

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP No.153/2007 & CMP No.223/2007

Date of Decision:31.08.2010

M/s Jay Kay Electronics Pvt. Ltd. Vs. U.O.I & ors.

Coram:

Mr. Justice J.P.Singh, Judge.

Appearing Counsel:

For Petitioner(s) : Mr. B. S. Salathia, Advocate.

For Respondent(s) : Mr. P. S. Chandel, CGSC.

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| i) | Whether to be reported in Press/Journal/Media: | Yes |
| ii) | Whether to be reported in Digest/Journal : | Yes |
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The petitioner, a Private Limited Company, has approached this Court seeking issuance of directions to the respondents to permit its participation in the contracting process, issuing Tender documents/Quotations, as per its entitlement, in view of its Registration by the respondents as Approved Contractor, besides a direction for investigation into the respondents' conduct in issuing Tender documents/ Quotations, on pick and choose, basis.

The grievance projected by the petitioner in the Petition, in a nut-shell, is that despite its registration and entitlement to receive Tender documents/Quotations for participation in the process initiated by the respondents for grant of Contracts to the successful Bidders, the respondents, as it happened earlier too, when this Court, on petitioner's Writ Petition OWP No.417/1999 had issued directions to the respondents to supply it, the Tender documents/Quotations for participation

in the process of allotment of Contracts, had, by resorting to pick and choose method, sent only four Tender documents/Quotations to the petitioner, refusing others, for extraneous considerations and malafide intentions.

While not denying the petitioner's registration with them as approved Contractor and its entitlement to receive Tender documents/Quotations under rules, the respondents have contested the petitioner's Writ Petition urging that the petitioner had disqualified it to receive Tender documents/Quotations, as its two firms namely M/s Jay Kay Electronics Private Limited and M/s Aay Kay Trading Corporation, were operating from the same premises, which, according to the rules, was impermissible and would not entitle the petitioner to receive Tender documents. It is further urged that on the basis of findings of the Board of Officers constituted for the purpose, the respondents had stopped issuing Tender documents/Quotations to the petitioner after December 2007. It is, however, asserted by the respondents that in deference to the interim directions issued by the Court on the petitioner's Writ Petition, the Tender documents/Quotations had been supplied to the petitioner.

At the hearing of the Writ Petition, the petitioner's learned counsel restricted petitioner's relief in the Writ Petition only to seek direction against the respondents to supply it the

Tender documents/Quotations according to its entitlement under rules.

Per Contra, learned Union Counsel submitted that the Board constituted by the respondents having found the petitioner disentitled to the issuance of Tender documents/ Quotations, the petitioner was not entitled to the directions sought for.

I have considered the submissions of learned counsel for the parties, perused the pleadings and the documents placed on records.

Petitioner's registration with the respondents as an approved Contractor entitles it to receive Tender documents and Quotations for its participation in the contracting process to seek consideration for grant of Contracts, in accordance with the rules on the subject. The registration, therefore, entitles the petitioner to do business with the respondents.

To deprive the petitioner of its right to do business with the respondents, the respondents were required to apprise it of the allegations, which, according to them, had disentitled its participation in the contracting process, besides hearing it, before taking the final decision for its disentitlement to participation in the contracting process.

The respondents have neither apprised the petitioner of the allegations appearing against it nor held any enquiry with the petitioner's participation therein, before taking the extreme

step of stopping supply of Tender documents/Quotations.

The action of the respondents, which appears to be based only on the findings of the Board of Officers held on May 01, 2007, can not, thus, be justified, in that, neither any notice, pursuant to the directions of the Board, appears to have been issued by the respondents to the petitioner for its response thereto nor any enquiry held in the matter with petitioner's participation before resorting to the stoppage of issuance of Tender documents/Quotations to the petitioner.

Stoppage of the issuance of Tender documents/Quotations to the petitioner visits it with severe civil consequences. Before taking such step, the respondents were required to follow the principles of Natural Justice, which they have omitted to do.

Relying on the law laid down by the Court in *Bhatia Builders & Contractors & Connected matter versus Union of India*, reported as 2008(2) JKJ 784(HC), the action of the respondents in stopping issuance of Tender documents/Quotations to the petitioner is, therefore, held violative of Articles 14 and 19 of the Constitution of India.

The respondents having deprived the petitioner of its right to carry on business, without any justifiable reason and complying with the principles of Natural Justice, a command needs to be issued to them to restore the petitioner's right flowing from its registration as their Approved Contractor.

Accordingly, a direction shall issue to the respondents to supply the petitioner, the Tender documents/Quotations, according to its entitlement under rules.

This Writ Petition, therefore, succeeds and is, accordingly, allowed with costs quantified at Rs.5000/-.

(J.P.Singh)
Judge

JAMMU:
31.08.2010
Pawan Chopra