

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

% Judgment delivered on: 17.04.2015

+ W.P.(C) 3677/2015

PES INSTALLATIONS PVT. LTD. AND ANR Petitioners

versus

UNION OF INDIA AND ANOTHER Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sanjeev Behl with Ms Eklavya Behl and Mr Nitin Raj
For the Respondent No.1 : Mr Vikram Jetly with Ms Bharti Raju and Mr Ankur Chhiber
For the Respondent No.2 : Mr Ratan K. Singh with Mr Shashi Bhushan, Mr Suraj Prakash and Mr J. K. Chaudhary for R-2.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 6557/2015

The delay in re-filing is condoned.

This application stands disposed of.

CM 6556/2015

Allowed subject to all just exceptions.

WP(C) 3677/2015 & CM 6555/2015

1. In this writ petition, the grievance of the petitioners is that their bid, which was submitted 12 minutes beyond the bid submission time, has not

been considered. The bid was in respect of a Global Tender Enquiry for procurement of Modular Operation T (1) and Integration Part for 6 AIIMS.

2. The tender was floated initially on 03.03.2014. The tender had gone through various amendments and finally the bid submission date and time were specified as 16.01.2015 at 2 pm. On 16.01.2015, at 11:53 am, the petitioners sent an e-mail to the respondents informing them that the bank guarantee is under preparation with their bankers and the same would be ready and would be given to them by 1:30 pm. They made a request for extending the time for submission of the bids, at least by 1-1/2 hours, that is, up to 3:30 pm. In response to the said request, the respondents extended the bid submission time to 3 pm (15:00 hours) on 16.01.2015. The petitioners did not submit their bid by 15:00 hours, but submitted it late by 12 minutes at 15:12 hours.

3. The learned counsel for the petitioners submits that the bid submission time ought to have been extended up to 3:30 pm (i.e., 15:30 hours), as requested, and not only to 3 pm (15:00 hours). He further submitted that the petitioners had full intention to submit the bid and had tried their level best to submit the same within the stipulated period, but were only able to arrive

at the place for the submission of the bid at 3:12 pm. The learned counsel for the petitioners referred to a decision of the Bombay High Court in **Infrastructure Leasing & Finance Services Limited v. State of Maharashtra: WP(C) 1454/2009** decided on 20.08.2009. He submitted that in that case also, there was a delay in submitting the bid by two minutes and the High Court permitted the said bid to be considered. He placed reliance on paragraph 28 of the said decision, which reads as under:-

“28. This entire problem can even be viewed from another angle. Does any of the parties including the Respondent particularly would suffer from any prejudice if the tender of the Petitioners is also permitted to be considered? Obvious answer would be in the negative. It is a tender of huge amount and it will be in the interest of the State on the one hand to have a wider choice out of the lowest bidders and on the other hand, it would serve the public interest. It can hardly serve any public purpose and public interest if fair competition is suppressed at this juncture. We are told that there are only three tenderers including the Petitioners.

Nothing substantial has happened as yet. In our view, no prejudice will be caused to any of the parties including the Respondent who will get wider zone of consideration by offering greater competition which will always be in the public interest. Obviously, the Petitioners would not gain anything as all the bids are in a sealed cover and it is for the State to take appropriate decision depending upon the clear technical bids and financial bids offered by the tenderers in accordance with the terms and conditions of the tender document.”

(underlining added)

Consequently, he submitted that the petitioners' bid also ought to be considered in the same light.

4. The learned counsel appearing on behalf of the respondents, on advance notice, submitted that the petitioners' bid cannot be taken into account for various reasons. First of all, the bid submission date was 16.01.2015 and a lot of water has flown since then. The writ petition was filed around 10.02.2015 and, thereafter, the objections have only been removed recently, which is why the petition is listed before us today, for the first time. According to the learned counsel for the respondents, this delay would itself disentitle the petitioners from any relief in the petition. Secondly, it is submitted by the learned counsel for the respondents that the delay in submitting the bid cannot be condoned as that would be altering the condition of the bid itself. Thirdly, it was submitted that there were eight bids which were received and the technical bids had been processed and are at the stage of opening of the price bids. Fourthly, it was submitted that in case the bank guarantee was taking some time, the petitioners could have submitted a banker's cheque which does not take much time.

5. Having considered the submissions made by the learned counsel for the parties, we are in agreement with the submissions made by the learned counsel for the respondents. Once a bid submission date and time has been fixed, the bids have to be submitted before that time, unless amended by the employer with notice to all concerned. In this case, a request had, *inter alia*, been received from the petitioners and on that request, the bid submission time had, in fact, been extended to 15:00 hours. The petitioners cannot contend that the respondents were duty bound to extend the bid submission time to 15:30 hours, as requested by the petitioners. In any event, the petitioners were originally aware that the bids have to be submitted by 2 pm on 16.01.2015. If eight other bidders were able to submit their bids along with bank guarantees within the stipulated time then, there was nothing preventing the petitioners from being completely ready for submitting the bid on or before 2 pm on 16.01.2015.

6. Furthermore, the petitioners have approached this Court at a belated stage and had not even bothered to remove the objections in a timely manner. Today, when we are hearing the writ petition, three months have elapsed from the due time for bid submission on 16.01.2015. In that period of three months, several things have happened. Technical bids of the eight

bidders have been opened and processed and are now at the stage of opening of the financial bids. For this reason also, we refrain from interfering with the tender process at the behest of the petitioners.

7. Insofar as the decision of the Division Bench of the Bombay High Court is concerned, that is clearly distinguishable. In that case, there were only three bidders, including the petitioner and, if the petitioners' bid was not taken into account, then, only two bidders would be left in the field. This is not the case in this matter. Here, there are eight bidders whose bids are being processed. Thus, the argument of wider participation, which may have been relevant in the case before the Bombay High Court, cannot be raised in the present petition.

8. Furthermore, in paragraph 28 of the said decision itself, it has been noted that :-

“Nothing substantial has happened as yet.”

In the present case several things have happened. Technical bids of eight bidders have been opened and processed and, therefore, for this reason also the present case is completely distinguishable from the decision of the Bombay High Court. This is apart from the fact that this Court is not bound

by the decision of the Bombay High Court, cited by the learned counsel for the petitioner. There are other distinguishable facts which we need not allude to in the backdrop of the view which we have already taken.

9. We may also point out that it was a specific condition of the tender, as indicated in clauses 20.2 and 23.1, that if a bid was not received within due date and time, then it would be ignored/ rejected. So, the respondents in not considering the bid of the petitioners, which, admittedly, was beyond the bid due time, have not committed any wrong and have not acted in an arbitrary fashion. They have complied with the tender conditions.

10. For all these reasons, there is no merit in the writ petition. The same is dismissed.

BADAR DURREZ AHMED, J

**APRIL 17, 2015
SR**

SANJEEV SACHDEVA, J