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IN THE HIGH COURT OF DELHI AT NEW DELHI

C.W.P. NO. 7077 OF 2001

Date of Hearing : 15th May, 2002

Date of Decision : 6th August, 2002

CONVEYOR BELT MANUFACTURERS ASSOCIATION....PETITIONER
THROUGH : MR. ARUN KHOSLA,
ADVOCATE WITH
MS. MANISHA SINGH,
ADVOCATE

- VERSUS -

GOVT. OF INDIA & ORS.

... .. RESPONDENTS
THROUGH : MR. RAJIV NAYYAR,
SENIOR ADVOCATE WITH
MR. S. BHOMIACK
ADVOCATE FOR R-6
MR. SIDHARTH YADAV,
ADVOCATE FOR R-3, 4 & 5

CORAM :

THE HON'BLE MR. JUSTICE S.B. SINHA, CHIEF JUSTICE

THE HON'BLE MR. JUSTICE A.K. SIKRI

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not? ✓

S.B. SINHA, C.J.

1. Interpretation and/or application of two notifications relating to grant of purchase preference and price preference to the public sector / joint sector industries vis-à-vis the small-scale industries is in question in this writ petition.

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BACKGROUND FACTS:-

2.1 The petitioner association comprises of the following five small-scale industries :-

- (i) M/s. Forech India Ltd., New Delhi;
- (ii) M/s. Mercury Rubber Mills;
- (iii) M/s. Anil Rubbers Pvt. Ltd., New Delhi;
- (iv) M/s. Northland Rubber Mills, New Delhi; and
- (v) M/s. Hindustan Rubbers Pvt. Ltd., Mumbai.

The members of the petitioner association are manufacturers of conveyor belts.

2.2 A Request for Quotation (RFQ) was issued by the respondent No. 5 herein on 06.01.2001 stipulating :-

- (1) the L-1 supplier will be given the maximum value/quantity for that lot or item;
- (2) the volume of order to be distributed to other suppliers will be based on their ranking on total lot basis; and
- (3) the purchase from the PSUs and Joint Ventures with PSUs will be allowed as per the relevant prevailing guidelines of the Central Government.

2.3 In overview of the said RFQ, it is *inter alia* provided :-

"1.6.3.2.

(A) Order Splitting for proven firms

- SAIL may decide to distribute order on more than one source.
- Quantity allocation for the L-1 supplier will be done as follows.

1. For each lot of item, the L-1 supplier will be given the maximum value/quantity

for that lot or item, however the lot L1 tenderer should match item-wise L1 price wherever their price is not L1. In case they do not match the item-wise L-1 price no order for that item may be considered on them.

- Distribution of the balance quantity will be done as follows :-
 1. Item wise the L-1 price will be offered to all other suppliers for matching (based on the recommendation of the technical evaluation team.)
 2. The volume of order to be distributed to other suppliers will be based on their ranking on total lot basis.
- Every attempt will be made to give substantial quantities to successful tenderer. Suppliers with un-competitive bids may get insignificant or no order.

(B) Order Splitting for trial firms

Only those parties whose prices are either equal to or less than the landed cost of orders finalized for proven sources for that item shall be considered for placement of order. The TL-1 firm (Lowest landed cost net of CENVAT) shall be given maximum order based on the evaluation of SAIL technical team at the time of techno-commercial evaluation before opening of price bid.

In case the lowest price obtained for trial firms is higher than the L-1 price from proven sources, such L-1 landed cost net of CENVAT shall be offered for matching to all trial firms for that item. In case the trial firms match the offered price, the order distribution for trial quantities shall be done as per recommendation of SIL technical team before opening of price bid and maximum order shall be placed on the original TL-1 firm."

2.4 Pursuant to or in furtherance of the said RFQ, the members of the petitioner association as also the respondent No. 6 herein submitted their respective tenders. It is not in dispute that the respondent No. 6 is a Joint Venture Company wherein the Central Government has 26% of equity shares and a German Company has the rest 74%.

