

(2008) 11 DEL CK 0075

In the Delhi High Court

Case No : WP (C) No. 1346 of 2008

The Times Travels and Another

APPELLANT

Vs

Chief Managing Director and Others

RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19, 20

Citation : (2008) 2 CTLJ 503

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : Varinder Kumar Sharma, for the Appellant; Lalit Bhasin, Ratna, Zainul, Shreya and Sudhanshu Toma, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—The Petitioners have filed the present petition under Article 226 of the Constitution read with Articles 14, 15, 16, 19, 20, 21, 39 and 40 of the Constitution of India. By way of this petition the Petitioners have prayed for quashing of Letter of Intent dated 18th January, 2008 issued by the Respondent Nos. 1 to 3 in favour of Respondent No. 4. It has further been prayed that the tender dated 15th October, 2007 for hiring of Non-AC CNG Coaches for staff transportation on point to point basis be awarded to the Petitioners.

2. The sole submission of Mr. Varinder Kumar, learned Counsel for Petitioners is that the Respondent Nos. 1 to 3 have awarded aforesaid tender to Respondent No. 4 who had not even participated in the tender process. Learned Counsel for Petitioners contended that after opening of the financial bid, both the Petitioners, L-1 and L-2 were called for negotiation and after bringing the L-2 to the level of L-1, the Respondent Nos. 1 to 3 had decided to divide the tender equally between the two Petitioners. In this context, learned Counsel for the Petitioners placed reliance on the Petitioner No. 1's own letter dated 26th December, 2007.

3. Learned Counsel for the Petitioners also relied upon the judgment of the Apex

Court in Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others,

4. Mr. Lalit Bhasin, learned Counsel for Respondent Nos. 1 to 3 contended that the tender in question dated 15th October, 2007 was cancelled as the Petitioners had formed a cartel and quoted exorbitant rates. He stated that in comparison to the existing rates, the rates offered by the Petitioners contained an additional financial burden of Rs. 10.7 Lakhs per month or Rs. 130 Lakhs per year on the Respondent Company. According to Respondents, there was no reason for hike in the rates because on that date there was neither any increase in fuel prices nor any additional levies or additional taxes. Mr. Bhasin submitted therefore, the Respondent Nos. 1 to 3 decided to exercise the power conferred under Clause 13 of the tender to terminate/cancel the aforesaid tender. Mr. Bhasin further stated that only after the cancellation of the aforesaid tender, the Respondent Nos. 1 to 3 decided to enter into an interim arrangement with Respondent No. 4 who was providing similar services to erstwhile Air India.

5. Mr. Bhasin pointed out that, in fact the Respondent Nos. 1 to 3 had floated a fresh tender on 21st July, 2008 inviting bids under two bid system for hiring of Non-AC CNG Coaches for staff transportation on point to point basis. He contended that even the Petitioners had participated in the new tender and after opening of the financial bids on 22nd September, 2008, it was found that the Petitioners are not the L-1 parties. He consequently prayed for dismissal of the present writ petition.

6. The relevant paragraphs of the counter-affidavit are reproduced hereinbelow for ready reference:

9. It was observed by Respondent Management that M/s. Vivek Travels was L-1 party; M/s. Highway Travels and M/s. The Times Travels were L-2 parties as both the parties had quoted same rates for all the 5 requisite slabs. L-1 and L-2 parties were called for negotiations as it was stated in Tender that the Respondent Management will preferably be engaging two service providers for the entire job. After negotiations all the three parties i.e. M/s. Vivek Travels, M/s. The Times Travels and M/s. Highway Travels offered the same final rates for all the slabs.

On analyzing the rates quoted by the parties (including Petitioners) for the job, it was found by the Respondent Company that;

the three parties i.e. M/s. Vivek Travels, M/s. The Times Travels and M/s. Highway Travels had cartelized and offered same final rates for all the distance slabs. these rates would have an additional impact of Rs. 10.76 lacs per month (Rs. 130 lacs per annum) on the Respondent Company as compared to existing rates. It was apparent that there was no reason for hike in the rates because neither there was any hike in the fuel rates nor increase in any levies of taxes etc. which calls for such a high increased in the existing slab rates. Therefore, hike in rates clearly implies the cartelization on the part of Petitioners.

