

(2018) 10 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition (L)No. 1715 Of 2018

Valentine Maritime Ltd. And Another

APPELLANT

Vs

Union Of India Through The Secretary And 2 Others

RESPONDENT

Date of Decision : 05-10-2018

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2018) 10 BOM CK 0010

Hon'ble Judges : Shantanu S. Kemkar, J;Nitin W. Sambre, J

Bench : Division Bench

Advocate : Janak Dwarkadas, Ameet Mehta, Omkar Khanwilkar, Devang Sharma, Priyanka Upadhyay, Drahti Jani, Mustafa S. Doctor, Amrita Joshi, Ashok R. Verma, S. Poria, C.Keswani,

Final Decision : Dismissed

Judgement

Original Bid Value,"20% Of

Annualized Bid

Value As Per

Bec","15% Of The 20%

Annualized Bid

Value For The

Consortium

Member As Per

Bec","NewÂ?Worth

Submitted","Criteria

Being

Met

Rs.1594,77,47,336/(Us\$244,110,628/Â?)" , "Rs.318,95,49,467/
Â?" , "Rs.29,39,86,251/Â?" , "Rs.30,69,19,070/Â?" , Yes

Original Bid Value, "20% Of Annualized

Bid Value As Per Bec" , "15% Of The 20%

Annualized Bid

Value For The

Consortium

Member As Per

Bec" , "NewÂ?Worth

Submitted" , "Criteria

Being

Met

Rs.1343,62,73,764/Â?

(Us\$205,667,744.75)" , "Rs.268,72,54,753/Â?" , "Rs.24,48,03,990/
Â?" , "Rs.30,69,19,070/Â?" , Yes

18. On 12/04/2018 The Respondent No.2 Has Informed The Dropping Of Certain
Work From The Scope Of Work.Â The Petitioner In Categorical,,,,

Terms In ParaÂ13 Of The Petition Has Stated That The Petitioner Has Accepted
Letter Dated 12/04/2018 Unconditionally And Was Responded To,,,,

Vide Communication Dated 16/04/2018. The Bid Validity Was Then Extended For
All The 4 Bidders Till 15/05/2018. All The 4 Bidders Were,,,,

Informed By Communication Dated 25/04/2018 By The Respondent No.2 Calling
Upon Them To Submit Reduction In The Quoted Lump Sum Price.,,,,

19. The Original Quoted Price Was Formed To Be A Basis For All The Qualified
Bidders And The Petitioner In Response To The Call Given By The,,,,

Respondent No.2 Without Any Protest Has Participated In The Tender Proceeding
By Submitting The Revised Offers Pursuant To The Reduction In,,,,

Scope Of Work.Â The Act On The Part Of The Petitioner In Accepting The Revised
Terms Viz. Reduction In The Scope Of Work By Not,,,,

Objecting To The Procedure Adopted By The Respondent No.2 At The Relevant
Time Speaks Of The Petitioner Wholeheartedly Participating In,,,,

The Tender Process.,,,,

20. The Fact Remains That After The Tender Document Was Submitted By All The 4 Qualified Bidders The Change In The Scope Of Work Is Not,,,,

In Regard To The Offer Made By Petitioner But Was In Regard To All The 4 Qualified Bidders. As Such It Cannot Be Inferred From The Record,,,,

That The Petitioner Was Singled Out From The Tender Process Or The Conditions Of The Tender Were Changed Only For The Petitioner. It Cannot,,,,

Be Also Inferred From The Record That The Tender Conditions Were Tailor-Made So As To Suit The Convenience Of The Respondent No.3. At,,,,

Least, No Such Case Is Pleaded By The Petitioner Before This Court. That Being So, The Reliance Placed By The Learned Sr.Counsel For",,,,,

The Petitioner On The Judgment Of Rishi Kiran Logistics Private Limited And The Food Corporation Of India Cited Supra Will Be Hardly Of Any,,,,

Assistance. The Procedure Adopted By The Respondent No.2 In Evaluating The Offers Of All The 4 Qualified Bidders Appears To Be Transparent,,,,

And In Most Fair Manner,,,,

21. The Modification Or Change In Tender Conditions Was Uniformly Applied To All The 4 Qualified Bidders And The Petitioner Without Any,,,,

Demur Participated In The Tender Process,,,,

22. Though Learned Sr.Counsel Mr.Dwarkadas Has Tried To Impress Upon This Court By Entering Into Certain Calculations About The Original,,,,

Schedule Of Completion, As Observed Herein Earlier The Change Therein Is In Regard To All The 4 Qualified Bidders And Not Only For The",,,,,

Petitioner, Such Tender Conditions Were Well Within The Knowledge Of The Petitioner. The Confusion, If Any, In The Matter Of Calculation Of",,,,,

The Original Schedule Of Completion That Is Whether 594 Days Or 491 Days Cannot Be An Issue Which Needs To Be Appreciated In The Extra,,,,

Ordinary Jurisdiction In A Contractual Matter,,,,

23. The Fact Remains That The Petitioner Having Acted Upon The Tender Conditions By Wholeheartedly Participating In The Tender Proceeding,,,,

Has No Right To Question The Tender Conditions. The Petitioner Has Failed To Demonstrate Before This Court As To The Mode And Manner In,,,,

Which The Petitioner Is Stated Unequally Amounts To Equal,,,,

24. The Learned Sr.Counsel For The Respondent No.2 In Our Opinion Was Right In Pointing Out The Terms Of The Invitation Of The Tender Are,,,,

Not Open To Judicial Scrutiny. It Appears That The Respondent No.2 Has Adopted

The Prudent Principle Of Commerce In Evaluating The Bids,,,,

And Same Equal Yardstick For All The 4 Qualified Bidders. Apart From Above, This Court Need Not Go Into Interpretation Of The Tender" ,,,,

Conditions At This Stage Of The Proceedings Particularly When Already There Is A Concluded Contract In Favour Of Respondent No.3.,,,,

25. That Being So, There Is No Substance In The Petition, The Same Is Dismissed." ,,,,