
(1997) 01 DEL CK 0076
In the Delhi High Court
Case No : C.W.P. No. 3562 of 1996

Sukumar Chand Jain

APPELLANT

Vs

Mahanagar Telephone Nigam Limited and Others

RESPONDENT

Date of Decision : 01-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 66 DLT 2

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mukul Rohtagi and Ravi Gupta, for the Appellant; A.K. Sikri, for the Respondent

Final Decision : Dismissed

Judgement

C.M. Nayar, J.—The petitioner has moved this Court under Article 226 of the Constitution of India for a writ of mandamus directing the respondents to open the tender submitted by him with regard to the work of "construction of building at Hari Nagar, New Delhi" and to consider the same while awarding the work with the other tenderers.

2. The respondent Mahanagar Telephone Nigam Limited issued Notice Inviting Tenders with regard to the works as specified therein. The portion of the notice which is relevant for the purpose of decision of this case may be reproduced as follows :

"Mahanagar Telephone Nigam Ltd.

New Delhi

Notice Inviting Tenders

1.0 Wax sealed item rate tenders for the following work was invited by EE(C-II) on behalf of MTNL, New Delhi from the following contractors:

1.1 Civil and sanitary contractors of appropriate class registered with Department of Tele-communications C.P.W.D. MES Railways and local PWDs State of Central / State Govt. in their own capacity shall also be eligible to tender subject to conditions below.

2.0 Eligibility Condition

2.1 For work at Sr. No.1, the intending tenders should have satisfactorily completed at least 3 works each costing Rs. 2 crores or no works of aggregate cost not less than Rs. 6 crores under the Central Govt. /State Govt. PSUs during the last 7 years.

2.2 For works at Sr. Nos. 2.3 and 4 the intending tenders other than those enlisted with CPWD/DOT should have satisfactorily completed at least 3 works under the Central Government/ State Government/PSU during the last five years each costing not less than 30% value of the estimated cost put to tender of the work for which application has been made.

3.0 Particulars of works.

S. No.	Name of work	Estt. cost (Rupees)	Earnest money (Rupees)	Time of completion (months)	Date of Apply /sale/ Tender
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1	2	3	4	5	6
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1	Cost of the TE Builg. at Hari Nagar.	5,41,61,569	1,00,000	24	27.8.96
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29.8.96

2.9.96"

The petitioner alleges that he is a reputed and experienced Civil Contractor engaged in the business of construction and raising of Multi-storeyed structures, group housing societies and other civil works. The petitioner is already enlisted with Delhi Development Authority and the Central Public Works Departments. Therefore, it is stated that the petitioner fulfills all the eligibility conditions as contained in the Notice Inviting Tenders issued by the respondents and was competent to participate in the same. The last date for issue of the tender documents was August 29, 1996 and the tenders were to be opened on September 2, 1996. The petitioner allegedly approached the respondents for obtaining necessary documents so that he could fill in the same and submit its tenders on or before the scheduled date.

3. It is further alleged that since the documents were not available with the respondents, the same could only be supplied to the petitioner on August 30, 1996 at about 1 p.m. Immediately on receipt of the documents the petitioner completed the same and filled in its quotation for the said tender. The petitioner, admittedly did not wax seal the same and merely stapled the envelope with the staple pins. The plea is raised in the petition that the petitioner had filled in quotation hurriedly and inadvertently it just escaped to seal the same by wax

which was the requirement according to the tender notice. The tender was closed at 3p.m. on September 2,1996. The other contractors along with the petitioner had submitted their tenders just before the closing of the tender in the Tender Box in presence of the other contractors and responsible officer of the respondents.

4. The respondents did not open the tender of the petitioner on the ground that he failed to comply with the condition as contained in the "Notice Inviting Tenders" which required the envelope to be wax sealed.

5. The plea taken by learned Counsel for the petitioner is that the object of wax sealing is to ensure secrecy and since the tender was submitted in the presence of officers of the respondents as well as other contractors there was no question of any mischief being played by the petitioner and the tender must be directed to be opened and considered along with others. He has vehemently argued that the Authority issuing the tender is not expected to enforce condition rigidly. It is always open to the Authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. Reliance is placed on the judgment as reported in M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, . Paragraph 6 is cited which reads as under :

"It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank Clause 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories -- those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the Authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in C.J. Fernandez v. State of Karnataka a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. The High Court has, in the impugned decision, relied upon Rawana Dayaram Shetty v. International Airport Authority of India, but has failed to appreciate that the reported case belong to the first category where the strict compliance of the condition could be insisted upon. The Authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favor on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the Court closely examined the nature of the condition which had been relaxed and its impact before answering the question whether it could have validly condoned the

shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses, the present case belongs."

6. In the present case, the tenders were to be submitted in an envelope which was to be sealed with wax. The petitioner, admittedly, submitted his tender in an envelope which was not wax sealed but merely stapled. It was quite possible that he may have done so inadvertently and in a hurry so that the submission of the tender was not delayed. The question now arises as to whether respondents were within their rights to reject the tender as it did not comply with the first condition as incorporated in the notice. It is quite obvious that there is a specific purpose of sealing the envelope containing item rates tenders for the specified work. This is essentially to maintain secrecy so that no objection is raised by any party at the time the tenders are opened. The closing of the envelope by a staple pin would not comply with the essential requirements as incorporated in the tender as it is possible that the pins can be opened and contents seen when it is stapled. It cannot be a substitute for sealing the tender by wax. In my opinion, this was an essential condition of the tender notice and it was not permissible for the respondents to deviate from the same. The Supreme Court in Poddar Steel Corporation (*supra*) was dealing with a different situation where the cheque was submitted which was drawn on a different Bank than the one indicated in the tender notice. The non-compliance of this condition could, Therefore, be waived. In the present case the Authority issuing the tender is required to enforce the same strictly as it is an essential requirement of secrecy that the tender must not be submitted in a manner which is likely to violate the same.

7. The law is well settled that the terms of the invitation to tender cannot be opened to judicial scrutiny. The Court does possess powers to quash decisions which are, *prima facie*, arbitrary, biased and discriminatory. The respondent Authority in the present case has acted with due caution and no arbitrariness has been pointed out as it is quite clear from reading of the notice that the petitioner was expected to seal the tender and not to staple the same.

8. In view of the above, there is no merit in the petition. The same is dismissed in limine.