14. It is further submitted that the bid of Petitioners were duly considered by the Respondent Company and only after examining the bids and coming up to the conclusion that exorbitant rates were offered by the Petitioners, the Respondent Company decided to reject the bid of the Petitioners as per Clause 13 of the tender dated 15.10.2007. Clause 13 reads as follows:

NACIL reserved the right to accept or reject any or all bids, annul the tender process and reject all bids at any time prior to the award of Contract without incurring any liability to the Tenderer (s) or without any obligation to inform the Tenderer (s) of the ground for its action.

15. It is submitted that in view of the foregoing, the decision of the Answering Respondent Company to reject the bid of the Petitioners and to offer the work to M/s M.D. Travels was an interim arrangement and valid. A fresh tender was issued on 21.07.2008 inviting quotes under two bid system for hiring of Non-AC CNG Coaches for staff Transportation on point to point basis vide Tender No. DGSD/09/STAFF-TPT/ENQ-06. Last date of submission of Tender was 1500 hours of 13.08.2008. The technical Bids were opened on the same day at 1530 hours.

The following parties responded to the above Tender:

- (i) M/s. Highway Travels
- (ii) M/s. The Times Travels
- (iii) M/s. Vivek Travels
- (vi) M/s. City Life Line Travels Pvt. Ltd.
- (v) M/s. Balaji Services
- (vi) M/s. Rao Tourist Services Pvt. Ltd.

The evaluations of the Technical Bids has been completed. The financial bid of the technically qualified parties have been opened on 22.09.2008 and the Petitioners are not the L 1 parties.

7. In rejoinder, learned Counsel for the Petitioner emphatically denied that the Respondent Nos. 1 to 3 had not executed a contract with Respondent No. 4 in respect of the same tender which had been issued on 15th October, 2007. In this context, he placed reliance on the Respondent's letter dated 18th January, 2008. The relevant portion of the said letter is reproduced hereinbelow for ready reference:

TO

M/S. M.D. TRAVELS

OLD PALAM GURGON ROAD,

SAMALAKHA, NEW DELHI"....

Sub: CONTRACT FOR HIRING NON A/C CNG COACHES FOR TRANSPORTATION ON POINT TO POINT BASIS.

SIR,

Please refer our discussion/offer dated 7.1.2008 of the subject and your letter dated 8.1.2008 wherein you have agreed to provide NON A C CNG COACHES FOR TRANSPORTATION ON POINT TO POINT BASIS. We intent to sign contact/agreement for award of subject service for routs as per Annexure A for a period from 1.2.2008 to 30.5.2009. The services are to commence w. e. f. 1st shift of 1st Feb, 2008. The detail agreements containing work scope, Rates and terms and conditions would be signed separately.

8. Learned Counsel for Petitioners further contended that the rates quoted by the Respondent No. 4 were lower as it did not comply with the tender terms dated 15th October, 2007 like deposit of Rs. 2 Lakhs as earnest money. He further contended that the new tender had been floated only because the Respondent No. 4 had itself given a notice to the Respondent Nos. 1 to 3 to withdraw its services.

9. After hearing the parties we are of the view that Clause 13 of the notice inviting tender gave the Respondent Nos. 1 to 3, the power to annul the tender process at any stage prior to award of contract. In the present case, the Respondent Nos. 1 to 3 after having come to the conclusion that the Petitioners had quoted exorbitant rates, had cancelled the tender. We find no infirmity with the decision making process of the Respondent Nos. 1 to 3 as the power conferred by the tender had been exercised on reasonable grounds. The judgment cited by the Petitioners' Counsel is not relevant to the present facts of the case inasmuch as it holds that the terms of the invitation to tender, being in the realm of contract, are not open to judicial scrutiny.

10. Though there may be merit in the Petitioners' plea that the Respondent Nos. 1 to 3 had not entered into an interim arrangement but had awarded the same tender dated 15th October, 2007 of hiring of Non-AC CNG Coaches for staff transportation by way of an agreement dated 18th January, 2008, we are of the view that this grievance of the Petitioners no longer survives inasmuch as the said Letter of Intent dated 18th January, 2008 had been terminated and a fresh tender for the same work had been issued on 21st July, 2008 in which the Petitioners have also participated, though unsuccessfully. In this view of the matter and the subsequent development we are not entertaining this writ petition.

11. Consequently, as the Respondent Nos. 1 to 3 have floated a fresh tender on 21st July, 2008 and are in the process of awarding it to the L-1 party, we are of the opinion that the Petitioners are not entitled to any relief from this Court. Therefore, the present petition is dismissed but with no order as to costs.