

Supreme Court of India

State Of U.P.& Anr vs M/S Al Faheem Meetex P.Ltd. & Anr on 17 February, 2016

Author: A Sikri

Bench: T.S. Thakur, A.K. Sikri, R. Banumathi

NON – REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1437 OF 2016
(ARISING OUT OF SLP (C) NO. 9170 OF 2012)

STATE OF UTTAR PRADESH & ANR.APPELLANT(S)	
VERSUS		
M/S. AL FAHEEM MEETEX PRIVATE LTD. & ANR.RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

This appeal is directed against the final judgment and order dated July 26, 2011 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 71568 of 2010. The High Court, vide the impugned judgment, was pleased to allow the writ petition preferred by respondent No.1 herein by quashing the decision dated November 22, 2010 of the Bid Evaluation Committee (for short, 'BEC') and directed that the bid of the appellant, as accepted by it on September 08, 2010, be dealt with in accordance with law from the stage of such acceptance.

The dispute pertains to the construction, maintenance and operation of a slaughter house in Meerut, Uttar Pradesh. The appellants are intending to construct a slaughter house with ultra modern technology. Origin of this plan of the Government can be traced to the directions which were given by this Court vide judgment dated December 07, 2006 in the case of Nagar Nigam, Meerut v. Al Faheem Meat Exports Pvt. Ltd. & Ors., (2006) 13 SCC 382 emphasizing the need for modernising the slaughter houses according to the prescribed standards. Pursuant to the aforesaid directions of this Court, the State Government vide its G.O. dated August 06, 2008, laid down Policy Guidelines for operation of animal slaughter houses owned by urban local bodies in the State on the basis of Private Public Participation (PPP) Model. It was provided that slaughter houses owned by urban local bodies can be given on PPP Model to private persons by public auction/tender process on the condition that the private participants will have to modernise slaughter houses according to the prescribed standards. Accordingly, the State Government vide its G.O. dated September 29, 2009 constituted BEC with regard to the operation of animal slaughter houses owned by urban local bodies in the State on the basis of PPP Model in accordance with G.O. dated August 06, 2008 and

June 26, 2009. The BEC was required to follow the Guidelines as laid down vide G.O. dated June 29, 2007 for selection, contracting and monitoring of Consultants and Private Developers for PPP Projects in the State. As per the Guidelines, the selection of the Developer was to be made through two stage bidding process, i.e.:

Stage I – Shortlisting of Developer through EOIs in the form of Request for Qualification (RFQs) Stage II – Selection of Developer from shortlisted, developer on the basis of Request for Proposal (RFPs) submitted by them containing two stage bids i.e. Technical and financial bids.

The Guidelines provide for a PPP. The BEC was empowered to examine all aspects and stages of developer selection, i.e. issuance of EOI, evaluation of EOI, shortlisting of Developers, deciding terms of reference, issuance of Request for Proposal (RFP), evaluation of technical and financial proposals, negotiations and final selection of Developer. After the requisite evaluations, the BEC was to recommend the name of a Bidder/Developer to the Competent Authority for award of contract and the final approval of the Developer for the PPP project was to be granted by the Competent Authority. As per the Guidelines, the Competent Authority was the Cabinet of Ministers of the Government of Uttar Pradesh.

The Nagar Nigam, Meerut, published a Notice dated May 26, 2010 inviting tenders of Request for Qualification (RFQ) for establishment of a new modern slaughter house at village Ghosipur, Meerut on Build-Operate and Transfer (BOT) basis. In the Notice, the estimated cost of the project was shown to be ₹101.76 crores and the project was to be implemented within 24 months. Pursuant to the aforesaid Notice, financial and technical bids were received from three firms and the consultant had found all the three bids to be deficient and recommended for invitation of fresh bids. Accordingly, the Nagar Nigam again published a Notice dated June 29, 2010 inviting tenders of RFQ. Pursuant to the aforesaid Notice, five financial and technical bids were received from five firms. Out of them, four companies were permitted to participate in the RFP stage. Subsequently, the Nagar Nigam issued RFP for construction, operation and maintenance of modern slaughter house at Ghosipur, Meerut on July 29, 2010. Pursuant to the aforesaid RFP, tenders were submitted by only three firms.

The BEC in its meeting dated September 08, 2010 opened the sealed tenders of RFP of three firms, namely, (i) Figro Rifico Ilana Ltd., Ghaziabad, (ii) M/s. Hind Agro Industries Ltd., and (iii) M/s. Al Faheem Meat Exports Pvt. Ltd., i.e. respondent No.1 herein. Out of the above three bids, the bid offered by Figro Rifico Ilana Ltd., Ghaziabad was found to be incomplete as the documents as per the terms of RFP were not annexed. Thus, only two bids were found eligible for consideration. M/s. Hind Agro Industries Ltd. in its bid had offered concession period of 19 years and respondent No.1 had offered the concession period of 12 years. As respondent No.1 had offered minimum concession period, it was selected by the BEC for recommendation as a Developer.

