

SUPREME COURT OF INDIA

M/S Continental Construction Ltd.

Vs.

Tehri Hydro Development Corporation Ltd.

S.L.P.(civil) 12078 of 2002

(S. Rajendra Babu and P.Venkatarama Reddi JJ.)

05.09.2002

JUDGMENT

Rajendra Babu, J.

1. This petition is directed against an order made by the High Court of Delhi in a writ petition wherein the petitioner prayed for quashing the decision of the first respondent that the second respondent has the pre-qualification for the construction of Koteshwar Dam Spillway and Power House Civil work of Koteshwar Hydro Electric Project pursuant to the tender specification No. THDC/RKSH/CD/197/PQ/99. The pre-qualification document under clause 10.2 provided as follows:-

"10.2. The minimum pre-qualification criteria for the work of construction of "Koteshwar Dam, Spillway & Power House Works" would be as under :

(i) The bidder should have minimum annual turnover of Rs. 50 crores in anyone of the last five years. (ii) The bidder should have successfully completed the construction of at least one concrete dam/barrage involving placement of minimum 2.5 lac cubic meters of all grades of concrete against a single contract in a Hydro Electric/Irrigation Project." [Only relevant part extracted]

2. The challenge to the pre-qualification of the second respondent was met by the first respondent on the following basis:-

1. "Amongst the 7 parties, recommended to be pre-qualified for the subject work, one of the parties recommended was M/s Progressive Construction Limited, in Joint Venture with the Consortium of Intertech :Lenhydro, Russia (named as respondent no. 2 in the writ petition). In the Pre-qualification bid documents submitted by M/s Progressive Construction Limited in Joint Venture with the Consortium of Intertech Lenhydro, Russia the party had, inter-alia, provided Memorandum of Understanding (MOU), purporting to be an agreement between M/s Progressive Construction Limited, with its Head Officer at Hyderabad (India) and the Consortium of Intertech Service (Head office at Saint Petersburg, Russia) and Institute Lenhydro Project,

(Head Office at Saint Petersburg, Russia), formed to submit the pre-qualification bids to the THDC in response to the subject tender. The MOU had described the Intertech Lenhydro Consortium having experience, skill and specialized experience in construction of dams, underground tunnels, ports etc. Further, the said MOU had laid down the detailed obligations, responsibilities and working arrangements for submission of bids and undertaking the subject works in the event, the contract was awarded to the Joint Venture. Alongwith the documents, the Joint Venture had also provided details concerning experience and financial status of all the respective Joint Venture partners.

2. As per information provided by the Joint Venture of Progressive Construction Limited and Consortium of Intertech Services: Institute Lenhydro Project, it was disclosed that M/s Progressive Construction Limited would be the Joint Venture lead partner. It was further indicated in the submitted documents that Institute Lenhydro Project, one of the Joint Venture partners, had successfully completed Bureya Hydroelectric Project on Bureya River, Far East of Russia, which was a 140 m. high concrete dam. It was further stated that this massive gravity dam contains 3.5 million cum. Concrete about 30% of which being dry RCC which is placed into downstream part of the dam. This experience detail was supported by an Affidavit dated July 31, 1999, signed for and on behalf of Institute Lenhydro Project, by their Chief Engineer and authorised signatory declaring that Institute Lenhydro Project had executed the Bureya Hydroelectric Project, as per details given in the foregoing. It was also indicated in the affidavit that the work was done for Government of Russia.

3. The answering respondent vide letter no THDC/RKSH/CD-197/2607 dated 18.11.99 intimated to Progressive Construction Limited who were disclosed to be the leader of Joint Venture, that the claim of meeting the PQ requirements of having completed construction of Dam involving 2.5 lac cum concrete based on the credential of their Joint Venture partner, Lenhydro Project, had been laid on the self certification made by Lenhydro Project to the effect that they have placed 3.5 million cum concrete in Bureya HEP. Similarly, the claim of having achieved more than 20,000 cum concrete placement in a single month was also laid on self certification through an affidavit furnished by Institute Lenhydro Project. They were required vide this communication dated 18.11.99 to arrange to furnish a certificate in support of meeting the above PQ requirements.

4. In response to this, Progressive Construction Ltd. vide their letter dated 24.11.99 addressed to Sr. Manager (Contracts) furnished the certificate issued by Bureya HPP, an open joint stock company "UES of Russia" under Ministry of Fuel and Power Engineering of Russia. While forwarding the said certificate by Bureya HEP, it was intimated by Progressive Construction Ltd. that the certificate was in support of the successful completion of the Project as well as also the total quantities of concrete/peak month quantity of concrete executed by their Joint Venture partners M/s Lenhydro Project. The original letter of confirmation issued by the joint stock company Bureya HPP under Ministry of Fuel & Power Engineering of Russia was

later forwarded by Progressive Construction Ltd. vide letter No. PCL/ND/Koteshwar/2206 dated 29.11.99 by their letter also it was intimated that the said letter of confirmation certifies total works of concreting having been done by their Joint Venture partners M/s Lenhydro Project for Bureya HPP in Russia.

