

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6205/2012 & CM No.16642/2012

RADIO SYSTEMS INC.

..... Petitioner

Through: Mr.Kirti Uppal, Sr.Adv. with Mr.Atul
Sharma, Mr.Nitesh Jain and Mr.Nitin
Thakur, Advocate.

versus

UNION OF INDIA AND ANR

..... Respondent

Through: Mr.Neeraj Chaudhari, CGSC with
Mr.Ravjyot Singh, Advocate for R-1.
Mr.Rajeev Sharma, Mr.Sahil Bhalaik
and Mr.Uddyam Mukherjee,
Advocates for R-2.

CORAM:

**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE VIPIN SANGHI**

ORDER

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09.10.2012

The petitioner participated in the tender floated by respondent No.2 for supply, installation, testing and commissioning of 709 nos. of Digital Consoles and Digital Cabling at AIR Stations under Digitization Scheme under 11th plan by submitting both the technical and price bid on 28.10.2010. The original validity of the offer was till 14.07.2011 for which the EMD in the form of bank guarantee was to be kept alive. The price bid was opened on 24.08.2011. The final result of the tender was however not declared but the petitioner was called upon repeatedly to keep extending the bank guarantee and the final extension was made till 30.09.2012.

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The grievance of the petitioner is, that though it is almost two years since the original date of the tender, eleven months since the price was opened when the petitioner alone was called upon to extend the bank guarantee, suddenly vide letter dated 28.08.2012, the original bank guarantee with the extension has been returned and no reasons disclosed why the contract has not been awarded to the petitioner.

In view of the aforesaid facts and circumstances, we had called upon respondent No.2 to explain their stand. Learned counsel for respondent No.2 fairly concedes that the reason for return of the EMD ought to have been disclosed. We may emphasize that we have repeatedly observed umpteen times in various orders and even issued directions for circulation of our orders that while dealing with tender matter in case of any rejection, the reasons for the same must be disclosed so that the bidder is not caught unaware and he does not have to approach the court to find out the cause why his bid has not been accepted. Learned counsel also fairly concedes that there has been an inordinate long period of time taken to give this decision but the same is stated to be on account of usual delays and complaints which keep on coming.

In our view even this aspect needs serious review and rethought as in commercial tenders, parties cannot be expected to keep their offers open over a long period of time as it comes at a cost and some decision must be taken within a reasonable period of time one way or the other.

Now coming to the records as produced before us, it is apparent and as submitted by learned counsel for respondent No.2 that the whole bidding process in respect of the tender in question itself has been scrapped by exercising authority under clause 12 which permits respondent No.2 to reject or accept a tender without assigning any reasons. We have however

perused the record to find out the actual basis for the decision to scrap the tender.

The record shows that it is an undisputed position that the bids were made with a foreign exchange component. In the long time period that the bid was pending consideration, there was considerable variation in the foreign exchange rate for the dollar. The result of the same was found to be that L-2 would have become L-1. The finance wing of respondent No.2 noticed that there were substantial delays and drastic change in foreign exchange rate which was affecting the ranking and that there were two options available. The first option was to go with a rebid in view of changed ranking while the other option was to accept the existing L-1 offer with justifiable reasons taking into account various factors like the impact of further delays on essential project requirements, the extent of the difference between the newly worked out L-1 and L-2 rates etc.

The matter was put up to the Finance and Accounts Committee to thus consider the proposal of the petitioner which was at a total cost of Rs.35,54,13,344/- including a foreign exchange component of US Dollars 5543550.50. The Finance and Accounts Committee met on 31.07.2012 and found that as a consequence of the change of exchange rate of dollar, the difference between L-2 and L-1 is substantial at more than Rs.1 crore. The Member Finance explained the financial view that they could not now open the tender of L-2 and the option would be to call fresh tender unless management can justify strong reasons for consideration of the L-1 offer. After detailed analysis, a decision was taken that fresh tender should be called for and the committee recommended that all future bids be taken in INR and FOR destination basis. The matter was thereafter put up to the Board of respondent No.2 which in its meeting held on 06.08.2012 recommended that fresh bids be called as ranking had changed

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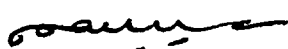
substantially on account of foreign exchange fluctuations. It is under these circumstances that the bid process has been cancelled.

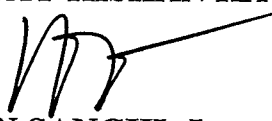
We find that the decision taken by respondent No.2 is not without basis and they have weighed all the pros and cons to come to the conclusion that the most appropriate course of action would be to cancel the bid. Needless to emphasize that this court does not sit as an appellate authority to weigh as to whether A option is better than B option as long as there is reasonable basis for the option exercised. There is no fault in the decision making process in the present case. The only fault really is that an inordinate period of time was taken to process the bids which has brought this position to pass and we will expect the authorities to take care in future that the bid process does not go on indefinitely and the time schedule is adhered to apart from the fact that the reasons for decision taken ought to be communicated simultaneously with the decision so that the tender party knows the reasons for any adverse decision.

In view of the aforesaid facts and circumstances, we are not inclined to exercise jurisdiction under Article 226 of the Constitution of India.

Dismissed.

Learned counsel for the petitioner at this stage states that the petitioner may be advised to take remedial measures for compensation. If that be so, we have not opined one way or the other in the present case and whatever civil remedies are available to the petitioner in accordance with law are always available.


SANJAY KISHAN KAUL, J


VIPIN SANGHI, J

OCTOBER 09, 2012/dm