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

+ **CRL.L.P. 712/2017 & CrI. M. A. No.20415/2017**

CENLTRAL BUREAU OF INVESTIGATION Petitioner

Through Counsel (appearance not given)

versus

R S THAKUR & ANR Respondents

Through Dr. A. K. Gautam, Mr. B. P. Singh,
Mr. Puneet Gaba, Mr. Harsh Gautam
and Mr. Mohit Siwach, Advs. for R1.
Mr. Anindya Malhotra and Mr.
Shaurya Lamba, Advocates for R2.
Mr. Mridul Jain, Spl. P.P. for CBI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 20.01.2020

1. The Central Bureau of Investigation (CBI) has filed the present petition seeking leave to appeal against the judgment dated 08.05.2017 passed by the Court of the Learned Special Judge, Patiala House Court, whereby the Trial Court had acquitted the respondents (both public servants) under Section 120B of the Indian Penal Code, 1860 (IPC) read with Section 420 of the IPC and Section 13(2) of the Prevention of Corruption Act, 1988 (PC Act) read with Section 13(1)(d) of the PC Act.

2. CBI contends that the Trial Court had erred in not appreciating that the evidence on record, established the fact that RS Thakur (respondent no.1) was aware of the fact that M/S Raja Aederi Consultants Pvt Ltd

(hereafter 'RACPL') did not have the requisite experience of upgrading and/or renovation of a stadium as an architect. The petitioner also contends that Shri VK Gulati (respondent no.2) was aware of the said fact since he had scrutinized the bid documents and had assessed the eligibility criteria, while discharging his role as an Executive Engineer.

3. Briefly stated, the relevant facts are that Talkatora and Shivaji Stadium were selected as the venues to hold boxing competitions and training for the Common Wealth Games (CWG). Facilities were required to be provided in this regard. Respondent no.1 (RS Thakur) was deputed as a Project Leader for the said project and he invited applications on behalf of NDMC, for upgradation and renovation of the abovementioned stadia, from reputed/registered architects/architectural firms. Six concerns including RACPL applied for the same. RACPL was not found suitable, as it did not have adequate experience and manpower to undertake the aforesaid work. Thereafter, a sub-committee was formed to come to the final decision and the said committee came to the conclusion that the details as submitted were not adequate and consequently fresh applications were invited.

4. RACPL submitted two separate applications dated 08.05.2016, in response to the Notice Inviting Tenders (NIT). The same were submitted to V.K. Gulati (respondent no.2), the then Executive Engineer, NDMC. It is stated that in both the applications, RACPL dishonestly claimed to have completed eighteen projects, including stadium projects with M/s Sterling Engineering Consultancy, Mumbai (hereafter 'Sterling'), which was a structural engineering company and not an architectural consultant. RACPL also fraudulently claimed that Sterling would be its consortium partner but

no documents were found to have been enclosed with the application. It was alleged that despite being aware of the fact that RACPL did not meet the eligibility requirements and had submitted false documents, the respondents awarded the bid to RACPL by favouring it.

5. After completing the investigation, a chargesheet was filed against the respondents and other persons, including RACPL, for the offences punishable under Section 120B of the IPC read with Section 420 of the IPC and Section 13(2) of the PC Act read with Section 13(1)(d) of the PC Act. To prove its case, the prosecution examined fourteen witnesses.

6. The Trial Court examined the allegation that RS Thakur was aware that RACPL was not eligible and despite the same, had considered its bid. To determine the same, the Trial Court took note of the nature of the post of respondent no.1 and the testimonies of certain witnesses. The Trial Court noted that respondent no.1 (RS Thakur) had issued a notice inviting Expression of Interest (EOI) for appointment of a consultant for the stadia projects. Thereafter, respondent no.1 had, by his note dated 05.01.2006 (Ex PW 5/E), observed that M/s Consultant Engineers and M/s Kothari Associates had adequate experience and RACPL, along with three other applicants were not considered qualified for the aforesaid project. However, the Chief Architect, Mr. Sanjeev Sen, recommended evaluation of responses filed by the six applicants by a Sub-Committee and opined that all the details provided by all the applicant firms were not proper and recommended for calling of a fresh bid.

7. The Trial Court noted that the prosecution had failed to place on record the documents, which the aforesaid six applicants had filed and hence

it was not clear whether RACPL had claimed the experience, as required under the said EOI. The details on the basis of which respondent no.1 had recommended the names of M/s Consultant Engineers and M/s Kothari & Associates and not RACPL, were also not clear. Further, to the basis on which the Sub Committee had held that the details, as furnished by the six applicants, were not adequate, was also not clear.

8. Thereafter, a Notice Inviting Tender (NIT) was issued. Six companies/firms including RACPL submitted their detailed bids to respondent no.2 (Executive Engineer). Respondent no.2 found that RACPL and M/s Kothari and Associates fulfilled the eligibility criteria and the matter was forwarded by respondent no.1 to the Board of Assessors for consideration. The same was evaluated and after technical and financial evaluation, RACPL's bid was found to be the lowest. Consequently, the contract was granted to RACPL.

