

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 538 of 2022

With

CAN 1 of 2022

Reserved on: 13.04.2022

Pronounced on: 18.05.2022

BTL EPC Limited and Another

...Appellants

-Vs-

Damodar Valley Corporation and Others

...Respondents

Present:-

Mr. Anirban Ray,
Mr. Suddhasatwa Banerjee,
Mr. Subhankar Chakraborty,
Mr. Saptarshi Bhattacharjee,
Ms. Ruchira Manna, Advocates

... for the appellants

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

... for the DVC

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. In this appeal the writ petitioner has challenged the order dated 06.04.2022 whereby learned Single Judge has refused to interfere in WPA 6056 of 2022.

2. The appellant was one of the bidder in response to the NIT dated 24th of January, 2022 issued by the respondent for annual rate contract for round the clock operation, maintenance and/or removal and technological waste and up-keepment of coal handling plant of Durgapur Steel Thermal Power Station, Andal. The technical bid submitted by the petitioner did not qualify and this decision was communicated to the appellant, hence the appellant had filed the writ petition challenging the decision.

3. Learned Single Judge has taken note of the qualifying requirements and technical credentials relating to eligibility criteria and the reason of rejection of the technical bid. In the undisputed facts situation he has found that the appellant did not possess the requisite eligibility qualification and has accordingly refused to interfere in the writ petition.

4. The submission of the learned Counsel for the appellant is that the respondents have committed an error in rejecting the technical bid and reason for rejection cannot be sustained and that it was not necessary to execute the entire contract from inception to the end within the stipulated period of 7 years.

5. As against this learned Counsel for the respondents has supported the order of the learned Single Judge.

6. Having heard the learned Counsel for the parties and on perusal of the record it is noticed that the qualifying requirement for the technical bid is as under:

“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.”

7. Before the learned Single Judge, the appellant had relied upon the eligibility certificate issued by Punj Llyod Ltd. relating to execution of contract in engineering, supply of materials for erection and commissioning of coal handling plant with Haldia Engineering Limited of a capacity of 800 TPH. The work orders of the projects were dated 17th of October, 2013 and the plant was commissioned on 23rd of April, 2015.

8. In view of above the plea of the appellant was that completion of work had occurred within 7 years prior to 31.12.2021. Whereas the respondent had interpreted the eligibility condition to mean that the bidder should have performed and completed the said work of erection and commission of coal handling plant for the specified unit size for coal handling system of specified capacity from inception to the end entirely within the 7 years period immediately preceding 31.12.2021. Further

stand was taken that appellant had started erection and commission of Haldia Engineering Limited in 2013 and had commissioned it in April, 2015 hence only 4 month of tenure of work experience of the appellant has come within 7 year prior to December, 2021.

9. Learned Single Judge has found that interpretation of the qualifying requirement made by the respondent DVC is clear and plausible view and has expressed that he is not inclined to impose on the DVC the other plausible interpretation of the clause as put forth by the appellant.

10. A perusal of the eligibility condition reveals that the view taken by the learned Single Judge is a reasonable and plausible view. The view is not arbitrary.

11. The Hon'ble Supreme Court in the matter of **Michigan Rubber (India) Limited vs. State of Karnataka and Others** reported in (2012) 8 SCC 216 has held that:

“23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”? and

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226.”

12. In the present case, the eligibility condition has been uniformly applied in similar manner to all the bidders and no such discrimination has been pointed out to this Court. The view which is taken by learned Single Judge is reasonable and plausible view. Hence, we are of the opinion that it is not a case of arbitrary action of the respondents and the learned Single Judge has not committed any error in dismissing the

petition. Thus, finding no case for interference in the order of the learned Single Judge, the appeal is dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
18.05.2022

PA(SS)

(A.F.R. / N.A.F.R.)