

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

% Judgment Reserved on : March 20, 2013
Judgment Pronounced on : March 22, 2013

+ **WP(C) 7184/2012**

BEEHIVE SYSTEMS PVT LTD AND ORS Petitioners
Represented by: Mr.Ranvir Singh, Advocate
with Mr.Tilleshwar Prasad, Ms.Shruti Kumari,
Advocates

versus

RAJYA SABHA SECRETARIAT AND ORS Respondents
Represented by: Mr.Parag P.Tripathi,
Sr.Advocate instructed by Ms.Zubeda Begum,
Mr.Abhimanyu Bhandari, Ms.Aanchal Mullick,
Ms.Sana Ansari, Mr.Saket Sikri, Ms.Monisha
Handa, Advocates for R-1.
Mr.Rajeev Sharma and Mr.Dadyam Mukherjee,
Sahil Bhalaik, Advocates for R-2.
Mr.Sushil Peter, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. A Request for Proposal (RFP) was published by the
'Broadcast Engineering Consultants India Ltd.', a Government of India
enterprise for procuring 'VIZrt Graphics System', for Rajya Sabha TV
channel.

2. Disclosing the intent for the Request for Proposal, it was
informed to the bidders, that proceedings of Rajya Sabha being telecast
live whenever the House was in session, a decision was taken to have a
full fledged dedicated TV service for Rajya Sabha. It was informed that
a decision was taken to set up a 24x7 TV channel, known as 'Rajya
Sabha TV (RSTV) Channel' for broadcasting programmes and events

dedicated to the important functions of Rajya Sabha. It was expressly stated that the intent of the RFP was to procure 'VIZrt Graphics System'.

3. The grievance of the writ petitioner is that, of the many softwares available in the market including that of the petitioner, decision taken to procure only VIZrt Graphics, violates Rule 154 of the General Financial Rules, 2005 framed by the Government of India; admittedly adopted by the Rajya Sabha Secretariat. The Rule in question reads as under:-

"Rule 154. Single Tender Enquiry

Procurement from a single source may be resorted to in the following circumstances:

i. *It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods.*

ii. *In a case of emergency, the required goods are necessarily to be purchased from a particular source and the reason for such decision is to be recorded and approval of competent authority obtained.*

iii. *For standardisation of machinery or spare parts to be compatible to the existing sets of equipment (on the advice of a competent technical expert and approved by the competent authority), the required item is to be purchased only from a selected firm."*

4. Conceding that a single source tendering process may be resorted to, learned counsel for the petitioner had urged that in said circumstance, a Proprietary Article Certificate (PAC) in the prescribed form had to be obtained by the Ministry/Department concerned. The certificate in question envisaged by the Rule, is as under:-

“(i) The indented goods are manufactured by M/s.....

(ii) No other make or model is acceptable for the following reasons:

.....
.....
.....

(iii) Concurrence of finance wing to the proposal vide.....

(iv) Approval of the competent authority vide.....

(Signature with date and designation
of the procuring officer”)”

5. Admittedly, no such certificate has been obtained by the Rajya Sabha Secretariat.

6. It is not in dispute that VIZrt Graphics System is a software programme, ownership whereof vests in ‘VIZRT India Pvt. Ltd.’, respondent No.3. It is also not in dispute that the petitioner is the proprietor of a real time 3D graphic software called WASP3D. As per the petitioner, its software is, and if we may use the expression from the mouth of the petitioner contained in petitioner’s representation dated July 31, 2012; ‘an Equivalent Graphics System’.

7. The first point of variance between the parties is to the interpretation of the word ‘source’ in Rule 154 of the General Financial Rules, 2005.

8. Shri Parag Tripathi, learned Senior Counsel appearing for the respondents urged that the ‘source’ referred to in the Rule is the source wherefrom the goods enter the market and thus urged that any Vendor of the product could be a bidder and in this way it is not a case of a ‘single source’ procurement. Per contra, as per the petitioner the source

means the manufacturer of the goods and not the source of the channel where from the goods enter the market.

9. The Rule in question, while referring to procurement from a single source, while permitting the same to be resorted to, limits the circumstance under which procurement from a single source may be resorted to; and the first circumstance is that to the knowledge of the user department a particular firm alone is the manufacturer of the required goods.

10. Thus, it needs no intelligence to answer the debate. The ‘*source*’ referred to in Rule 154 is not the channel through which the goods enter the market, but is the source of the manufacture. With respect to software, it has to be the owner of the software programme.

11. Having overcome the problem in favour of the petitioner, we now need to consider whether the single source procurement, with reference to the manufacturer i.e. VIZrt software has been justified by the respondents.

12. It may be true that a Propriety Article Certificate (PAC), as per the proforma prescribed, is not available with the respondents, but it has to be kept in mind that the General Financial Rules, 2005 govern purchases made by various ministries and departments of the Government and thus the need for a Propriety Article Certificate to be obtained from the Ministry/Department concerned. For example, the Ministry of Urban Development may like to procure, say a bio-larvicide, to control breeding of mosquitoes in urban areas. It wants to source the chemical from a single manufacturer. It would then require a certificate from the Ministry of Environment, inasmuch as the product is a bio-larvicide. Similarly, the Ministry of Railways may intend to procure

telecommunication equipment from a single manufacturer. The concerned Propriety Article Certificate would have to be obtained from the Ministry of Telecommunications. In other words, it is the expert body within the Government which would issue the certificate.