9. On the basis of the same, the Trial Court had held that the prosecution had failed to establish that respondent no.1 was aware that RACPL was not eligible and had forwarded its bid despite the same. This was held on the basis of the fact that the documents filed by RACPL in response to the EOI (consisting of one page) was not placed before the Court and only the documents in respect of the Notice Inviting Tender (NIT) (consisting of 27 pages) were on record. Therefore, the Court was unable to ascertain as to what were the facts, which had led to the disqualification of RACPL's application in response to the EOI. The NIT, which was more detailed, required applicants to submit various information in various formats.

10. Further, the Trial Court took note of the testimony of PW5 (Shakeb

Akhtar Khan), who stated that the conditions of EOI and NIT were different. In light of the same, the Trial Court concluded that the prosecution's case that respondent no.1 was aware that RACPL was not qualified and yet had processed its case, was not substantiated.

11. The Trial Court also noted that in terms of the procedure adopted by the NDMC for consideration of the bids, the Board of Assessors, having experience in different fields, was in charge of considering the bid documents; and evaluating the technical and financials bids; and assigning marks. The bids were, infact, assessed by the Board of Assessors. Thus, it ruled out the possibility of RACPL being favoured by respondent no.1.

12. Thereafter, the Trial Court while ascertaining the role of respondent no.2, noted that he had no role to play at the time of inviting EOI. Respondent no.2 had considered the documents filed by three concerns: RACPL, M/s Architectural Grid and M/s Kothari and Associates. Since M/s Architectural Grid had not filed the details as per the bid, it was disqualified. The bids submitted by RACPL and M/s Kothari and Associates were found to be in order and he had, by the note dated 29.05.2006 (Ex. PW-1/D2), cleared the said concerns stating that they had adequate experience and were eligible for the contract. He also made a noting to the effect that the originals of the documents, as submitted by the said concerns were yet to be seen. Both concerns had not placed these respective experience certificates on record at that point of time. However, they were found to have the necessary experience on the basis of details of their experience, as furnished by them. The Trial Court concluded that had respondent no.2 wanted to favour RACPL, he would not have qualified both concerns and would not have

written in the note dated 29.05.2006 that original documents were yet to be seen.

13. The Trial Court also analysed the testimonies of various persons involved in the tender process to understand who had the power to award the tender. Both the prosecution witnesses, PW5, Shakeb Akhtar Khan, Superintending Engineer, CPWD and PW4, Mr. Anant Kumar, Chief Engineer, NDMC, testified that all documents had been checked by the Board of Assessors and RACPL was found to be eligible and the lowest bidder. They also stated that the Board of Assessors consisted of persons having experience in different fields and it was clear that the said Board had seen the details furnished by the aforesaid company in its bid documents.

14. It was also noted that the Board of Assessors had given marks to the applicants for technical evaluation and the financial bids were to be opened and evaluated subsequently.

15. PW4 also clarified that they had followed a two-bid system, that is, financial bid and technical bid. The Executive Engineer was not required to check the experience at the time of issuing the bid documents. Further, after technical evaluation by the Board of Assessors, the matter was placed before the Chairman for acceptance of the technical bids and for the permission to open the financial bids. The financial bids of the technically qualified bidders were opened only after obtaining the requisite permission of the Chairman. And, RACPL was recommended on finding its bid to be the lowest. Further, the entire documents were also placed before the Financial Advisor of NDMC and he also did not raise any objections.

16. The Trial Court noted that none of the members of the Board of

assessors had been charge sheeted. The prosecution had also not examined any of the members of the Board of Assessors as witness to establish that they had relied solely on the note dated 29.05.2006 prepared by respondent no.2.

17. The prosecution contended that the conduct of respondent no.2 reflected his culpability as even though experience certificate was not furnished by Raja, respondent no.2 had held it to be eligible. This contention was rejected. The Trial Court noted that the prosecution had failed to show that there was any condition or requirement of filing any experience certificate. On the contrary, PW5 had stated that there was no such condition. The prosecution had also failed to point out any rule or guideline applicable to NDMC, which required filing of an experience certificate along with the bid documents. The Court also noted that M/s Kothari and Associates had also not filed any experience certificate and had yet been declared eligible by respondent no.2.

18. In light of the abovementioned facts and observations, the Trial Court concluded that it was not established that the respondents had favoured RACPL and, accordingly, acquitted the respondents.

19. The learned counsel appearing for the petitioner submitted that the Trial Court had erred in not appreciating that RACPL had not submitted any experience certificate and yet the respondents forwarded their tender for consideration. He submitted that it is well accepted that CPWD Manual was applicable to bids and the CPWD Rules require furnishing of such experience certificate.

20. The said contention is unmerited. Admittedly, the notice inviting

tender (NIT) did not require bidders to furnish any experience certificate and, therefore, to impute any culpability on the part of the respondents on account of clearing the bids submitted by RACPL without insisting on an experience certificate, is unsustainable.

21. It is also relevant to note that the Trial Court had found that there was no material to indicate that the respondents had derived any benefit from forwarding RACPL's bid to the Board of Assessors.

22. This Court finds no infirmity with the decision of the Trial Court in acquitting the respondents of the offence for which they were charged.

23. The present petition seeking leave to appeal is, accordingly, dismissed. The pending application is also disposed of.

24. It is, however, clarified that this Court has not examined the decision of the Trial Court insofar as it has convicted other accused and nothing stated in this order shall prejudice either party in the appeals preferred by those accused.

VIBHU BAKHRU, J

JANUARY 20, 2020
DR/RK