3. The contention of the petitioner in this writ petition is two-fold viz. (i) the price preference as directed by the Central Government was required to be given to the Small Scale Industrial (SSI) units but the same had not been incorporated in the RFQ; (ii) the benefit of purchase preference has been extended to the respondent No. 6 herein which is contrary to all norms.

4. Mr. Arun Khosla, the learned counsel appearing on behalf of the petitioner, would submit that the scheme of the Central Government to grant price preference to the SSI units was evolved with a laudable object. The respondent No. 5, which is a public sector undertaking and a 'State' within the meaning of Article 12 of the Constitution of India, was, thus, bound to give effect to the said directives of the Central Government.

The learned counsel would contend that SSI units are being deprived of a benevolent scheme, which has a direct nexus with the promotion of economy of the country. The learned counsel would urge that benefit of purchase preference has been extended to a Joint Venture Company not only to the detriment and prejudice to the reason of the petitioner association but the same is also to the detriment of the national economy.

It was contended that the respondent No. 6 having been found to be beyond 10% of the final negotiated valid price for all costs of products was not eligible to the purchase preference benefit even in terms of the said notification.

5. The learned counsel appearing on behalf of the respondents No. 1 to 5, on the other hand, would submit that the respondent No. 6 had been held to be entitled to the benefit of the purchase preference scheme in terms of the said notification, wherefor an opinion had also been sought for from the concerned Ministries.

It was contended that not only the offers of the respondent No. 6 had been accepted as far back as on 18.05.2001, but it had also made supplies and received considerations therefor and, thus, this Court at this stage should not exercise its discretionary jurisdiction.

It has been pointed out that whereas the contract was awarded in favour of the respondent No. 6 on or about 18.05.2001, this writ petition was filed only on 21.11.2001.

In a situation of this nature, the learned counsel would contend that the petitioners are not entitled to any equitable relief.

6. Mr. Rajiv Nayyar, the learned senior counsel appearing on behalf of the respondent No. 6 would further urge that the members of the petitioner association having participated in the said bid cannot now be permitted to question the same.

It was submitted that the offer made in favour of the respondent No. 6 was far more advantageous to the official

respondents than the offers made by the members of the petitioner association.

7. The O.M. dated 31.10.1997 reads thus :-

"...

Dated 31st October 1997

Office Memorandum

Subject: Purchase preference for Products & Services of Public Enterprises.

1. Reference is invited to the Department of Public Enterprises OMs of even number dated 13.1.1992, 14.2.1994 and 15.3.1995 regarding the policy of purchase preference for Central PSE's. The basic policy of purchase preference was spelt out in OM dated 19.01.93, which was operable for a period of three years. This policy provided purchase preference in supply of goods and services to the Government Department and other PSE's if the price quoted by the supplying PSE was within 10% of the lowest valid price, other things being equal. The policy incorporated in the said OM was extended unto 31.3.97 vide OM dated 15.3.1995 due to restructuring of PSEs in responding to the new competitive environment.

2. There have been requests from various PSEs and Ministers that this facility should be further extended for some more time. The matter has been carefully examined keeping in mind the various relevant factors and Government have decided that the scheme be extended for a limited period of 3 years i.e. upto 31.3.2000, for manufactured items produced by PSEs or joint venture with PSE's with a minimum value added content of over 20% by the latter subject to the purchase being in excess of Rs.5 crores.

The cases which we are under consideration from 1.4.1997 till the date of issue of the OM would stand covered under this policy except which are already decided otherwise."

However, the Memo dated 28.08.2000 is in the following terms :-

"...

28th August, 2000

To

All Chief Secretaries,
State/Union Territory Governments

Sub: Government Purchase & Price Preference Policy - Grant of Benefits to Small Scale Units

Sir,

The promotion & growth of the Small Scale Industries Sector is a national priority. Marketing is a crucial area where institutional support is essentially required by the SSI units. Under the Govt. Stores Purchase Programme, Government of India has been extending various facilities as given below to the small scale units registered with the NSIC, under its Single Points Registration Scheme, in order to help them in marketing their products.

