

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 381-382 OF 2006

CHAIRMAN, AIRPORT AUTHORITY OF INDIA

Appellant (s)

VERSUS

ECIL RAPISCAN LTD. & ORS.

Respondent(s)

O R D E R

By judgment dated 25.9.2002 in CWP NO.2944-48/2001, High Court of Delhi disposed of the said writ petitions without granting any substantive relief to the petitioner but directed the respondents to pay cost quantified as Rs.5 lakh to each of the petitioners in the above mentioned 2 writ petitions. Apart from that the High Court also directed the appropriate authority to hold an inquiry to look into the conduct of the officers and take appropriate action, if it is found that anyone of the officers of the appellant herein is found responsible for the grant of a contract to the respondent No.3 herein (Heimann Systems Inc.Canada) in the above mentioned writ petitions.

Aggrieved by the above mentioned two directions, the instant appeals are filed by the second respondent in the said writ petitions, that is, Airports Authority of India.

The controversy is very limited, therefore, we need to take note only of a limited set of facts.

The appellant invited global tender in two bid system for supply, installation, testing and commissioning of color X-ray, Baggage Inspection System (XBIS) at various airports in India - 37 in number. The two bid system are (1) a technical bid and (2) a commercial bid. In response to the tender invitation, it appears the appellant received 5 tenders. On examination of the technical bids of the 5, one of the Technical bids was found non responsive. On the opening of the commercial bid, the appellant found certain discrepancies (which accordingly to the appellant are minor discrepancies) in 3 of the 4 responsive bids. The appellant, therefore, thought it fit to permit all the 4 technically responsive bidders to furnish a fresh commercial bid.

Aggrieved by such a decision, 2 of the bidders who are respondent No.1 in each of the respective appeals, namely, ECIL Rapisca Ltd. in Civil Appeal No.381/2006 and Beijing Zhongdun Security Technology Development Co. in Civil Appeal No.382/2006, filed two writ petitions before the High Court, the details of which may not be necessary for the present purpose except to mention both the writ petitions were dismissed one on the ground that it was premature and other as withdrawn.

Consequent upon the dismissal of the writ petitions, fresh commercial bids were furnished by all the 4 technically qualified bidder including the above mentioned two respondents herein.

On assessment of their commercial bids, the appellant found that respondent No.3 in both the appeals, namely-Heimann Systems Inc., to be the most competent and lowest bidder and the contract was

awarded in favour of the said respondent.

Challenging the award of the contract in favour of the respondent No.3, once again respondent No. in each of these appeals herein filed two writ petitions before the Delhi High Court which came to be disposed of in the judgment under appeal. In so far as respondent No.1 Beijing Zhongdun Security Technology Development Co. in Civil Appeal No.382/2006 which is a Chinese Company, it appears from the record that its tender was not considered by the appellant in view of the direction dated 9.2.2001 issued by the Government of India. The relevant portion of the communication containing the direction is as follows:

"I am directed to refer to your D.O. Letter No.3/3/2000-ARII (illegible)Pt.III dated 10.01.2001 on the subject noted above and to say that the matter has been considered in this Ministry and it has been decided that these systems would not be procured from the Chinese Company. Further action for procurement be taken on top priority in view of the urgency of the requirement in the current internal security scenario."

What exactly are the reasons which prompted the Government of India to give such directions, we are not concerned in this instant appeals. Unfortunately, the High Court found fault with the appellant and its officers herein for not considering the bid of the said Chinese Company and directed payment of costs as well as the inquiry into the action of the officers of the appellant herein. In our opinion, such a direction are uncalled for and untenable in law. The appellant is a public sector statutory corporation which is governed by the Airports Authority of India Act, 1994 under Section 40 of the Act and it is bound by the directions given by the Government of India from time to time. Section 40 of the Act reads as below:

"40. Power of the Central Government to issue directions.--(1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

Irrespective of the question whether the directions given by the Government of India are legal, tenable or not, (an issue which we will not examine in the instant case as we are not called upon) neither, the appellant nor its officers can be found fault with for not complying with the direction given by the Government of India, therefore, the two directions which are impugned in the instant appeals in so far as the Chinese Company is concerned, in our view, are not sustainable and therefore, set aside.

Coming to the direction in so far as respondent No.1-ECIL Rapiscan Ltd. in Civil Appeal No.381/2006 is concerned, we are of the opinion that even in this case, the directions cannot be sustained. The respondent knowing fully well that the appellant herein modified the the original terms of the tender notice (which enable not only the successful bidder but also the respondent alongwith the other bidders to resubmit their commercial bids) participated in such a process voluntarily. The respondent ECIL Rapiscan Ltd. now cannot be permitted to find fault with the procedure adopted by the appellant, more particularly, when the successful bidder has been the lowest tenderer on both the occasions, that is, in the original tender as well as in the commercial bid submitted pursuant to the decision of the appellant to call for fresh commercial bids as mentioned earlier. In the circumstances, we are of the opinion that the directions in so far as this respondent- ECIL Rapiscan Ltd. are also not sustainable and are set aside.

The appeals succeed and are allowed.

.....J.
[DR. B.S. CHAUHAN]

.....J.
[J. CHELAMESWAR]

NEW DELHI
MARCH 6, 2014
ITEM NO.104

Court No.4

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 381-382 OF 2006

CHAIRMAN, AIRPORT AUTHORITY OF INDIA

Appellant (s)

VERSUS

ECIL RAPISCAN LTD. & ORS.

Respondent(s)

(With appln(s) for permission to file additional documents and prayer for interim relief)

Date: 06/03/2014 These Appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Appellant(s) Mr. Rakesh K., Khanna,ASG
Mrs.Rachana Joshi Issar,Adv.

For Respondent(s) Mr. Arun K. Sinha,Adv.

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

The appeals are allowed, in terms of the signed order.

| (O.P. SHARMA)
| Court Master

| (M.S. NEGI)
| Assistant Registrar

(Signed order is placed on the file)