

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 16.08.2016

+ W.P.(C) 11709/2015 & CM 31146/2015 and 29521/2016

BENJAMIN BENJAMIN & VATS

.... Petitioners

versus

DELHI DEVELOPMENT AUTHORITY AND ORS

.... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Mayank Jain, Mr Parmatma Singh and Mr Madhur Jain

For Respondent No.1 : Mr Rajiv Bansal and Mr Shlok Chandra

For Respondent No.4 : Ms Aditi Mohan

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This petition is concerned with the request of proposal for engagement of Comprehensive Integrated Planning Consultancy Services for Construction of a Football Stadium of 18000 seating capacity at Sector-19, Dwarka. A request for proposal was issued by the Delhi Development Authority (DDA) on 29.5.2014. Three bidders responded. One out of them was disqualified leaving the petitioner and respondent No.4 in the fray. Ultimately, the bid of respondent No.4 was accepted and the letter of award of the work was made in favour of respondent No.4 on 02.01.2015.

2. The case of the petitioner, who is an unsuccessful bidder, is three-pronged. First of all, the learned counsel for the petitioner submitted that respondent No.2 submitted false information regarding completed works and, therefore, respondent No.4's bid ought to have been rejected summarily. The second plea taken by the petitioner was that the information given by the respondent No.4 with regard to the area covered by the Media Centre at Tau Devi Lal Stadium, Punchkula, and the seating capacity of the said stadium was false as the figures given by the Haryana Urban Development Authority (HUDA) were contrary to those given by the respondent No.4. Therefore, according to the petitioner, respondent No.4 had made false statements and consequently, the bid ought to be rejected and the award of the work made in favour of respondent No.4 ought to be cancelled. Thirdly, it was contended by the learned counsel for the petitioner that the respondent No.4 did not fulfil the criteria of having done consultancy work to the tune of Rs 75,00,000/- insofar as the Central Government project pertaining to the women's Hostel at NIT Warangal, was concerned. It was also contended that the work at Tau Devi Lal Stadium, Punchkula, was not upto the minimum limit of Rs 1.5 crores. For all these reasons, it was contended by

the learned counsel for the petitioner that the award of work to respondent No.4 ought to be cancelled.

3. The learned counsel for the DDA submitted that all the issues raised by the learned counsel for the petitioner had been considered and gone into in detail by the DDA. It was submitted that the Chief Engineer (Projects), DDA, had made certain recommendations which included the recommendation that the tenders be rejected and recalled and that the respondent No.4 be banned from doing business with DDA on the allegation that respondent No.4 had misrepresented and suppressed material facts which were crucial for the tender. It was, however, submitted by the learned counsel for the DDA that the recommendations of the Chief Engineer (Projects), DDA, did not find favour with the Finance Member as per Finance Member's Note dated 22.12.2014. However, the Finance Member recommended that the views of the Engineer Member be also taken as he was the expert in the matter. The Engineer Member also concurred with the views of the Finance Member and, ultimately, the views were placed before the competent authority being the Vice Chairman, DDA.

4. The note of the Engineer Member was, *inter alia*, to the following:-

“I have perused the Notes of EE / Supports Div. -1, PD Sports, CE (Project) form N/1 to N/12 , Comer (Sports) note from N/13 to N/17 and FM Note from N/17 to N/20. Further I have perused the related documents also. In view of the perusal / examination the following is placed for consideration.

(A). The work of consultancy services for India Cricket League (ICC) for Tau Devi Lai Stadium, Panchkula considering the scope of work involved qualifies as similar works defined in NIT.

(B) From the perusal of documents i.e., TDS, AS26 copy of agreement etc, it is clear the consultancy fee amounting to Rs 115 lac was paid during the financial years 2007-08 and 2008-09. By indexation at a simple rate of 7 % per annum it qualifies as “one similar completed consultancy work of aggregate cost not less than Rs. 150 lac.

(C) The work of “Architectural design Engineering and Project Management Consultancy for construction of Ladies Hostel for 350 capacity at NIT Warangal vide agreement no 15/2008-09 dated 18.06.2008 qualifies as one completed consultancy work of any nature costing not less than Rs 75 lac with some Central Govt. Department / State Government Department / Central Autonomous body / Central Public Sector Undertaking of Union of India as per NIT stipulation, in spite of alleged court case which has nothing to do with this work.

In view of above M/s Collage Design Pvt. Limited 300, Sai Sampanna Station Road, Vibhroli East Mumbai, qualifies for award of the work “Comprehensive Integrated Planning Consultancy Services for construction of Football stadium of

18000 seating capacity at Sector 19 Dwarka. The letter of award of work may be issued immediately without any further delay. The CE (Project) Note from N/7 to N/12 was perused in this note CE (Project) tried to confuse the matter by relying on documents procured dubiously and interpreting it in different ways, which is unbecoming of the officer of that stature. Perhaps he worked here with ulterior motive, so he should be censured for his misconduct and causing unwarranted delay of 2 months in this process besides creating a possible dispute with M/s Collage Design to whom the LOI already issued and they have already submitted Performance Guarantee (PG).