1. Issue of Tender sets free of cost
2. Exemption from payment of Earnest Money
3. Waiver of Security Deposit to the Monetary Limit for which the unit is registered
4. Price Preference upto 15% over the quotation of large-scale units.

The aforesaid facilities are given as the financial resources at the disposal of small-scale units are limited and it becomes difficult for them to participate in more than one tender floated by any Government Department/PSU and hence they are not able to block their limited capital for long.

Instructions have been issued by the Government of India from time to time to ensure marketing support to the small-scale units including circular No. F. No. 2 (11) / 92 - Mktg. Dated 30.7.93 & No. 21 (1) /98 - EP&M /914 dated 15.5.98. In spite of this complaints are also been received from the SSI Units regarding failure in not granting the aforesaid facilities including exemption from the payment of earnest money deposit, issue of Tender sets free of cost & waiver of security deposit upto their respective monetary limits by the Govt. departments/ undertakings. I seek your co-operation in giving marketing support to the SSI products in the emerging competitive environment and the fast changing economic scenario.

In view of the above you are requested kindly to impress upon the purchase departments under your control to ensure that SSI units registered with NSIC are extended the aforesaid facilities. Suitable instructions may also be issued to all concerned for effective implementation of the Govt.'s Price/Purchase Preference Policy. This will go a long way in providing the much-needed marketing support to the small scale sector."

8. The respondent No. 5 is a public sector undertaking. It being under the control of the Ministry of Steel was bound to comply with the directives issued by the Department of Public Industries.

9. So far as notification dated 28.08.2000 is concerned, the same had been issued by the Ministry of Small Scale Industries and Agro and Rural Industries. A bare perusal of the said notification would clearly go to show that thereby only the Chief Secretaries of the State / Union Territory Governments had been requested to give benefit thereof. The addressees of the said letter were requested to impress upon the purchase department under their control to ensure that SSI units registered with NSIC are extended the said benefits. However, the Bureau of Public Enterprises was merely requested to issue suitable instructions to all concerned.

It is not a case of the petitioner that such instructions had been issued either by the Ministry of Steel or the Bureau of Public Enterprises.

In that view of the matter, the contention of the respondent No. 5 to the effect that it was not bound by the said notification must be accepted. If the said respondent was not bound to implement the said notification dated 28.08.2000, the logical corollary thereof would be that the members of the petitioner association cannot claim any right thereunder.

10. It has not been denied or disputed that the members of the petitioner association participated in the bid without any demur whatsoever. Some of the members of the petitioner association had been given the benefit of the clause 1.6.3.2. of the RFQ.

11. In the counter affidavit filed on behalf of the respondents, it had clearly been stated that whereas supplies made by the respondent No. 6 were satisfactory, those made by the members of the petitioner association were not.
12. It is also not in dispute that a doubt was raised as to whether the respondent No. 6 would be entitled to the benefit of the purchase preference notification or not. The matter was referred to the Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises and it by a letter dated 06.08.1999 clarified that the respondent No. 6 being a Joint Venture Company would be entitled to the said benefit.

Furthermore, the petitioner in this case is not entitled to any equitable relief, as it is guilty of gross delay and latches.

Although, we have our own reservations as to whether a benefit of this nature should be granted to the respondent No. 6 or not, keeping in view the facts and circumstances of the case, we are of the opinion that it is not a fit case wherein this Court should interfere with the matter, more particularly when there had been gross delay and latches on the part of the petitioner and, as furthermore, they do not have any legal right to enforce the price preference clause in terms of the notification dated 28.08.2000.

We, therefore, do not find any merit in this writ petition, which is accordingly dismissed. However, in the facts and

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circumstances of the case, there shall be no order as to costs.

Delivered by
CHIEF JUSTICE

A.K. Sikri
A.K. SIKRI, J.

August 6 2002
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