

06.04.2022
Court No.13
Item No.27
AP

WPA 6056 of 2022

**BTL EPC Limited and Anr.
Vs.
Damodar Valley Corporation and Ors.**

(Through Video Conference)

Mr. Anirban Ray
Mr. S. Banerjee
Mr. Subhankar Chakraborty
Mr. Saptarshi Bhattacharjee

... For the Petitioners.

Mr. Jishnu Chowdhury
Mr. Aritra Basu
Mr. Partha Banerjee

... For the DVC.

The issue that arises for consideration in the instant writ petition is the interpretation of the “Qualifying Requirements” in the tender documents pertaining to NIT floated by the DVC, for “ARC for round the clock operation and maintenance, removal of technological waste and upkeepment of coal handling plant of DSTPS Andal (2X500 MW)”.

The petitioner participated in the aforesaid tender and submitted a bid. By an email communication dated 10th March 2022 the petitioner was asked to clarify and/or submit documents with regard to technical eligibility. The petitioner submitted the same. By a further email communication dated 2nd April 2022 the petitioner was informed that it was ineligible.

Counsel for the petitioner submits that the eligibility criteria for participation in the tender is

stipulated under the heading “Qualifying Requirements”
in the tender documents, which is set out hereinbelow:-

“QUALIFYING REQUIREMENTS:

A. TECHNICAL CREDENTIALS

1. *The bidder should have executed the contract for Erection & Commissioning of Coal handling Plant for Unit size 200 MW or above for coal handling system of capacity 500 MT/hr or more in coal based power plants of any Power utility within India and the above Coal handling Plant should have been in operation for a period of 01(one) year from the date of successful commissioning of entire system during the last seven years ending last day of the month previous to the date of issue of the NIT.*

OR

The bidder should have executed the contract for Operation & Maintenance/Mechanical Maintenance/Overhauling of Coal Handling Plant for Unit size 200 MW or above for coal handling system having capacity 500 MT/hr or more in coal based power plants of any Power utility within India during the last seven years ending last day of the month previous to the date of issue of the NIT.

2. *The bidder should have experience of having completed similar works during last 07 years ending last day of month previous to the one in which offers are invited should be either of the following:-*
 - a. *Three similar completed works each costing not less than the amount equal to Rs.4,00,99,080/- only*
 - OR
 - b. *Two similar completed works each costing not less than the amount equal to Rs.5,01,23,850/- only*
 - OR
 - c. *One similar completed work costing not less than the amount equal to Rs.8,01,98,160/- only.*
3. *All the values as mentioned above are exclusive of GST.”*

The communication by which the petitioner was found ineligible, is as follows:-

4.	Haldia Energy Limited under Punj Lloyd Ltd	E&C Completed on 23.04.2015. Executed value during last 7 yrs of NIT, could not be ascertained.
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Counsel for the petitioner would argue by reference to an eligibility certificate issued by one Punj Lloyd Ltd. dated 27th May 2015, that his client was qualified since he had executed a contract for Engineering, Supply of Material for Erection and Commissioning of Coal Handling plant with Haldia Energy Limited of a capacity of 800 TPH.

The work orders in the said project were dated 17th October 2013. The plant was commissioned on 23rd April 2015. Hence the completion of the work had occurred within the last seven years prior to 31st December 2021. The petitioner should therefore have been treated as eligible within the meaning of the qualifying requirements set out hereinabove.

Mr. Chowdhury, learned counsel appearing for the Damodar Valley Corporation, submits that a plain reading of the aforesaid “Qualifying requirements” would indicate that the petitioner should have performed and completed the said work i.e. for erection and commissioning of coal handling plant for the unit size

200 MW or above for coal handling system of capacity 500 MT of coal, from inception to the end entirely should have occurred within the aforesaid seven years period.

The petitioner's tenure of erection and commissioning with the said Haldia Energy Limited having started in the year 2013 and has ended on April 2015 with commissioning. Only 4 months of the tenure of the work experience of the petitioner has come within 7 years prior to December, 2021. It is therefore submitted that the petitioner was rightly found ineligible in the Tender process.

In reply Mr. Anirban Ray, learned counsel for the petitioner would argue that the rejection order as set out hereinabove does not indicate or satisfy the aforesaid ground or interpretation of ineligibility as argued across the bar today.

This Court has carefully considered the rival arguments of the parties. It is now a well-settled principle of administrative law that when an authority has taken one view on the basis of certain admitted facts and two views are possible and/or plausible, a writ Court cannot substitute or impose the other plausible view on such authority.

This Court sees in no uncertain terms that the interpretation of the qualifying requirements made by the Damodar Valley Corporation is definitely one clear and plausible view i.e. the view that the entire

experience of erection and commissioning of the said coal handling plant must have occurred within the seven years period immediately preceding 31st December 2021.

The petitioner admittedly does not have the said qualification. This Court is not inclined to impose on the Damodar Valley Corporation the other plausible interpretation of the clause as canvassed by Mr. Anirban Ray and Mr. S. Banerjee, learned counsel for the petitioner.

The Hon'ble Supreme Court has recently held that interference by writ Courts in tender matters is generally not desirable since they have the effect of causing delay in the functioning of important public utility services. Reference is made to the decision in the case of **N.G. Projects Ltd. Vs. Vinod Kumar Jain** reported in **2020 Livelaw (SC) 302**. Para 26 is set out hereinbelow:-

“26. A word of caution ought to be mentioned herein that any contract of public service should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good. The grant of interim injunction by the learned Single Bench of the High Court has helped no-one except a contractor who lost a contract bid and has only caused loss to the State with no corresponding gain to anyone.”

Admittedly, the Damodar Valley Corporation is a power generation plant and performing essential services.

For the reasons inter alia stated hereinabove, the writ petition is disposed of without any orders.

There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)