13. But the Rajya Sabha Secretariat is not a heterogeneous secretariat. It is settled law that when a particular organization adopts a Rule enacted by some other organization, the Rule must apply *mutatis mutandis*. That apart, it is not the form but the content which matters, and that takes us to further narration of facts to see whether, in substance, the mandate of Rule 154 has been fulfilled in the instant case.

14. We have noted hereinabove that the Request for Proposal was issued on July 23, 2012. Much before that, the expert body engaged by Rajya Sabha Secretariat i.e. respondent No.2, consisting of an Executive Director, a Product Manager and an Associate Executive Producer, had surveyed the existing infrastructure i.e. the hardware available at the Rajya Sabha Secretariat. After survey and deliberating upon the issue, the three member committee minuted a decision on December 20, 2011. The minutes of the meeting dated December 20, 2011 bring out the object of the discussions with respect to the requirement for a graphic system by the Rajya Sabha Secretariat as under:-

“A central graphics system for the creation and delivery of graphics, bar charts and pie charts, weather information and a variety of customized graphical information as per the needs and genre of the Channel.

A Ticker system to update information on latest happenings, news breaks, sports etc. In the form of a graphical scroll which is generally placed on the lower part of the viewable screen area.

The information and data used for this purpose is based on a customized data base and is usually supported with an automated integration.”

15. The committee noted that with aforesaid outline of requirement, choice of the graphic system was narrowed down by identifying advantageous features, being 15 as under:-

- “1. Market presence in popular channels in both national as well as international broadcasting arena.*
- 2. Internationally reputed.*
- 3. Ease of design and operation.*
- 4. Availability of adequately trained manpower.*
- 5. Easy workflow with minimum hardware and software.*
- 6. Ease of integration in to the broadcast workflow.*
- 7. Easy to work with third party design tools and software.*
- 8. Open Architecture.*
- 9. Easy to incorporate dynamic changes to the existing designs with maximum ease and in minimum time in an automated workflow.*
- 10. Ability to import data from a continuously variable feed such as stock data, consumer price index etc.*
- 11. Structured data base that gives easy access to all designers and clients as well as stores all assets with efficient and secure file-handling.*
- 12. Vibrant Colour space and texture.*
- 13. Distinctive and appealing character fonts in both English and Hindi Languages.*
- 14. Ease of delivery and structured archival of data base.*
- 15. Day-to-day support for design as well as Engineering.”*

16. Based on the aforesaid parameters, the Committee noted that it had evaluated popular graphic systems available in the market and used

by various channels. The Committee opined that VIZrt Graphics System was the most suitable for the Rajya Sabha TV channel, primarily based on the following features of the system:-

“a. VIZRT is used by the world’s leading broadcasters, publishing houses and telecom operators, including: CNN, CBS, Fox, BBC, Sky, ITN, ZDF, SVT, Star TV, CCTV, NHK, the Globe and Mail, The Telegraph, Welft Online, Etisalat and Telia Sonera. Furthermore, many world-class production houses and institutions, including both the New York and London Stock Exchanges, utilize VIZRT solutions. Almost 80% of the popular Indian Television Channels including the national broadcaster (DD News) is using this Graphic System.

b. Installations of VIZRT are found in more than 80 countries, powering over 3,500 TV Channels and around 600 internet media sites. Its local presence in all the major markets around the world makes this possible. In addition to regional presence in Eastern Europe, East Asia, Latin America, and the Middle East, VIZRT has offices in Argentina, Australia, Austria, Bangladesh, China, Hong Kong, India, Indonesia, Israel, Japan, Korea, Norway, Philippines, Russia, Singapore, South Africa, Spain, France, Portugal, Sweden, Switzerland, Thailand, UK, and the USA.

c. Due to its presence in abundance, the trained operators and designers are easily available in the Indian market of broadcasting professionals.”

17. The Committee additionally noted that some of the unique features of VIZrt were as under:-

“(i) Data Base Structuring – It has integrated multi-user database that serves as the central point

for storing all assets which provides efficient and secure file-handling.

(ii) Open Architecture – It can be controlled by any programming language and connected to any database.

(iii) Video (DVE)- It has a special mode for playing videos (DVE mode) in which there is no audio delay otherwise in other applications there is a sound delay of 2-6 frames it can also be used to play videos from a video server along with graphics.

(iv) Open GL has more use in the professional graphics market. It has excellent rendering quality, real-time shadows and multi-texturing.

(v) It has built in-interactivity and advanced control options. With its own powerful set of plugins and functionality, it can automate a design and make buttons for touch screens.

(vi) VIZRT has guaranteed data consistency and remain consistent even when they are copied or moved. This means that changes in an object will affect all connected designs.