5. The Standing Committee on pre-qualification, on detailed examination of bids submitted by various parties, had noted in regard to PCL-Intertech : Lenhydro Consortium based on information/documents furnished by them, that the annual turnover of M/s Progressive during the year 1998-99 has been Rs. 158.11 crores. The joint venture partners, M/s Institute Lenhydro Project, Russia have successfully completed 140 M. high concrete gravity dam on Bureya river for Bureya Hydroelectric Project, Russia involving 35 Lac cum of concrete placement. The peak rate of concrete placed by the party in a single month on this project was more than the required rate of 20,000 cum. It was also noted that M/s Progressive achieved a monthly rate of 2,50,307 cum for earth and rock excavation in the month of June, 1994 for Srisailem Right bank Canal work. M/s Institute Lenhydro Project, having worked on Bureya HEP, Russia, have adequate experience in Reinforced Cement Concrete Technology. Based on the information provided, and documents submitted by this Joint Venture in response to the pre-qualification tenders, the Standing Committee recommended pre-qualification of PCL-Intertech : Lenhydro Consortium Joint Venture. It was intimated to the applicant that since the pre-qualifying requirements relating to concreting were being met by the consortium of Intertech : Lenhydro Project, Intertech : Lenhydro Consortium needs to be nominated as the leader of the Joint Venture. This was accepted and confirmed by the applicant vide letter No. PCL/ND/THDC/2000/2275 dated 22nd May, 2000.

6. Based on the recommendations of the Standing Committee, the answering respondent, THDC, pre-qualified seven parties in June, 2001, including the Joint Venture of M/s Progressive Construction Limited and Consortium of Intertech-Lenhydro, Russia, for submission of bids for the civil construction works of Koteshwar Hydroelectric Project."

3. In view of these pleadings, the High Court held that "on consideration of the rival submissions and pleading on record, it is abundantly clear that respondent No. 2 is fully qualified and eligible to carry out the contract" and the writ petitioner did not, before the bids were opened, raise any objection regarding the experience and financial capacity of respondent No. 2. The High Court, therefore, dismissed the writ petition filed by the writ petitioner.

4. In this case the respondents had entered caveats. We asked them, even at the stage of preliminary hearing before issuing notice, to address the arguments on the merits of the matter. Having heard the parties in the case, we have passed this order.

5. In the writ petition filed before the High Court the petitioner contended (i) that one of the constituents of the second respondent Lenhydro Project is not a company engaged in actual

physical execution/construction of works; rather, it was only a design firm; (ii) the Intertech Services is not a Construction Company engaged/having experience in actual execution/construction of concrete Dam, Spillway and Power House Works; (iii) The statement made by the authorised signatory of the Lenhydro Project that the said constituent has executed the Bureya Hydro-electric Project, far east Russia is not correct as in fact the said project has been built by JSC Buguchangesstroy as turn key contractor. In support of this contention, the learned counsel for petitioner relied upon a letter issued by the SHC Institute Hydro Projects and letter dated May 25, 2002 by the Chamber of Commerce and Industry of the Russian Federation which stated that "LENGIBROPROYEKT" is a specialized design engineering company in the field of hydro-electric projects where it enjoys good standing as a design firm. This firm does not involve itself in executing projects nor is it known to associate or act as a turn-key contractor"; that letter dated 22.11.1999 [Annexure P/12] issued by the Bureya Hydro Power Project is ambiguous inasmuch as it only refers to successful completion of the contract by the Russian constituent of the second respondent without any details thereto; that the Bureya Hydro Power Project on Bureya River was, in fact, constructed by Boguchangesstroy as a turn-key contractor as per the information obtained from the Reference list of the Project built by the JSC Boguchangesstroy for the years 1997-2000. It is also contended that during the period from 1993 to 1997 the "Lenhydroproject" merely got executed construction work project at the Bureya Hydro Power Station even as per certificate dated 15th July, 2002 issued by the Chief Engineer of the Parent Company of the Russian Constituent of the 2nd respondent. On this basis it is contended that the second respondent had not placed any satisfactory material to show that it had necessary experience as required under the pre-qualification documents.

6. The letters issued by the SHC Institute Hydro Projects and the Chamber of Commerce and Industry of the Russian Federation do not specifically deal with whether the 2nd respondent had in fact executed the construction work of Bureya Hydro-Power Station project but makes general reference. The Reference List obtained from the Internet gives information from 1997 onwards and not for the earlier period. Therefore, these three documents are not helpful to the petitioner. The stand of the respondents is that Bureya Hydro-Power Station project is a multi-stage project; that during period 1993-1997, the Russian Constituent of the 2nd respondent was entrusted with the construction, technical support and quality control of Bureya Hydro-Power Station project and they were providing construction machinery, material, manpower etc. during the execution of works. Certificate issued on 1.8.2002 in this regard by the parent company is made available by the 2nd respondent. Another certificate dated June 11, 2002 was relied upon along with the letter dated 22.11.1999 issued in this regard. Next stage of project from 1998 onwards was executed by a sub-contractor JSC Boguchangesstroy and Boguchangesstroy had not figured for the earlier period prior to 1998. This project has nothing to do with the earlier project. The clear stand of the respondents on the basis of these documents is that apart from general designing work they were also engaged in actual construction of the project. If upon the material made available to the 1st respondent by the 2nd respondent its pre-qualification has been decided, the High Court is justified in not interfering under Article 226 of the Constitution.

7. In the light of this position, we find no merit in this petition and the same stands dismissed. No costs.