

SUPREME COURT OF INDIA

M/s. Electrical Manufacturing Company Ltd.

Vs.

M/s. Power Grid Corporation of India Ltd.

C.A.No.801 of 2009

(Altamas Kabir and Markandey Katju JJ.)

09.02.2009

JUDGMENT

Markandey Katju, J.

1. Leave granted.
2. This appeal has been filed against the impugned judgment dated 26.5.2008 of the Delhi High Court in Writ Petition (Civil) No.3668 of 2008.
3. Heard Shri Sudhir Chandra, learned senior counsel for the appellant, and Shri K.K. Venugopal, learned senior counsel for the respondent and perused the record.
4. The appellant Electrical Manufacturing Company Ltd., (hereinafter as `EMC') has alleged that it is a leading modern power system company in India and is the first ISO 9001 certified company in India in Transmission Line Projects. It was established in 1951 and carries out such projects in India as well as overseas. It filed a writ petition in the Delhi High Court with the following prayer:-

"To quash the decision taken by the Board of Directors in its meeting held on 06.5.2008 with respect to not awarding of contract to the petitioner with respect to Package A1, A2 & A7 in spite of the fact that it is L1, technically qualified as per the requirement and more so its bid is Rs.16.34 crores less than L2 bidders."
5. The respondent no.1, the Power Grid Corporation of India Ltd. ((hereinafter as `PGCIL') is a Public Sector Undertaking of the Government of India working under the Ministry of Power. The petitioner has been carrying out the contract of respondent no.1 for a long time.
6. On 5.11.2007, a Notice inviting tender with respect to Package A1 and A2 was made by respondent no.1 PGCIL. On 8.11.2007, Notice inviting tender with respect to Package A7 was made by respondent no.1. These tenders were for setting up electrical transmission lines.

7. On 8.1.2008 and 9.1.2008, bids were opened for the above mentioned packages, respectively. In both the petitioner was declared the Lowest Quoted Bidder (L1).

8. On 16.4.2008 the petitioner made representations to the respondent no.1 with respect to Package A1, A2 and A7, explaining as to how the petitioner was fully qualified and met the requirements of technical experience stipulated in Clause 1.1 of Annexure `A' of Special Condition of Contract.

9. On 6.5.2008, the respondent no.1, decided not to award the contract for the above mentioned packages to the petitioner as it was of the opinion that the appellant did not have the requisite technical experience as set out in Clause 1.1 of Annexure `A' of the Special Condition of Contract.

10. The appellant has alleged that the above refusal by respondent no.1 to award the contract for the above mentioned packages was arbitrary and illegal since the appellant's bid was the lowest among all the bidders.

11. Shri Sudhir Chandra, learned senior counsel for the appellant has submitted that the appellant has been denied the contract in question on an erroneous interpretation of Clause 1.1 of Annexure `A' of the Special Conditions of Contract. The aforesaid Clause 1.1 states:

"1.1 Technical Experience The bidder shall have satisfactorily completed as a prime contractor or as a sub-contractor or as a member in a Joint Venture, 345/400 KV Double Circuit or higher voltage class transmission line(s) within the last seven (7) years as on date of bid opening. The bidder's experience should include the following:

(i) The bidder should have surveyed, optimized tower locations, erected and strung with tension stringing equipment, not less than following cumulative route length of transmission lines of 345/400 KV Double Circuit or higher voltage class involving bundle conductor.

Package - A7 : 100 Kms

Package - A8 : 100 Kms"

12. Learned counsel for the appellant submitted that the appellant fully satisfied the requirements mentioned in Clause 1.1 namely that the petitioner has surveyed, optimized tower locations, erected and strung with tension stringing equipment, not less than following cumulative route length of transmission lines of 345/400 KV Double Circuit or higher voltage class involving bundle conductor, which in so far as the petitioner is concerned is 100 Kms. for package A1 and A7 and 200 Kms. for package A8. Hence learned counsel submits that the appellant should have been given the contract in question.

13. On the other hand Shri K.K. Venugopal, learned senior counsel for respondent submitted that sub-clause (i) of Clause 1.1 has to be read along with the main clause 1.1 which stipulates that the bidder should have satisfactorily completed the requisite length of 100 Kms. He submitted that the petitioner has only satisfactorily completed 83 Kms. of

transmission line as on 9.1.2008 and therefore, did not fulfill the technical experience required by Clause 1.1.