(vii) It has the ability to import models from other 3D packages like Maya, 3DS Max, Lightwave and Softimage.

(viii) Transition Logic is a trademark functionality with which it can seamlessly play graphics back to back and manage screen space thereby easing the operator's job of handling multiple layers of graphics.

(ix) Each parametric object has a set of free variables that allows designers to alter the object's features in various ways.

(x) For all the designs like ticker design, virtual sets, world maps, data graphics etc. Designing is only done in VIZrt. Hence, a designer can take care of all the different needs of the channel.

(xi) With additional plug-ins it is easily possible to incorporate dedicated graphics for web based applications. Since RSTV has plans to webcast its Channel, this feature will enable ease of implementation.”

18. It has to be kept in mind that the Rajya Sabha Secretariat was purchasing the software programme which had to be compatible with its existing infrastructure i.e. the hardware. The compatibility had to be : *a minimum real time interface.*

19. What does this mean? Those, who watch television see tickers displayed when a programme is being broadcasted. Software integrates the tickers into the broadcast. Further, it is not one camera alone which records the proceedings, say a cricket match or a debate in the Rajya Sabha. Six to eight cameras, at different positions are put. The cameras scan the proceedings from various directions and the scanning from all the cameras cannot be simultaneously broadcasted/beamed, for the reason the image would be fudged. At any given one point of time, proceedings as captured by one camera, at one angle, can be beamed. The computer software is so programmed that a human agency sitting in the control room can operate the system so that only one image captured is broadcasted; needless to state the image being the one of the choice of the person concerned, who is trained in the field of broadcasting i.e. understands which out of the various images captured needs to be broadcasted i.e. the best.

20. Further, let's say, a bill is being voted. The voting strength of the House, with reference to the party position, is graphically displayed. These graphics find superimposition on the broadcast. But the same has to be with aesthetics.

21. To put it pithily the existing computers, cameras and operational system need compatible software.

22. It is not a case of buying potatoes or mangoes. It is not a case of buying tables and chairs. It is a case where a person already has the operating systems and is desirous of purchasing a software. Surely, compatibility in the form of which is the best compatible software is a relevant part of the decision making process and has to be left to the decision of the person concerned.

23. Thus, in effect in the facts of the instant case the question of applicability of Rule 154 of the General Financial Rules, 2005 being applicable does not even arise, but assuming it does, we find a compliance with the requirement of Rule 154 of the General Financial Rules, 2005 in its spirit. If a Rule is complied with in its spirit, it hardly matters whether the letter thereof is also complied with. Besides, as we have already held, the requirement of the Rule in question pertains to the Government of India, having multiple/different departments i.e. the heterogeneous character of the Government.

24. That apart, we would be failing not to note that after Request for Proposal was issued, the representatives of the petitioner lodged a protest pointing out that the software developed by them called WASP3D was called compatible with the VIZrt system. A technical committee of the Rajya Sabha Secretariat and respondent No.2 was constituted. It evaluated the performance of the WASP3D computer

software developed by the petitioner and found the same not compatible with the requirement of Rajya Sabha TV keeping in view the stage of the functionality of the system. The decision was conveyed to the petitioner under cover of a letter dated September 07, 2012 (date wrongly typed in the letter as 2010), an error apparent for the reason, the letter refers to a letter dated August 31, 2012 written by the petitioner. Besides, beneath the signatures of the Joint Director (Admn.) of Rajya Sabha TV is the date September 07, 2012. The letter reads as under:-

*“From 7 September, 2010
A.K.Mallick
Joint Director, RSTV*

*To
Nishant Chawala,
Country Head-India, WASP3D,
BeeHive Systems
B-37, Sector 1, Noida-201301*

Dear Sir,

*This is in reference to your letter dated 31
August, 2012.*

In this connection, we wish to inform you that the technical committee of RSTV had evaluated your system in terms of the presentation given and as per the documents provided by your company. After careful consideration of the information received and an in-depth technical analysis in relation to the requirements of RSTV duly keeping WASP3D on a level playing field, it has been observed that procurement of VIZRT system commensurate with the requirements of RSTV at this stage of its functionality.

However, any requirement in the course of future expansion of RSTV, Your product will be

considered in routine course, subject to suitability and need existing at that time.

Thanking you for providing valuable inputs and details of your product and expecting your co-operation in future endeavours of RSTV.

With regards,

*(A.K. Mallick)
Joint Director (Admin), RSTV”*

25. It is settled law that the Government has the freedom to trade as it wishes. But, once having set the rules of the game, would be bound by the same. So would the Rajya Sabha Secretariat have the necessary freedom. Law does not prohibit a single tenderer, provided the decision to procure the goods from a single source is fair and reasonable. In the areas of computer software programmes it is left best to the decision of the consumer to decide which operating system best suits the requirement of the consumer keeping in view the existing hardware available with the consumer.

26. The writ petition is accordingly dismissed but without any order as to costs.

**(PRADEEP NANDRAJOG)
JUDGE**

**(PRATIBHA RANI)
JUDGE**

**MARCH 22, 2013
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