

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4991 OF 2018
(Arising out of S.L.P. (C) No.4839 of 2018)

M/S ROYAL CPL JV

APPELLANT (S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT (S)

O R D E R

Leave granted.

This appeal has been filed against the judgment passed by the Division Bench of the Gauhati High Court dated 8th February, 2018, upsetting the judgment of the learned Single Judge of the same High Court in which the writ petition filed by the appellant had been allowed.

The brief facts necessary for the purpose of this appeal are as follows:

By a tender notice dated 8th March, 2016, by the North-East Frontier Railways, open tenders were invited from experienced and reputed contractors for four works which required design and construction of broad gauge Ballastless Track including supply of Bi-Block sleepers

and fastening in tunnel along with ancillary work in between stations which connect Jiribam to Imphal. As against each one of these four works, separate tender values were indicated in the tender document. What is important is the eligibility criteria, which under sub-clause (A) speaks of technical criteria. Clause (v) and (viii) thereof are relevant for our purpose and are set out hereinbelow:-

“(v) The construction firm should have executed at least one single work of ballast less track or construction of RCC Structures such as bridges etc. for a minimum of 35% of advertised value of the work within qualifying period i.e. last three financial years & current financial year. For foreign firms, the tender value in Indian currency will be converted to equivalent foreign currency based on exchange rate prevailing on the date of publishing of the tender.

(viii) Sub-sectioning has been done with a view to expedite the work, only one tender will be awarded to one firm; if same firm becomes L1 in all the sub-section, then evaluation of the firm for its fitness for award of all the works should be done for the works as a whole.”

On facts, it was found that the present appellant was L-1 insofar as the first three works were concerned and

one Bhartiya Infra Projects Limited was placed as L-1 insofar as work number four was concerned. There is no dispute insofar as work one and four are concerned in the present appeal, as work one has already been awarded to the appellant, and work four has been awarded to Bhartiya Infra Projects Limited. We are concerned with the award of work under the second and third works. The second work had been awarded to respondent No.4 herein, which is a consortium of companies, and the third work was awarded to the same Bhartiya Infra Projects Limited, who is a partner of this consortium.

The learned Single Judge after hearing all parties, struck down the Tender Committee's decision under clause (v) and (viii), and ultimately held that as the appellant was L-1 in works two and three, consequently, the appellant should be awarded these works. The Division Bench upset this order, stating that the Tender Committee had given its purposive construction to these clauses, which should not be interfered with in view of the fact that not only did it further the purpose of the tender conditions, but that at the very least, it was a possible view of the tender conditions which should not be interfered with in judicial review.

Mr. Mukul Rohatgi, learned senior counsel has argued that sub-clause (viii) is in two parts, and the first part has not been enforced by the Railways in the present tender order. Equally, the second part of the said clause can apply only if all works are awarded to the same firm, that is all four works. Admittedly, on facts, all four works have not been awarded to his client. In this view of the matter, according to learned senior counsel, the interpretation given by the Tender Committee to clause (v) would clearly be perverse inasmuch as the only requirement of having executed at least one single work for a minimum of 35% of the advertisement value of the work within the qualifying period cannot possibly be 35% of works bunched up together, but can only be 35% of each individual work as indicated in the tender. In that view of the matter, learned senior advocate submits that the judgment of the learned Single Judge is correct, and the Division Bench in applying purposive construction to disturb the clear language of the clause was in error.

The learned Additional Solicitor General, appearing on behalf of the Railways, argued that the interpretation of the said clause is a possible one and this Court ought not to interfere. This possible interpretation could be said to be erroneous, but so long as it is a possible

view, we should refrain from exercising the power of judicial review. Consequently when the Tender Committee thought that its interpretation would sub-serve the real object of the tender conditions, this court ought not to interfere.

Shri J.P.Cama, learned senior counsel appearing on behalf of the respondent submits that the Division Bench's judgment ought not to be disturbed and it is clear in the present case that if the appellant were to be awarded more than one work bunched together, it would not have met the tender condition of 35% of the total tender value of all the bunched works, and would have been unfit to carry out the same. He has cited judgments of this Court, emphasising the position in law that this Court has taken with respect to tender conditions generally.

Having heard learned counsel for the parties, we are of the view that sub-clause (viii) of the Technical Criteria is in two parts: the first part relates to sub-sectioning that has been done with a view to expedite the work, and only one tender will be awarded to one firm. The counter affidavit filed by the Railways, however, shows that this part of clause (viii) was not enforced in the present tender. What the Railways have stated is

that "as per the sub-section clause, after opening of the 2nd packet, if any tenderer is found to be lowest in more than one sub-section, the evaluation of the eligibility of the tenderer would be made based on the combined advertised tender value of the sub-sections in which the tenderer is lowest."

This being so, it is clear that the second part of the clause can only be applied if "all" works are to be awarded to the same firm. It is clear that the expression "all" cannot be equated with the expression "some". We find that there is no scope for any purposive interpretation if the clause is susceptible to one meaning alone. The Technical Committee cannot distort the clear language of this clause, and fell into error by applying a purposive interpretation which leads to an interpretation which no reasonable person can arrive at. This being so, to state that the bunching of two or more works would be permissible under clause (v) to arrive at the 35% equivalent of the total of such bunched works is, therefore, a construction which is not a possible one.

This court in M/s. Sam Built Well Pvt. Ltd. vs. Deepak Builders & Ors. [JT 2017 (12) SC 215], after citing two judgments of this Court, laid down the well known

parameters of judicial review in cases like the present one. One exception to the rule of "hands off" is a perverse understanding of a tender condition. This case clearly falls within the said exception. This being the case, we set aside the judgment of the Division Bench and restore that of the learned Single Judge for the reasons given by us.

The appeal is allowed in the aforesaid terms.

.....J.
[ROHINTON FALI NARIMAN]

.....J.
[ABHAY MANOHAR SAPRE]

NEW DELHI
MAY 10, 2018

ITEM NO.8

COURT NO.11

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 4839/2018
(Arising out of impugned final judgment and order dated 08-02-2018 in WA
No. 111/2017 passed by the Gauhati High Court)

M/S ROYAL CPL JV

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 10-05-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s)

Mr.Mukul Rohatgi, Sr.Adv.
Mr.Parthiv K. Goswami, Adv.
Mr.Palak Mahajan, Adv.
Ms.Diksha Rai, AOR

For Respondent(s)

Mr.Vikramjeet Banerjee, ASG
Ms.Nachiketa Joshi, Adv.
Mr.Ayush Anand, Adv.
Mr.Shubhendu Anand, Adv.
Ms.Priyanka Das, Adv.
Mr.Raj Bahadur, Adv.
Mrs.Anil Katiyar, Adv.

Mr.J.P.Cama, Sr.Adv.
Mr.D.K.Mishra, Sr.Adv.
Mr.Rituraj Biswas, Adv.
Mr.Chandan Kumar, Adv.
Mr.Mayank Shahewala, Adv.
Mr.Chandan Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(Ashok Raj Singh)
Court Master

(Saroj Kumari Gaur)
Court Master

(Signed Order is placed in the file)