14. The dispute thus in this case is whether the appellant has the requisite technical experience mentioned in Clause 1.1 of the Special Conditions of Contract.

15. Shri K.K. Venugopal, learned senior counsel for respondent submitted that the appellant has satisfactorily completed only 83 Kms. Of transmission lines as on the date of the opening i.e. 8/9.1.2008 instead of the requisite 100 Kms. He submitted that the appellant had in addition laid various incomplete transmissions lines, but these cannot be added to the lines satisfactorily completed because they are incomplete. The chart showing the work done by the appellant is as follows:

Transmission Line	Extent completed by petitioner as on 8/9.1.2008	Total extent of the line in question	Lines Satisfactorily Completed by petitioner
Meerut-Mandola	60 km (on 29.9.03)	60 km	60 km
Bhadrawati-Chandrapur	23km (on 13.4.06)	23 km	23 km
Trivenveli-Udmalpet	134km(on 8/9.1.08; 2km incomplete)	136 km	
TAPP-Kankaroli	87 km (on 8/9.1.08; 10.3 km incomplete)	97.3 km	
Total	304 km		83 km

16. A perusal of the above chart shows that the appellant has only satisfactorily completed 83 Kms. of transmissions lines. The line Trivenveli-Udmalet in Tamil Nadu was incomplete because only 134 Kms. out of the total extent of the line of 136 Kms. had been completed by the appellant. Hence this transmission line could not be treated to be satisfactorily completed. Similarly the line Tapp-Kankaroli was also incomplete as it was only laid for 87 Kms. but the entire line had to be 97.3 Kms.

17. Shri Sudhir Chandra, learned senior counsel for the appellant has submitted that the view taken by the High Court that satisfactorily completing the line means commissioning the line is not correct. We are of the opinion that even if satisfactory completion may not necessary

mean commissioning of the line but it certainly means completion of the entire length of the line and thereafter testing the line to find out whether it is functioning satisfactorily. Without testing it how can one be sure that it has been completed satisfactorily.

18. For instance, if an electrical line is laid inside a person's house, the only way to find out whether the electrical line has been laid satisfactorily is to find out by pressing the switch and seeing whether the bulb in the house is lighted or the fan starts running. Merely putting wires dangling inside the house but which do not light the bulb or turn the fan cannot be said to be satisfactory completion of the electrical line.

19. In the present case, as can be seen from the chart set out above the appellant has not completed the lines from Trivenveli to Udmalet nor from Tapp to Kankaroli. Unless the entire line is laid and is found to be functioning satisfactorily, it cannot be said that there was satisfactory completion of the line.

20. As regards the interpretation of Clause 1.1 we cannot agree with Shri Sudhir Chandra that the words 'Satisfactorily Completed' would not govern sub clause (i) of Clause 1.1. A fair reading of the entire Clause 1.1 along with sub clause (i) clearly indicates that the requisite technical experience requires satisfactorily completion of the requisite length of the line. Sub clause (i) is a part of Clause 1.1 and hence mere surveyance, optimizing tower locations, erecting and stringing with tension stringing equipment, etc. is not sufficient to give the requisite technical experience to the bidder unless such work was satisfactorily completed, which means that it was tested and found to be functioning satisfactorily.

21. If the bidder has surveyed, optimized tower locations, erected and strung with tension stringing equipment, the requisite length of transmission lines, but these transmission lines do not function, surely it cannot be said there was satisfactory completion of these transmission lines. In our opinion the expression 'Satisfactory Completion' govern sub clause (i) of Clause 1.1 also. Hence mere surveying, optimizing tower locations, erecting and stringing with tension stringing equipment the requisite length of transmission lines will not be enough to give the necessary technical experience because it is possible that even after doing the above work the transmission lines may not function. Unless after doing the above works the line is tested and found to be successfully functioning it surely cannot be said that there was satisfactory completion of the transmission lines.

22. Apart from the above, completion of a part of the line will be of no avail and the entire line from one location to another has to be completed before there can be said to be satisfactory completion of the line. Completion of part of the line has to be totally ignored as a line is one integral whole and cannot be divided into sections.

23. Thus there is no force in this appeal and it is dismissed. No costs.