(2002) 09 DEL CK 0259

Delhi High Court

Case No: Civil Writ No''s. 5837, 5860, 5878, 5908 and 5909 of 2002

Educomp Datamatics Limited APPELLANT

Vs

Directorate of Education RESPONDENT

Date of Decision: Sept. 20, 2002

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2003) 102 DLT 917

Hon'ble Judges: Devinder Gupta, J; B.N. Chaturvedi, J

Bench: Division Bench

Advocate: Rajiv Nayyar, Sushil Salwan, Amit, S. Chadha, Dharmesh Mishra and Bishwajit Singh, for the Appellant; Avinash Ahlawat, for the Respondent

Final Decision: Allowed

Judgement

Devinder Gupta, J.

Quashing of Clause 7.1(f) of Tender No. DE 45 (652)VE/CEP/202-2002 (Annexure P. 1) issued by the respondent has been sought by the petitioners in these petitions, which requires the bidders, bidding for implementation of the project, to have a turn over of at least Rs. 20 crores each year for the last three financial years up to 31.3.2002, inter alia, on the grounds being arbitrary and unreasonable and vocative of Article 14 of the Constitution of India.

2. For every relevant academic year, respondent floats tender for handling Computer Education Project in various Government and Government aided Senior Secondary Schools in Delhi. The petitioners have given details of the terms and conditions of the earlier tenders, more particularly with respect to the requirement to the eligibility criteria in the tender bids of the bidder of having a turn over of at least Rs. 2 crores each year for the last three financial years. It is urged that in the eligibility criteria in tender notices for the year 2000-2001 and 2001-2002 the condition was that the bidder should have a turn over of at least Rs. 2 crores each

year for the last three years but in the tender notice for the academic year 2002-2003 eligibility criteria has abruptly been changed saying:-

"The bidder bidding for implementation of the project should have a turn over of at least Rs. 20 crores each year for the last three financial years up to 31.03.2002."

3. The petitioners have urged that the criteria has abruptly been changed arbitrarily for oblique motive solely with the intention to keep out small companies like the petitioners and to promote big companies. The condition for a bidder to have turn over of at least Rs. 20 crores during the last three years is illegal, arbitrary, unreasonable and malafide. It is urged that the Directorate of Education in others States in the country are implementing similar kind of projects for various schools, the magnitude of which projects is even larger than the one undertaken by the respondent where the qualifying turn over does not exceed Rs. 2 crores. It was pleaded that on going through the other eligibility criteria in the tender in question, it will become apparent that there is no nexus with the objectives sought to be achieved, namely, the quality of computer education to be imparted to the students, which is of prima importance. Moreover, financial criteria fixed on the basis of turn over has not been stated to be a turn over in Computer Education Related Projects. It was accordingly submitted that laying down of such a criteria that bidder should have financial capacity to a particular extent without making it relatable to the project in question is irrelevant.

4. After show cause notice was issued to the respondent short affidavit has been filed by Shri Rajender Kumar, Director, in the Directorate of Education, Government of N.C.T. of Delhi stating that as per IT Policy of Government of India, Computer labs are to be set up in all Government schools by 2003. As per the policy, the Government with establish Computer labs in all Government Schools by the year 2003 in collaboration with private sector. In the first phase in the year 2000-2001, 115 schools were covered. Under the computer education project, the education department provides financial literacy to the students from class VIth to Xth and teaching of computer science and informatics practices subjects at plus two stage, as per CBSE syllabus. In the year 2000-2001 tenders were called from the firms having a turn over of Rs. 2 crores. As per agreement the firm has to first provide hardware to establish the lab in the concerned school. The total contract was for a sum of Rs. 14.62 crores only. Since lowest tenderer was not in a position to carry out the project in 115 schools, the contract was divided amongst four parties. In the year 2001-2002 the turn over clause was amended and Rs. 5 crores was added in place of two crores. At the stage of submission of tenders and consideration, because of various representations, the tender was cancelled and fresh tender from the firms with minimum of two crore turnover was called. The tender was for 275 schools, the total cost being approximately Rs. 30 crores. The department again faced the same problem that the lowest tenderer was not in a position to take up the whole project. The other seven tenderers agreed to bring their price at par with

