

Shapers Construction (P) Ltd. and Another

Vs

Airport Authority of India and Another

SLPs (C) Nos. 18121-22 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

17.09.1996

ORDER

1. The petitioners have filed these special leave petitions against the order of the Division Bench of the High Court of M.P. at Jabalpur made on 14-8-1996 in LPA No. 138 of 1996. The learned Single Judge as well as the Division Bench dismissed the writ petitions in which the petitioners had sought direction to the respondents to give the tender form on the ground that they had satisfied condition 2 of the tender conditions. Pursuant to the interim order passed by the High Court, the petitioners submitted their tender forms. But, at the final hearing, the writ petitions came to be dismissed. Thus, these special leave petitions.

2. It is contended for the petitioners that they have post experience in execution of the national highway. They have two contracts of more than required amount specified in the tender conditions, 42% of Rs 4 crores and Rs 6 crores respectively. The certificates issued by the competent engineers, namely Executive Engineer and the Superintending Engineer would show that the petitioners have been satisfactorily performing their duties in execution of the work. The petitioners, after securing the contracts, have executed major part of the work within the scheduled time granted under the contracts. Therefore, the failure to give tender form at the inception and consideration thereof after the interim direction is violative of their fundamental right to compete in the tender for the further contract. The question is whether the view taken by the High Court is wrong in law ? Tender condition 2 envisages as under :

"The tenderer who wish to apply shall have satisfactorily completed at least two runway/National highway, preferably rigid pavement works involving considerable earth filling each of value Rs 400 lakhs or one work of Rs 600 lakhs during the last five years and have annual turnover of Rs 500 lakhs in each (1992-93, 1993-94 & 1994-95) and should possess computerised hot mix plant and concrete batching plant for executing asphaltic and rigid pavement works."

3. A reading of this condition would clearly indicate that the tenderers who wish to apply shall have satisfactorily completed at least two runway/National highway, preferably rigid pavement works involving considerable earth filling, each valuing Rs 400 lakhs and one work of Rs 600 lakhs during the last five years and have annual turnover of Rs 500 lakhs in each of the last three years (1992-93, 1993-94 and 1994-95). He should possess computerised hot mix plant and concrete batching plant for executing asphaltic and rigid pavement works.

4. It is true, as contended by the petitioners, that the tender condition would indicate that they had completed at least two runway/National highway, preferably rigid pavement works. He contends

that the completion of the work is different from tendering the contracts for execution of the work. They had two contracts as envisaged thereunder; though they had not totally completed the same, major part of the work had been completed. Therefore, they have fulfilled the conditions prescribed thereunder. The petitioners, thereby, could not be denied of their right to compete in, apply for and be considered for assignment of the work under the tenders now in dispute. We find no force in the contention.

5. The condition envisages that he shall have satisfactorily completed. The word 'completed' would indicate that as on the date of application for the tenders, he should have completed at least two runway/National highway works, preferably rigid pavement works involving considerable earth filling. In other words, the completion of the work of at least two runway/National highway is a precondition. On their own admission, they had not completed, though the major part of the work as professed by them is completed. Under these circumstances, the view taken by the High Court cannot be said to be unwarranted.

6. The learned counsel placed strong reliance on the judgment of this Court in *New Horizons Ltd. v. Union of India* [(1995) 1 SCC 478], in particular, paras 21 and 22 in support thereof. This case relates to previous experience and the question therein was whether the previous experience would be considered after submitting the tenders or before submitting the tenders? This Court had held that the question would arise only after the submission of the tender. In support of consideration of the tender thereof, the previous experience would play an important role for awarding the contract. In that case, this Court considered and held that at the inception, the tender forms cannot be refused on the ground that he had not proved the previous experience. That question has no relevance to the facts in these petitions. Under these circumstances, as stated earlier, the completion of the work of at least two runway/National highway works is a precondition for submitting the application. On their own admission, since the petitioners had not completed the works in hand, we cannot find any illegality in respondents not giving the tender forms nor in non-consideration of their cases pursuant to the interim direction given by the High Court.

7. The petitions are accordingly dismissed.