

Poddar Steel Corporation

Vs

Ganesh Engineering Works and others Respondents.

Civil Appeal No. 2272 of 1991 (arising out of S.L.P. (C) No. 16526/90)

(L. M. Sharma, M. M. Punchhi JJ)

06.05.1991

JUDGEMENT

SHARMA, J. :-

1. Special Leave is granted.

2. In response to a notice inviting tenders by the Diesel Locomotive Works, Indian Railways, in connection with disposal of one lot of Ferrous Scrap, a number of tenders were submitted by the appellant, the respondent No. 1 and other intending purchasers. The tenders of the respondent No. 1 and some other bidders were rejected as defective and the appellant's offer being the highest was accepted, and accordingly the appellant deposited a sum of about Rs. 15 lacs. The respondent No. 1 challenged the decision by a writ petition before the Allahabad High Court contending that there was no defect in its tender and that the tender of the appellant could not have been validly accepted as the necessary condition of payment of Rs. 50,000/- as earnest money with the tender had not been complied with. The application was resisted on the grounds (i) that the respondent No. 1 having not deposited the earnest money at all was not entitled to a consideration of its tender and has no locus stand in the present matter; and (ii) that the appellant had substantially complied with the requirement by sending with its tender a Banker's Cheque marked and certified by the Union Bank of India as good for payment. The High Court accepted the appellant's first ground, holding that the tender of the respondent had been rightly rejected for failure to deposit the earnest money, but allowed the writ petition on the finding that the appellant also did not satisfy the condition No.6 of the tender notice as the earnest money was offered by the Banker's Cheque of a bank other than the State Bank of India mentioned in the said clause. The High Court directed the authorities to consider the other valid tenders and further observed that should the other tenders be found to be unacceptable it would be open to the authorities to invite fresh tenders. The present appeal is directed against this judgment.

3. The case of the appellant has been that its tender mentioned the highest amount of one and a half crores rupees for the 2000 M.T. of Ferrous Scrap which was a very fair price, and the authorities were absolutely right in accepting the same. With respect to the alleged deficiency in the matter of deposit of the earnest amount, the stand is that a Banker's Cheque is as good as cash and especially so when a verification from the bank in question about its authenticity was made and the bank's assurance to honour the same was obtained. Admittedly, the Tender Committee had taken the precaution of getting the matter confirmed from the appellant's bank before deciding to accept his tender.

4. The relevant clause 6 of the notice required the tender to be accompanied by earnest money

calculated at 5% of the offer under the tender subject to a maximum of Rs. 50,000/- and in terms permitted the deposit by cash or by demand draft drawn on the State Bank of India. The defect pointed out by the respondent No.1. and accepted by the High Court is in the appellant sending the cheque of the Union Bank of India drawn on its own branch and not on the State Bank. By the impugned judgment it has been held that in view of this defect the authorities had no power to accept the appellant's tender.

5. The learned counsel for the appellant has contended that having regard to the circumstances in the case it must be held that the Tender Committee had the power to accept the appellant's tender. Referring to the books "Bills of Exchange" by Byles, and "Cheques in Law and- Practice" by M.S. Parthasarathy, it has been argued that certified cheques are as good as cash and the irregularity relied upon in the appellant's submitting his tender could be validly waived by the Diesel Locomotive Works. Reliance was also placed on M/ s. B. D. Yadav and M. R. Meshram v. Administrator of the City of Nagpur, AIR 1984 Born 351, and T.V. Subhadra Amma v. Kerala Board of Revenue, AIR 1982 Ker 81.

6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause No. 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned. in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories - those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be. open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in G. J. Fernandez v. State of Karnataka, (1990) 2 SCC 488: (AIR 1990 SC 958), a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. The High Court has, in the impugned decision, relied upon Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489 : (AIR 1979 SC 1628), but has failed to appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favour on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the Court closely examined the nature of the condition which had been relaxed and its impact before answering the question whether it could have validly condoned the shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses the present case belongs.

7. The nature of payment by a certified cheque was considered by this Court in Sita Ram Jhunjhunwala v. Bombay Bullion Association Ltd., (1965) 35 Com Cas 526 . (AIR 1965 SC 1628) Several objections were taken there in support of the plea that the necessary condition in regard to payment was not satisfied and in that context this Court quoted the observations from the judgment in an English decision (vide Spargo's case (1873) L. R. 8 Ch. App. 407) that it is a general rule of law that in every case where a transaction resolves itself into paying money by A to B and then handing it back again by B to A, if the parties meet together and agree to set one demand against the other, they need not go through the form and ceremony of handing the money backwards and

forwards. This court applied the observations to a transaction requiring payment by one to another. The High Court's decisions in B. D. Yadav's case (AIR 1984 Bombay 351) and T V. Subhadra Amma's case (AIR 1982 Ker 81) are also illustrations where literal compliance of every term of the tender notice was not insisted upon.

8. In the present case the certified cheque of the Union Bank of India drawn on its own branch must be treated as sufficient for the purpose of achieving the object of the condition and the Tender Committee took the abundant caution by a further verification from the bank. In this situation it is not correct to hold that the Diesel Locomotive Works had no authority to waive the technical literal compliance of clause 6, specially when it was in its interest not to reject the said bid which was the highest. We, therefore, set aside the impugned judgment and dismiss the writ petition of the respondent No. 1 filed before the High Court. The appeal is accordingly allowed with costs throughout.

Appeal allowed.

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