

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

MAT 960 of 2022
With
CAN 1 of 2022
CAN 2 of 2022

Reserved on: 21.09.2022
Pronounced on: 28.09.2022

Sri Ramanand Jha and Others

...Appellants

-Vs-

Union of India and Others

...Respondents

Present:-

Mr. Jishnu Chowdhury,
Mr. Aritra Basu,
Ms. Kaynat Parveen,
Mr. Sayd Hassan, Advocates

... for the appellants

Ms. Oisani Mukherjee, Advocate

... for the Union of India

Mr. Amit Kumar Nag, Advocate

... for the respondent Nos. 2 to 5

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

Prakash Shrivastava, CJ:

1. This intra-court appeal is at the instance of the writ petitioner aggrieved with the order of the learned Single Judge dated 02.05.2022

disposing of WPA 19540 of 2021 on reaching to the conclusion that no relief could be granted to the petitioner in the petition.

2. The appellants had submitted bid in response to the e-tender floated by the respondents for transportation of bulk petroleum products from Jharsuguda Terminal. The bid of the appellants was rejected, hence a prayer was made in the petition to set aside the order of rejection.

3. Learned Single Judge while passing the order under challenge has noted that the appellants were informed about the deficiency in the bid particularly in the context of supply of amended partnership deed and Form A and thereafter the bid was rejected on 14th of September, 2021, after giving ample opportunity to submit documents. Hence, learned Single Judge found that there was sufficient compliance of the requirement of providing opportunity to the appellants to rectify the bid.

4. Submission of the learned Counsel for the appellants is that the appellants had submitted the memorandum Annexure-P1 page 30 of the paper book showing registration of partnership firm, therefore, there was sufficient compliance of the requisite clause and that in the bid they had disclosed the registration number and the names of the partners, therefore, rejection of the bid cannot be sustained.

5. As against this, learned Counsel for the respondents has submitted that the appellants had failed to submit the registration certificate as required by the terms of the NIT, therefore, after giving an opportunity to the appellants, the bid has been cancelled.

6. We have heard learned Counsel for the parties and perused the record.

7. The respondents had sent to the appellants technical-commercial query dated 14th of September, 2021 by giving an

opportunity to the appellants to response to the same and thereafter on 2nd of November, 2021 at the stage of technical evaluation the appellants were informed that the bid was rejected by the duly constituted committee and the reasons for rejection were also conveyed to the appellants, a perusal of which discloses that the appellants had failed to produce Form-A (Annexure) mentioning names of the partners of the partnership firm and the appellants were technically disqualified.

8. Clause 9 of terms and conditions of NIT requires the tenderer to submit copy of the registration certificate from the Registrar of Firms enclosing all annexures wherein names of all the partners of the partnership firm are mentioned. Condition 9 of the NIT reads under:

“9. Tenderers are required to submit copy of Registration Certificate from Registrar of Firms to establish the registered partnership firm enclosing all annexures wherein names of all the partners of the said partnership firm are mentioned or Certificate of Incorporation (as applicable). In case partnership firm registration certificate is not uploaded with the bid, the tenderers shall be given one opportunity to submit the same during technical evaluation. If the tenderer fails to submit the same within stipulated time, the tender of the tenderer shall not be considered for further evaluation. However it may be noted that date of partnership firm registration in the certificate shall not be later than closing date of the Tender.”

9. The record reveals that the appellants had failed to submit the requisite registration certificate with annexure mentioning the names of all the partners of the partnership firm, therefore, in terms of the aforesaid condition the appellants were given opportunity to submit the same during technical evaluation and on his failure to submit the same,

the bid has been rejected. The record further reflects that the requisite certificate from the Registrar of Firms was obtained by the appellants only on 02.12.2021 and undisputedly it was not submitted to the respondents. The memorandum on page 30 of the paper book relied upon by the Counsel for the appellants does not satisfy the requirement of condition 9. It is worth noting that condition No. 9 is not under challenge. We also do not find any arbitrariness and malafide on the part of authorities.

10. That apart, Counsel for the respondents has informed that meanwhile the tender has been finalized and work order has been issued.

11. Even otherwise it is the settled position of law that scope of interference in such contract matters is very limited and the Courts do not sit as a Court of appeal to examine the decision of the contract awarding authorities. Hon'ble Supreme Court in the matter of **Silppi Constructions Contractors vs. Union of India and Another** reported in **(2020) 16 SCC 489** has held that:

“19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies

which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."

12. Consider the above legal and factual position, we find no error in the order of the learned Single Judge in disposing of the petition and no case for interference is made out. The appeal is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
28.09.2022

PA(SS)

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