the lowest tender''s rate. Thus the contract had to be distributed amongst eight parties i.e. 35 schools each to seven parties and 28 to one party. The respondent has alleged that the submission of tenders and later on bringing the price down by the other tenders to the level of the lowest tender price, smacked of forming a cartel between the tenderers. Because the Government instead of dealing with one company had to deal with eight parties.

5. The counter affidavit further alleged that in the final phase of 2002-2003 the tenders have been called for all 748 schools. The hardware cost itself is going to be around 40-45 crores and cost of project is approximately Rs. 100 crores, 10% security money itself will be 2.5 crores. As such it was felt that to provide quality education to the children, which is the top most priority of the department of education, the companies having a minimum turn over of Rs. 20 crores should only be allowed to bid. This will help the department to deal with one company, which is well managed and not seven or eight, who individually are not in a position to take up the entire project and instead form a cartel compelling the Government to distribute the contract amongst the bidders at the LI rates, Government having no scope for further negotiations. In the best interests of the department it would be improper to award the contract or deal with a firm having a turn over of Rs. 2 crores only, when the cost of the project at 2001-2002 rates itself will be around more than 90 crores. The initial investment of hardware itself is going to be around 40-50 crores. By allowing incompetent parties to bid in a tender of the value of 90-100 crores only brings unhealthy competition and unforeseen negotiations, between the bidders. The decision is also in conformity with the policy of the Government to deal with the parties having higher turn over in projects involving higher expenditure.

6. Learned counsel for the parties were heard at length. The original file was also called for, which was made available to us containing proceedings of the meeting of Technical Advisory Committee appointed to review the terms and conditions for implementation of Computer Education Project 2002-2003. The Committee held its meeting on 15.4.2002 and 29.4.2002 and made its recommendations. It had initially recommended to raise the turn over requirement from Rs. 2 crores to Rs. 3 crores for tenderers bidding for Senior Secondary Schools and also fixed turn over of Rs. 1 crore for tenderers bidding for secondary and middle schools. This proposal was under consideration at that stage when the only question, which remained to be decided was as to whether the Directorate of Education would itself undertake to implement the project or will hand over the responsibility to M/s. C.M.C. The later proposition was turned down since M/s. C.M.C. had a private sector undertaking, which was also expected to bid in case tenders were called. As such it was suggested that the Directorate of Education should itself undertake to implement the project and finalise the tender documents as per the recommendations of the Technical Advisory Committee. This decision was taken in July, 2002.

7. Abruptly there was change thereafter when meeting of the Technical Advisory Committee was held on 19.8.2002 to review the terms and conditions for implementation wherein the draft tender, which initially had recommended turn over requirement of at least Rs. 3 crores for tenderers bidding for Senior Secondary Schools and to have turn over of Rs. 1 crore for tenderers bidding for Secondary and Middle Schools was changed to read as now stands incorporated in the tender documents, which is under challenge, namely, Rs. 20 crores.

8. We have also gone through the tender details contained in Part I, II, III and IV of the tender and would make reference to Clause 1.6, 1.7, 1.9, 8.7, 8.8, 8.11 and 8.15, which read as under:-

"1.6 Indicate the financing plan for this Contract. The finance should be adequate enough to meet the financial requirements of the contract. Furnish the supporting documents like Bankers Letter or letter of financing institution or letter from (Finance Company/lease finance institutions).

1.7 Indicate the category of schools; the bidder has opted to quote

(a) Sr. Secondary Schools

(b) Secondary Schools

(c) Middle Schools.

