Ltd.* wherein the Supreme Court has held:

"It is important to bear in mind that by Court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the Court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the Court is satisfied that there is a substantial amount of public interest involved, or the transaction is entered into mala fide, the Court should not intervene under Article 226 in disputes between two rival tenderers."

11. In the matters of this nature the power of judicial review is very much limited

for the following reasons:

(a) This Court cannot go into the technical details or the reasons assigned for accepting or rejecting technical bid as this Court does not have required technical expertise.

(b) The execution of the projects of the instant nature involve the public interest at large and by court intervention, the execution of project may be considerably delayed, thus escalating the cost far more than any saving in public money which the court would ultimately decide the matter in favour of one tenderer or the other tenderer.

12. The intervention of court is necessary if the court is satisfied that there is substantial amount of public interest involved or the transaction entered into is malafide. After going through the report of the Committee and the certificate issued by the Project Manager, we find that the appellants apart from constructing the necessary structures for STP in Hubli-Dharwad Municipal Corporation, had not installed the machinery and the plant had not been commissioned. In the circumstances, it is not possible to hold that the appellants had successfully or substantially completed the STP of Hubli-Dharwad Municipal Corporation to qualify their technical bid.

13. The learned counsel for appellant has contended that after dismissal of W.P. Nos. 21308-21309/2014, respondent No. 1 without adhering to conditions of tender notification has entrusted the contract to respondent No. 3.

14. These are the post events after the dismissal of writ petitions, which cannot be considered by us in the writ appeal wherein the correctness or otherwise of the order of learned Single Judge is called into question. Therefore, the submission of learned counsel for appellants cannot be accepted.

15. In the result, we pass the following:

ORDER

W.A. Nos. 200421-200422/2014 are dismissed.