The case is submitted for perusal and order of VC. DDA.

Sd/-
26.12.2014
EM”

5. The noting of the Vice-Chancellor, DDA, on the above note of the Engineer Manager was to the following effect:

“VC. DDA

I agree for ‘A’. We must issue show cause notice to CE (Projects) to explain his conduct in the matter.

Sd/-
29.12.2014”

6. From the above, it is evident that the Finance Member, the Engineer Member and the competent authority, that is, the Vice-Chancellor, DDA,

have all concurred and have considered respondent No.4 to have been eligible for the award of the contract. What is more important is that the Vice-Chancellor, DDA, has taken the view that a show cause notice ought to be issued to the Chief Engineer (Projects) to explain his conduct.

7. Be that as it may, we have examined the points urged by the learned counsel for petitioner. At this juncture, it would be pertinent to set out certain clauses of the Request For Proposal. Clause 2 of the request for proposal reads as under:-

“All information called for in the enclosed forms should be ‘furnished’ against the relevant columns in the forms. If, for any reason, information is furnished on a separate sheet, this needs to be mentioned against the relevant column. Even if no information is to be provided in a column, ‘nil’ or ‘no such case’ entry should be made in that column. If any particular query is not ‘applicable’, it should be stated as ‘not applicable’. The applicants are cautioned that not giving complete information called for in the Application Forms, or not giving it in clear terms, or making any change in the prescribed forms, or deliberately suppressing information shall summarily disqualify the applicant. Applications sent by telegram/telex, not enclosing prescribed fee and received after the stipulated date and time shall be outrightly rejected.”

And Clause 6 of the request of proposal reads as under:-

“Any information furnished by the applicant found to be incorrect at any stage would make the applicant ineligible & liable for such action as deemed fit by the DDA.”

8. These provisions were pointed out by the learned counsel for the petitioner to indicate that complete information was to be provided by the bidders and no false information or suppression of information was permissible and in either eventuality, the bids were liable to be rejected summarily. The learned counsel for the petitioner also drew our attention to Clause 5 which deals with the essential criteria of eligibility. Clause 5.1 is relevant for our purposes and same is reproduced herein below:-

“5.1 Professional Agencies / Firms having an experience of having successfully completed consultancy works during the last 7 year ending last day of the month previous to the one in which applications are invited:

Three similar completed Consultancy works costing not less than Rs.75 Lacs

OR

Two similar completed Consultancy works, costing not less than Rs.112.50 Lacs

OR

One similar completed Consultancy work of aggregate cost not less than Rs.150 Lacs

AND

i) One Completed Consultancy work of any nature (either, part of (i) or a separate one) costing not less than Rs.75 Lacs with some Central Government Department / State Government Department / Central Autonomous Body / Central Public Sector undertaking.

Similar nature of works means "Comprehensive Integrated planning & Consultancy services of Sports Stadium".

9. It was submitted by the learned counsel for the petitioner that the respondent No.4 had made a false statement that the works in respect of the Cricket-Football Stadium for 35th National Games at Trivandrum, Kerala and the International Cricket Stadium at Raipur, Dehradun for State Government of Uttarakhand, had been completed when, in point of fact, as was evident from the reply to the RTI query given by the DDA (the relevant document being at page 118 of the paper book) that the work was still in progress.

10. Therefore, according to the learned counsel for the petitioner, the respondent No.4 having given false information that the works had been completed ought to have been disentitled for consideration under the said Request For Proposal.

11. In response to this, the learned counsel for respondent No.4 submitted that the reference to completed works was not of the project but completed "Consultancy Works". It was submitted that though the projects may have

been ongoing, the consultancy works had been completed and, therefore, there was no false statement on the part of respondent No.4. When we examined Clause 5.1 which has been quoted above, it is evident that the reference is to completed 'Consultancy Works' and not to completed work and, therefore, the submission of the learned counsel for the petitioner cannot be accepted.

12. A similar submission was also made in respect of the Tau Devi Lal Stadium, Punchkula and the response of the respondent No.4 was also on the same line.

13. With regard to the second point raised by the learned counsel for the petitioner in respect of the Tau Devi Lal Stadium, Punchkula, it will be remembered that the petitioner had submitted that the respondent No.4 had misrepresented the area of the Media Centre and the seating capacity. It was contended that, on the one hand, the respondent No.4 submitted that the area of the media centre was 20000 sq. ft and the seating capacity was 7000, whereas, according to the response given by HUDA, the area of the media centre was 3786 sq. ft. and the seating capacity was only 5064. Consequently, it was submitted that because of these differences, the total amount should also be different. And that, this would have a dual impact.

First of all, the statement would be false and secondly, the quantum of consultancy fees would also be different.