1.8 Indicate the type of Internet connectivity the bidder will provide in the computer centre/lab.

1.9 No, of schools, the bidder will be able to handle.

8.7 The bidder should indicate a single rate applicable to all the schools in single shift using separate computer lab and for double shift schools in the same building using the same computer lab infrastructure for both alternatives I and II as laid down in price tender form of the commercial bid. For this every double shift school using the same computer alb and same infrastructure shall be counted as two.

8.8 IMPORTANT: THE RATE SHOULD BE QUOTED AS A CONSOLIDATED RATE FOR CONTRACT PERIOD OF FOUR YEARS PER SCHOOL FOR SINGLE SHIFT SCHOOL USING SEPARATE COMPUTER LAB . WHILE THE RATE PER SET OF TWO SCHOOLS IN THE DOUBLE SHIFT (MORNING AND EVENING) USING THE SAME COMPUTER LAB SHOULD BE QUOTED FORM CONSOLIDATED RATES FOR SING SHIFT AND DOUBLE SHIFT S.SEC.SCHOOL (Classes VI-XII) . SECONDARY SCHOOLS (CLASSES VI-X) AND MIDDLE SCHOOLS (CLASSES VI-VIII) SHOULD BE QUOTED .

8.11 Director of Education, Delhi reserves the right to award the contract for more than one bidder.

8.15 Director of Education, Delhi reserves the right to allot schools at his discretion and the bidders shall be bound by this decision. Further, the school can be changed at his discretion."

9. The project remains to be implemented in 784 schools. The respondents have taken the number of schools to be more than what actually the number is. Double shift in particular school has been taken to be two schools. Taking the figure as stated by the respondents to be correct, there are 562 Government Schools and 186 Government Aided Schools, out of which the number of Senior Secondary Schools, Secondary Schools and Middle Schools are 274, 154 and 134 respectively, which are Government Schools and 134, 26 and 26 are the Government Aided Schools.

10.. The condition 1.9 to require a bidder to state as to the number of schools, the bidder will be able to handle and conditions 8.11 and 8.15 reserves discretion with the Director to allot schools to more than one bidder. Neither the increase in number of schools nor the quality of education to be provided appears to have nexus wit the financial turn over of the bidder in as much as the financial turn over has nothing whatsoever to do with the Computer Education. A company might be having a large turn over of more than Rs. 20 crores but the same might not be exclusively in the Computer Education Business. It may be from other business the company might be having. Fixing of this criteria and permitting only those having turn over of more than 20 Crores in any business is likely to have the effect of excluding and disqualifying from bidding those having turn over of less than Rs. 20 crores. In case one has a look at the details of the 748 schools with the formats in which relevant information is to be supplied that a bidder has to quote consolidated rate, which are at pages 64 to 77 of the tender details, the only inference, which can be drawn is that a bidder need not bid for all the 748 schools but is at liberty and is entitled to bid for lesser number of schools and that is why the only reason that Clause 1.9 do require a bidder to state the number of schools it will be able to handle. There is no question of there being any deterioration in the quality of Computer Education in case other conditions will have to be adhered to since, as laid down in the tender i.e. the bidder must have trained at least 10,000 students up to 31.3.2002 and should have at least 50 graduate/post graduate instructors under their control for the last six months and should have declared infrastructural and financial resources to undertake a contract. It is worth while to mention here that in the earlier academic years there was a special condition laid down that not less than four and not more than five bidders will be selected for implementation of the project in the school. The stand taken by the respondents that now they intend to deal with are company only will have the effect of bringing in monopolistic situation for no rational reason. On the touch stone of the law laid down by Supreme Court in Tata Cellular Vs. Union of India, and in M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, the impugned condition, on the face of it is arbitrary and has nothing to do with the objectives sought to be achieved, namely, quality of education to be imparted. The impugned condition appears to have been incorporated solely with an intent to deprive a large number of companies imparting Computer Education from bidding and to monopolise the same for big companies.

11. Resultantly, the writ petitions are allowed. The impugned condition is held to be arbitrary and irrational and is hereby struck down.