Delhi High Court Siemens Public Communication ... vs Rail Tel Corporation Of India Ltd. on 16 September, 2003 Equivalent citations: 2005 (1) CTLJ 307 Del, 112 (2004) DLT 908 Author: A Sikri Bench: B Patel, A Sikri JUDGMENT A.K. Sikri, J. 1. The Respondent, a Government of India Undertaking under the Ministry of Railways, floated a tender for supply of installation and commissioning of STM-16/STM-4 SDH ADD/Drop Muxes (Telecommunication Exchange) in April, 2003. Bids were to be submitted in two parts; Part-I consisted of technical and commercial element of the tender bid (Credential Bid) and Part-II related to price element of the bid (Price Bid). On May 28, 2003 the respondent issued a corrigendum and addendum to the tender. One of the amendments was with respect to Clause 18.2.3 of the tender conditions whereby respondent wanted all the bidders to certify that its equipment is a proven equipment and working satisfactorily in India or at least two countries outside the country of origin for at least six months. 10 bidders submitted their bids including the petitioners. On July 7, 2003 Credential Bid i.e. technical and commercial bids of the bidders were opened. Thereafter price bids were opened on August 22, 2003. As price bid of the petitioners was not opened, this action of the respondent has been termed by the petitioners as arbitrary and illegal without assigning any reason and present writ petition has been filed challenging the rejection of the petitioners' bid. The petitioners had offered their equipment under the brand name Surpass hit. It is the case of the petitioners that this brand name Surpass hit was in fact their product earlier named SMA-16 which had been branded Surpass hit after their entire range of Telecommunication equipment was rebranded under the new brand name ''Surpass''in January, 2003 by their parent company Siemens A.G., Germany. The case made out in the writ petition is that the respondent presumably rejected the technical bid of the petitioners in view of amended Clause 18.2.3 as per which equipment should have been a proven equipment and working satisfactorily in India or at least two countries outside the country of origin for at least six months. It is stated that the equipment under brand name Surpass hit was started in January, 2003 only, the respondent rejected the bid in terms of Clause 18.2.3 as it was for less than six months, losing sight of the fact that the brand name Surpass hit was in fact their product earlier named SMA-6 which had established market and merely because of change of the brand name''Surpass hit''could not be treated as new product. 2. When this petition came up for hearing on 5.9.2003 notice was issued to the respondent, returnable on 8.9.2003 on which date the respondent appeared and produced the record. From the record, following position emerges: After the technical bids were submitted by 10 parties on 7.7.2003, the respondent appointed an Expert Committee to evaluate the technical bids. This Committee held its deliberations on different dates in July and in the first week of August, 2003. Evaluation was completed on 8.8.2003 when the Expert Committee submitted its detailed report evaluating the equipment supplied by all 10 bidders and making its comments in respect of all these bidders. The Committee after this evaluation, short listed six bidders which according to the Committee fulfillled the technical criteria laid down in the tender documents. The case of the petitioners was rejected. No doubt, one of the reasons for rejection is that

the petitioners' product did not conform to Clause 18 2.3 of the tender conditions. In addition, the Committee was also of the opinion that the equipment offered by the petitioners did not conform to three more specifications. Record further reveals that on 12.8.2003 letters were written to six short listed bidders to the effect that price bid would be opened on 22.8.2003. It was in these circumstances that on 22.8.2003 price bids of six bidders were opened which did not include the petitioners. Admittedly, in the tender documents submitted by the petitioners, they had nowhere stated or clarified that the equipment offered by them under the brand name ''Surpass hit''was in fact their product named SMA-16 which had been branded Surpass hit after their entire range of Telecommunication equipment was rebranded under the new brand name''Surpass''in January, 2003 by their parent company Siemens A.G. Again admittedly, this information for the first time was supplied by the petitioners vide letter dated August 19, 2003. However, it was late in the day to supply such an information inasmuch as by that time the Technical Committee already evaluated the bids on the basis of information supplied in the bidding documents and the bid of the petitioners had been rejected. Again, for want of such clarification, rejection of the tender on this ground cannot be faulted with. Intimation for opening the price bids on 22.8.2003 was given only to six short listed bidders and not to the petitioners. 3. Faced with the aforesaid actual matrix, learned counsel for the petitioners submitted that on 7.7.2003 when the credential bids were opened, after evaluating the same parties were informed that price bids would be opened on 22.8.2003 and at no stage any rejection letter was sent or communicated to the petitioners. It was also submitted that no reasons were communicated by the respondent while rejecting the bid of the petitioners. Learned counsel took strong exception to the conduct of the respondent showing the record to the court and not to the petitioners which contained exercise done by the Expert Committee containing the reasons because of which petitioners' tender was rejected. He submitted that unless reasons are disclosed to the party whose bid is rejected, it would not be possible for him to make an effective representation against such rejection or challenge such a decision. Learned counsel for the respondent on the other hand submitted that in a matter of this nature where tenders were evaluated it was not necessary to communicate reasons to a party whose tender was rejected. The only requirement was that the decision making process is fair and not arbitrary and the Court could not sit over the decision of the Committee as an Appellate Authority or to adjudicate as to whether the decision on merit was erroneous. He further submitted that in order to satisfy conscience of the Court records were shown to the court that there was an objective and fair consideration of all the bids including that of the petitioners and did not suffer from any arbitrariness. He submitted that no mala fides were alleged against the respondent or any of its officers. 4. There may be some force in the submission of learned counsel for the petitioners that reasons should be disclosed to a person whose bid is rejected on technical ground so that said person should know that in what respect product offered by him was lacking and was not meeting the specifications laid down in the tender conditions and further if he feels that rejection was arbitrary he should be in a position to make effective

representation or challenge the rejection in a court of law. However, we need conclusively determine this aspect in the present case. We find that admittedly the petitioners in their bid had not given any explanation about the change of brand name of the equipment offered by them. Technical bids were opened on 7.7.2003. It cannot be believed that after evaluating the same on the same day the parties were informed that price bids would be opened on 22.8.2003. May be August 22, 2003 was the date fixed on July 7, 2003 itself but price bids was to be opened only of those bidders who were technically qualified. Such a technical evaluation could not have been completed on 7.7.2003 itself i.e. immediately after opening of the tender. It is well known that for evaluating such technical bids, Expert Committees are constituted who consider the technical bids on various parameters with reference to tender specifications contained in tender conditions and a decision is taken on the basis of such reports. In the instant case itself the Committee was constituted which held deliberations on different dates and completed exercise only on 8.8.2003. Six bidders were short listed. Bid of the petitioners was rejected. There was no information with the Evaluation Committee till 8.8.2003 about the change in brand name. Rejection letter was out sent to the petitioners which in our opinion should have been sent as a bidder has right to know the fate of his bid. However, it appears that after letters dated 12.8.2003 were sent to six short listed bidders, the petitioners must have come to know about the rejection of their bid and at that stage vide letter dated August 19, 2003 the petitioners wrote letter indicating the change in the brand name. Otherwise no steps were taken by the petitioners in this behalf from 7.7.2003 till 19.8.2003 when the date of opening price bids was almost there. On this ground alone present writ petition deserves dismissal. As we are dismissing the petition on this admitted position, we are not examining the issue as to whether other three reasons for rejecting the bid are proper or not or whether such reasons were required to be communicated to the petitioners or not. 5. Leaving open these questions, this writ petition is dismissed with no orders as to costs.