14. In response to this allegation, the learned counsel for the respondent No.4 submitted that respondent No.4 did not have any privity of contract with the HUDA. Its contract was with Essel Sports Pvt. Ltd. which, in turn, had a contract with HUDA. Insofar as its contract with Essel Sports Pvt. Limited was concerned, there was no mention of the size of the media centre or the number of chairs. In fact, the contract indicated the total consultancy fee of Rs 115 lakhs. It was further submitted that the entire consultancy work had been completed and the respondent No.4 had also received the said amount from Essel Sports Pvt. Ltd. Furthermore, if the 7% simple interest escalation is to be calculated in terms of clause 5.2 of the document, the total value of the consultancy work that was completed by the respondent No.4 in respect of Tau Devi Lal Stadium, Panchkula, would come to Rs 1.53 Crores which was higher than the requisite minimum of Rs 1.50 Crores. Therefore, it was submitted by the respondent No.4 that, on both counts, the petitioner had no case.

15. We agree with the submission made by the learned counsel for the respondents. This is so because the respondent No.4 did not have any privity

of contract with HUDA and its contract was with Essel Sports Pvt. Limited which did not contain any mention of the size of the media centre or the number of chairs in the Stadium. Consequently, as per the contract between respondent No.4 and Essel Sports Pvt. Ltd, a fixed amount of Rs 1,15,00,000/- was payable towards consultancy works to the respondent No.4 which had been paid on the completion of the said consultancy works. Therefore, on both counts, the pleas raised by the counsel for the petitioner cannot be accepted.

16. This leaves us with the third point raised by the petitioner and that concerns the work with regard to the women's hostel at NIT, Warangal. The learned counsel for the petitioner drew our attention to several documents, including the letter dated 10.9.2015 which is at page 330 of the paper book. We had, on an earlier occasion, required the parties to file copies of the correspondence referred to in the said letter, which they did. The entire controversy relates to the consultancy work concerning the women's hostel at NIT, Warangal. There was some discrepancy with regard to the architectural consultancy fee. In the letter dated 10.07.2015, which was a response by NIT to an RTI query initiated at the instance of the petitioner, the architectural consultancy fee had been indicated as Rs 14,72,505/-.

Based on this, the petitioner submitted that the respondent No.4 would not have been eligible for participating in the subject tender because it would not have fulfilled the minimum criteria of Rs 75 lakhs as stipulated in the later part of clause 5.1 which required one completed consultancy work of any nature costing not less than Rs. 75 lacs with some Central Government Department / State Government Department / Central Autonomous Body / Central Public Sector Undertaking. The women's hostel at NIT, Warangal, was a Central Government project and, therefore, the respondent No.4 had to show that it had completed the consultancy work for the said women hostel costing not less than Rs 75 lakhs. A break-up of the work given by NIT, Warangal, in response to the RTI query through its letter dated 10.07.2015 indicates the architectural consultancy fee as Rs 14,74,505/- and the Project Management Consultancy Fee as Rs 39,74,920/-. The learned counsel for the petitioner submitted that taken together these amounts would not have entitled the petitioner to qualify for the minimum amount of Rs 75,00,000/- even if, as per clause 5.2, the 7% simple interest benefit were to be taken into account. However, this aspect of the matter has been clarified by NIT Warangal, through its letter dated 10.09.2015 addressed to the DDA. The said letter reads as under:-

“To

Date: 10-09-2015

The Delhi Development Authority,
Office of the Executive Engineer,
Sports Division No.1, SFSC,
New Delhi-110049

Sir,
Sub: Construction of 350 rooms new Women Hostel at NIT,
Warangal- Reg.

- Ref: 1) Application of R.K. Vats, Delhi, Lr Nil dated: 12-05-2015.
2) T.O.Lr NITW/PE/15/897 Dt.08-07-2015.
3) Application of A.K.Mittal, EE Sports Dn No.1
4) Your Lr. No. F2(9) Sports/Dnl/DDA/A/14-15/Dwk/549, dated: 22-08- 2015.

With reference and subject cited above, on verifications of the records, M/s Collage Design Private Limited, Mumbai, was paid Rs. 28,48,035/- towards Architectural Design Consultancy fee for 350 rooms Ladies Hostel at NIT, Warangal.

This is for your information.

Registrar I/c.
National Institute of Technology
Warangal"

17. From the above letter, it is clear that upon verification of records Collage Design Pvt. Limited (respondent No.4), received Rs 28,48,305/- towards architectural design consultancy fee in respect of the women's hostel, NIT, Warangal. In addition to this, the respondent No.4, as already indicated above, received the said management consultancy fee of Rs 39,77,354.07. The total of which adds upto approximately Rs 68.25 Lacs. If

the benefit of Clause 5.2, which provides for 7% simple interest, is taken into account, the figure would be in excess of Rs 75 lakhs and, therefore, based on the clarification received from NIT, Warangal, as a point of fact, the respondent No.4 was eligible to participate in the said tender.

18. In view of the foregoing, there is no merit in the writ petition. The same is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

AUGUST 16, 2016
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