

06
10.06.2025
Ct. No. 11
Jayanta

MAT 774 of 2025
in
IA No. CAN 1 of 2025

Mohammad Ehrar Khan & Ors.
Vs.
Union of India & Ors.

Mr. Biswaroop Bhattacharya
Ms. R. Dutta
Mr. Ramendu Agarwal
Ms. Khushi Khaitan

.... For the Appellants.

Mr. Sanajit Kumar Ghosh
Ms. Sayani Roy Chowdhury

..... For the UoI.

Mr. Udayan Chakraborty, Ld. Sr. Adv.
Mr. A. Bakshi

..... For the Respondent Nos. 1 & 2.

Mr. Sarvapriya Mukherjee
Mr. Varun Kothari
Mr. A. Agarwalla
Ms. Priyanka Garain

..... For the Respondent No. 3.

The present appeal has been preferred challenging an order dated 19th May, 2025 passed by the learned Single Judge in the writ petition being WPA 10094 of 2025 preferred by the writ petitioners/appellants herein. By the said order the writ petition was dismissed observing, *inter alia*, that ‘the court is not inclined to enter into any disputed question of fact’ and that ‘as the petitioners appear to have approached this court at a belated point of time, this court is not inclined to exercise jurisdiction in this matter’.

Records reveal that the South Eastern Railways published a tender notice for development of Gati Shakti

Modal Cargo Terminal (GCT) on railway land at Adra Sub-Division. On 10th August, 2024, the appellants formed a joint venture by the name and style of '*Universal Constructors Alliance JV*' (hereinafter referred to as the firm) to participate in the said tender. The firm duly submitted its bid *online* and the closing date of the tender was 16th December, 2024. By an email dated 7th March, 2025 the firm was intimated that it is '*Disqualified in Technical Evaluation*'. Challenging the said decision, the appellants preferred the writ petition.

Drawing our attention to the documents annexed at pages 188 to 191, Mr. Bhattacharya, learned advocate appearing for the appellants submits that the firm was found to have submitted all necessary documents in compliance of the technical specifications but surprisingly by the impugned email, it was declared to be disqualified in technical evaluation without disclosing any reason whatsoever. The said communication was a cryptic one and had been issued mechanically. No justifiable reason was ascribed as to why the firm had been disqualified. Such argument, as urged, was glossed over by the learned single Judge and no finding was returned on the same.

According to Mr. Bhattacharya, the order impugned would reveal that the appellants' claim was rejected on a purported ground that the firm had approached the Court belatedly without considering the explanation given

in paragraph 18 of the writ petition. Though the tender clauses provided for seeking clarifications, the Railways simply maintained a deceptive silence and without seeking any clarification, the firm's claim was mechanically rejected.

According to Mr. Bhattacharya, the learned single Judge ought not to have rejected the appellants' claim solely on the ground of delay in as much as it was not too late on the said date to interfere since though the work order was issued, the respondent no.3 had not commenced such work.

He contends that the writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity or unfairness that would vitiate the action, no matter the action is in the realm of contract.

He argues that while passing the impugned order the learned single Judge erred in not granting any weightage to the fact that in an identical tender process earlier, the appellants' firm emerged to be successfully and was issued the work order. The offer of the firm to the Railways in the present tender process was much higher than that offered by the private respondent no.3. The Railways would have earned more revenue upon accepting the firm's bid.

Mr. Chakraborty, learned advocate, assisted by Mr. Bakshi, learned advocate, appearing for the Railways

denies and disputes the contention of the Mr. Bhattacharya and submits that no *mala fide* can be attributed to the acts of the Railways. Tender is in the realm of contract and there had been no error in the decision-making process warranting interference in exercise of discretionary jurisdiction.

He argues that indisputably the appellants had approached the writ Court belatedly. The tender closing date was 16th December, 2024. The communication that the firm had been disqualified in the technical bid was issued on 7th March, 2025. The earnest money was returned on 8th April, 2025 and only thereafter the appellants had approached the writ Court. In the said conspectus, the learned single Judge rightly refused to exercise discretion in favour of the appellants moreso when the dispute involves disputed questions of fact.

Drawing our attention to the documents at pages 116 to 121 and pages 162 to 164, Mr. Chakraborty submits that admittedly the appellants did not fulfil the mandatory criterion to the effect that '*the date of registration of the tenderer should be minimum two years prior to date of opening of tender*'. The appellants also did not fulfil the eligibility criterion towards net worth since updated balance sheet of last three financial years duly certified by the Chartered Accountant was not produced.

Mr. Mukherjee, learned advocate appearing for the private respondent no. 3 submits that the learned single

Judge rightly dismissed the writ petition since the appellants did not approach the Court immediately after communication of the email intimating that it was disqualified in technical evaluation.

He further submits that the work order has already been issued and the respondent no.3 had commenced such work. Any interference at this stage would delay the completion of the work and would also prevent the respondent no.3 from completing the work within the time frame stipulated in the tender documents. The clause towards time frame provides that the *'successful bidder shall commence construction within three (03) months of the grant of approval of construction and complete construction within eighteen (18) months of the grant of approval'*.

In reply, Mr. Bhattacharya, strenuously argues that there was an inadvertent error in the balance sheet which was submitted. The documents at pages 334 and 336 would reveal that the former document was pertaining to *'the previous year ended on 31st March, 2024'* and the later document being the balance sheet was of *'31st March, 2024'* but it was inadvertently typed to be *'31st March, 2023'*. On the rudiments of such inadvertent error, the appellants could not have been ousted moreso when, there are several typographical errors in the terms and conditions incorporated in the tender documents.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the email intimating that the appellants' firm had been disqualified in technical evaluation was issued on 7th March, 2025. After refund of the earnest money in the month of April, 2025, the writ Court was approached. Mere submission of representations would not be a suitable explanation towards the admitted delay in approaching the Court.

Invitation to tender is in the realm of contract. It is not a case that the final decision was taken by the authorities in a perfunctory manner. No *mala fide* can be attributed to the act of the Railways. It is also necessary to remember that price offered may not always be the sole criteria for awarding a contract. It cannot be said that the Railways had acted in a manner which would benefit a private party at the costs of the Railways. The appellants have also failed to establish any arbitrariness or unreasonableness against the Railways.

The learned single Judge has disclosed the reasons for refusing to exercise discretion in favour of the appellants and we do not find any infirmity in the order impugned, warranting interference in this appeal.

The appeal and the connected applications are, thus, dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)