

SUPREME COURT OF INDIA

Assam Electronics Development Corporation Limited and Another

Vs

Messrs Educomp Solutions Limited and Others

Appeal (Civil) 5268 of 2006 (Arising Out of S.L.P.(C) No.9804 of 2006) Withcivil Appeal No. 5266 of 2006 Arising Out of Slp(c)No.9796/2006; Civil Appeal No. 5267Of 2006 Arising Out of Slp(c)No.14205/2006

(Arijit Pasayat and S. H. Kapadia, JJ)

29.11.2006

JUDGMENT

S. H. KAPADIA, J.

Leave granted.

Assam Electronics Development Corporation Ltd. (for short, 'AMTRON') had issued a Notice Inviting Tender (for short, 'NIT') on 23.11.2005 inviting bids for execution of the contractual work in the 4th Phase of Rajiv Gandhi Computer Literacy Programme (for short, 'RGCLP') in 300 schools in the State of Assam. As per the tender notice the tenderers were required to submit their bids in two parts, i.e., (a) Technical Bid (b) Commercial Bid, in separate sealed envelopes for the supply of computer hardware, software, courseware and connected accessories and provision of computer education service in government high schools on BOT basis. The last date and time for submission of tender was 19.12.2005 at 2 pm and the date and time for opening of technical bid was fixed at 3 pm on the same date. In the tender notice, it was further stated that the date and time for opening of commercial bid would be intimated separately to those bidders who would qualify in the technical bid.

Subsequent to the issuance of the tender notice, AMTRON carried out certain amendments to the tender documents on 16.12.2005. Under Clause 13 (f), (g) and (h) of the General Terms and Conditions, AMTRON reserved its right to evaluate technical bids and shortlisted the qualified bidders. The shortlisted bidders alone were to be informed regarding the date of opening of the commercial bids. The commercial bids of shortlisted bidders alone had to be opened and evaluated. The shortlisted bidders were to be listed in the descending order of their score on a scale of hundred, based on the results of evaluation. However, the criteria for evaluation of the bid on a scale of hundred was not indicated in the tender documents. In short, in the tender documents allocation of marks on a scale of hundred between technical bids and commercial bids, was not indicated. Further, the details of the heads, on the basis of which marks would be given, were also not disclosed.

On 14.12.2005 the representative of M/s. Educomp Solutions Ltd. and two others (for short, 'Consortium') along with other representatives of NIIT (successful bidder) attended the pre-bid meeting. According to Consortium, in the said meeting clarification was sought as to the criteria on the basis of which the bids were to be evaluated. It is the case of the Consortium that in spite of their request to disclose the criteria, the same was not done. They were informed that the criteria would be disclosed on 19.12.2005 when the bids were to be opened.

On 19.12.2005 the technical bids submitted by the Consortium as well as by NIIT were opened. Both the bids were found technically eligible and accordingly both the qualified bidders were informed that the commercial bids would be opened on 31.12.2005. However, the formula of 60 : 40 was not disclosed. The qualified bidders were, however, asked to remain present on 31.12.2005.

On 31.12.2005 the commercial bids submitted by qualified bidders were opened by AMTRON when it emerged that the price quoted by the Consortium was substantially lower than the price quoted by NIIT. The Consortium had quoted an amount of Rs.9.07 lacs per school as against the amount of Rs.14.15 lacs per school quoted by NIIT. Therefore, the rate quoted by NIIT for the entire tender was much higher than the rate quoted by the Consortium.

Be that as it may, the contract came to be awarded by AMTRON to NIIT.

Aggrieved by the aforesaid action of AMTRON, the Consortium filed a writ petition in the High Court of Guahati. It is not necessary to go into the chequered history of litigation. Suffice it to state that according to the Consortium, AMTRON should have disclosed the basis of the scoring methodology which was never disclosed till 31.12.2005. According to the Consortium, the formula of allocation of marks of 60 : 40 was never disclosed to the Consortium till 31.12.2005. According to the Consortium, the details of allocation were asked for by the representatives of the Consortium in the pre-bid meeting held on 14.12.2005 when AMTRON promised that they would disclose the above methodology on 19.12.2005 when the bids would be opened. In fact, on 16.12.2005 an amendment was made in the tender documents/NIT to that effect. According to the Consortium, the above formula for allocation of marks was not disclosed even on 19.12.2005. In the above circumstances, the Consortium invoked Article 14 of the Constitution alleging lack of transparency, lack of accountability and non-disclosure of relevant criteria.

On the other hand, AMTRON and NIIT submitted before the High Court that the criteria and methodology was disclosed on 14.12.2005 itself; that, the Consortium was aware of the methodology which AMTRON was to adopt in the matter of awarding of marks; that, the Consortium had never complained of about non-disclosure; that, there was no hidden criterion evolved and applied to evaluate the bids; that, the Consortium had given their bids without raising any objection and, therefore, AMTRON contended that there was no reason to open up the contract to judicial review. AMTRON further contended that NIIT was technically superior to the Consortium as indicated by the marks secured by NIIT; that, the Consortium had produced manipulated and fabricated documents; and therefore, they were not entitled to any relief under Article 226 of the Constitution.

It was further urged that the matter involved disputed questions of facts; that, there was a serious dispute between the parties regarding disclosure of methodology for awarding of marks; that, the Consortium had approached the High Court with unclean hands; that, the Consortium had rested its claim on forged documents and, therefore, in public interest there was no reason for interference by the High Court under Article 226 of the Constitution.

By the impugned judgment the High Court came to the conclusion, based on records, that on 5.12.2005 the criteria for evaluation of technical and commercial bids were fixed by the expert committee of AMTRON. According to the High Court, the formula of 60 : 40 was fixed on 5.12.2005. According to the High Court, on 14.12.2005 nine parties appeared in the pre-bid meeting. However, according to the High Court, the said formula was not disclosed in the pre-bid meeting. According to the High Court the tender document did not disclose the said formula; that in the minutes of the meeting dated 14.12.2005 there was no discussion about the methodology to be followed; that, in the said meeting there was no discussion as to the basis on which marks were to be allotted and, therefore, there was total non-disclosure of the scoring methodology. According to the High Court, AMTRON did not disclose the above formula to the Consortium till 31.12.2005. In short, for the above reasons, namely, non- disclosure of the scoring methodology, lack of transparency and lack of accountability, the contract awarded to NIIT was quashed by the High Court. Hence the above civil appeals.

Having heard learned counsel for the respective parties, we are of the view that on account of litigation, the cause of education should not suffer. There is considerable delay in the implementation of the project on account of the legal battle. The project covers 300 schools. To cut short the litigation, the following order is passed:

(1) M/s. Educomp and others (Consortium) would supply computer hardware, software, courseware and connected accessories and provision of computer education service in 100 government schools on BOT basis.

(2) Similarly, NIIT will supply computer hardware, software, courseware and connected accessories and provision of computer education service in 200 government schools on BOT basis.

(3) The above shall be subject to matching of prices, identification of schools by AMTRON, and upgradation of courseware, CDs and books. The monitoring of the above exercise shall be under the supervision of AMTRON. The said exercise should be completed within two weeks from the date of this judgment.

Before concluding we hereby expunge the stringent observations made by the High Court in the impugned judgment against the Consortium.

We also direct AMTRON to drop the blacklisting process adopted by it against the Consortium.

In the light of what is stated above, we are not required to go into the merits of the matter. All allegations and counter allegations are given up by the respective parties. In public interest we have worked out the matter as indicated above.

Civil appeals are, accordingly, disposed of with no order as to costs.