18.08.2021
Item No.09
Court No.30
Avijit Mitra

MAT 791 of 2021 (Via Video Conference)

with

CAN 1 of 2021

In re: Hi-Speed Logistics Private Limited
- Versus –
Food Corporation of India & Ors.

Mr. Tanmoy Mukherjee,
Mr. Dinabandhu Chowdhury,
Mr. Amal Kumar Saha,
Mr. Iresh Paul
.....for the Appellant

Mr. Kamal Kumar Chattopadhyay
...for the F.C.I.

The present appeal has been preferred against an order dated 11th August, 2021 passed in WPA No.12144 of 2021.

Mr. Mukherjee, learned advocate appearing for the appellant/writ petitioner submits that the firm, namely, Hi-Speed Logistics Private Limited participated in a tender process initiated by the Food Corporation of India (in short, FCI) authorities *vide* Notice Inviting Tender (in short, NIT) dated 17th May, 2021. In terms of Clause 3(a)(iv), a tenderer is required to submit audited Profit and Loss Account (in short, P&L Account) and Balance Sheet for the preceding three financial years, meaning thereby the financial years of 2017-18, 2018-19, 2019-20 since filing of such audited P&L Account and Balance Sheet for the year 2020-21 on the tender submission date was not possible and in view of the pandemics the date for finalization of such accounts was deferred. In view thereof, the respondents ought to have considered the appellant's work experience pertaining to the said financial year 2020-2021.

He submits that upon consideration of the bid documents as submitted, the authorities of FCI uploaded the technical bid on 16th July, 2021 at 4.48 p.m. wherefrom the appellant came to learn that its technical bid has been rejected due to non-submission of requisite documents as per the Model Tender Form (in short, MTF), however, the authorities did not disclose the particulars of the *'requisite documents'*. The authorities were under an obligation to give a reasoned decision but no such decision was communicated. The appellant's bid was rejected by a cryptic order. As 17th July and 18th July, 2021 were weekend holidays and 21st July was also a holiday in view of a religious festival, the counting of three working days would, accordingly, commence from 19th July and the representation was thus submitted within three working days on 22nd July, 2021 in terms of Clause XVIII(c) of the MTF. Without considering the same, the authorities opened the financial bid on 22nd July, 2021 though in the document disclosing the result pertaining to the technical bid, the date for opening of the financial bid was stipulated to be 21st July, 2021. The said issues though specifically urged were not considered by the learned Court in course of hearing of the writ petition.

He further argues that one of the grounds towards rejection of the writ petition was that the only bidder who succeeded at the technical stage had not been impleaded as a party respondent. Such ground is not sustainable since in a case where a participant challenges the rejection of its own technical bid, the other tenderers are not necessary parties. In support of such contention reliance has been placed upon the judgment delivered in the case of *Silppi Constructions Contractors Vs. Union of India & anr.*, reported in *(2020) 16 SCC 489*.

Per contra, Mr. Chattopadhyay, learned advocate appearing for FCI submits that it would be explicit from the tender documents that the tenderers were required to possess work experience of 5 years. The appellant furnished work experience in respect of financial years 2019-2020 and 2020-2021. The financial year 2020-2021 stood excluded due to lack of P&L Account and Balance sheet. The experience pertaining to the other year, as indicated in the document annexed at page 54 of the stay application, did not amount to 25% of the estimated value of the contract to be awarded in any of the single contract nor 50% of the estimated value of the contract to be awarded, in different contracts.

He further submits that in the *web portal* of FCI *e-mail* of General Manager was open and available from 16th July, 2021 onwards, every day, irrespective of holidays but the writ petitioner submitted the representation on 22nd July, 2021. The FCI authorities had no obligation to consider such belated representation.

Records reveal that after filing of the writ petition further materials were brought on record by the writ petitioner through a supplementary affidavit. A reply was also filed by FCI. Since all the materials are on record, the appeal itself and the connected application are taken up for final hearing.

The primary argument of Mr. Mukherjee is that the appellant's work experience pertaining to the financial year 2020-2021 could not have been excluded by the authorities in view of Clause 3(a)(iv) of the NIT which runs as follows:

> "*Duly audited P&L Account and Balance sheet for preceding 3 financial years. For immediate preceding financial year, in case the tender submission date is before the due date for finalisation of accounts as per law, financial statements for previous 3 years (prior to the immediate financial year) shall be submitted. In case the bidder submits the Experience for the years not covered under P&L Account and Balance sheet of 3 financial years as mentioned above he/she shall also submit duly audited P&L Account and Balance sheet for the relevant period for which experience has been claimed and submitted.*"

The conditions, as incorporated in the NIT, need to be considered together and not in isolation. A particular clause cannot be picked up and highlighted. A composite reading of the clause as quoted above does not reveal that the work experience of the appellant pertaining to the financial year 2020-2021 ought to have been taken into consideration. The said year is excluded since finalization of the accounts pertaining to the said year was not complete. We do not find any infirmity in such decision of the authorities towards non-acceptance of work experience of the appellant pertaining to the said financial year. On the basis of the work experience of the financial year 2019-20, as detailed in the document annexed at page 54 of the stay application, the appellant could not fulfil the experience criterion as specified in the NIT and MTF.

No *mala fide* can be attributed to such action of the authorities and it cannot be said that the authorities have acted in a manner which would benefit a private party at the cost of the authorities. The appellant has failed to establish any arbitrariness or unreasonableness in the tender process. The judgment delivered in the case of *Silppi Constructions* (Supra) is also distinguishable on facts.

The invitation to tender is in the realm of contract and the Writ Court should not easily interfere in the same. The learned Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error in the order impugned.

The appeal and the connected application are, accordingly, dismissed.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Subhasis Dasgupta, J.) **(Tapabrata Chakraborty, J.)**