Before the recommendation could even be forwarded, inter-departmental consultation in accordance with the Rules of Business took place. It was done prior to the placing of the recommendations of the BEC before the Cabinet of Ministers/ Competent Authority. In the said

consultation, the Finance Department pointed out certain procedural irregularities in the process and suggested for reviewing the matter as the number of valid tenders received was very less. Following issues were raised by the Finance Department:

- (i) Only two bids were found to be valid by the BEC. In view of Rule 21 of the Financial Handbook, decision has to be normally taken on the basis of three or more bids. If less number of bids are received, then it is presumed that there must have been some deficiency in making wide publicity in inviting tenders.
- (ii) Municipal Corporation being a separate Constitutional body from that of the State Government, it is necessary to consider the provisions of Article 19A of the Constitution of India to consider as to who is the Competent Authority for taking final decision.
- (iii) Since the number of valid tenders are very less, therefore, the matter should be reviewed and if deemed proper decision should be taken for re-invitation of tenders.

Pursuant to the abovesaid suggestions of the Finance Department, the matter was placed before the BEC. After deliberating upon the comments of the Finance Department, the BEC, in its meeting dated November 22, 2010, took the following decisions:

- (i) Decisions taken by the BEC in its earlier meeting held on September 08, 2010 are cancelled in view of receipt of less number of valid tenders.
- (ii) Fresh tenders of RFQ/RFP be published for construction of modern slaughter house on PPP model at village Ghosipur, Meerut.
- (iii) Meeting of pre-bid of RFQ be convened on December 07, 2010, and last date for submission of RFQ be fixed as December 15, 2010.
- (iv) With regard to determining the issue of Competent Authority who will take the final decision, it was decided that appropriate decision for the schemes to be implemented on PPP Model by Corporation be taken at the level of the State Government.

Pursuant to the decision of BEC in its meeting dated November 22, 2010, the Nagar Nigam, Meerut issued fresh advertisement on December 01, 2010 inviting applications for RFQ. Being aggrieved, respondent No.1 herein preferred Civil Misc. Writ Petition No. 71568 of 2010 before the High Court of Judicature at Allahabad. The High Court, by means of the impugned judgment, has allowed the same by quashing the decision of BEC dated November 22, 2010.

A perusal of the judgment of the High Court would reveal that the High Court has primarily been persuaded by the fact that once the BEC in its first meeting held on September 08, 2010, had found that respondent No.1 was suitable for award of the contract in question, it could not have revisited the issue and review the same in its subsequent meeting dated November 22, 2010, that too without any notice to respondent No.1.

It is argued by the learned counsel for the appellant that the High Court is not justified in quashing the decision of the BEC dated November 22, 2010 without considering the terms as contained in Clause 2.7.1 of the RFP and the Guidelines laid down vide G.O. dated June 29, 2007 for selection of Developers for PPP Projects wherein discretion is conferred on the authority to accept or reject any or all bid proposals. The steps for selection of consultant as laid down in Part-I of the Guidelines are applicable for the selection of Developer as well. Chapter II of Part I of the Guidelines specifically provides that the employer will have the right to reject all proposals. The relevant portion of the Guidelines are as under:

“Rejection of All Proposals, and re-invitation The Employer will have the right to reject all proposals. However, such rejections should be well considered and normally be in cases where all the bids are either substantially in deviation to the TOR or considered unreasonably high in cost. If it is decided to re-invite the bids, the terms of reference should be critically reviewed/modified so as to address the reasons of not getting any acceptable bid in the earlier invitation for Bids.” Learned counsel also pointed out that Clause 2.7 of the RFP is also to the same effect which empowers the Authority to accept or reject any bid proposal and annul the whole bidding process.

Learned counsel for respondent No.1, on the other hand, impressed upon the reasons given by the High Court and submitted that the appeal be dismissed.

We find force in the aforesaid argument of the learned counsel for the appellants. In the first instance, it is to be noted that BEC is only a recommendatory authority. It is the Competent Authority which is to ultimately decide as to whether the recommendation of BEC is to be accepted or not. We are not entering into the discussion as to whether this Competent Authority is the State Government or the Municipal Corporation. Fact remains that there is no approval by either of them. Matter has not even reached the Competent Authority and no final decision was taken to accept the bid of respondent No.1 herein. Much before that, when the BEC was informed that there were only two valid bids before it when it made its recommendation on September 08, 2010 and as per the Financial Rules there must be three or more bids to ensure that bidding process becomes competitive, the BEC realised its mistake and recalled its recommendation dated September 08, 2010. It cannot be said that such a decision was unfair, mala fide or based on irrelevant considerations. This, coupled with the fact that the authority has right to accept or reject any bid and even to annul the whole bidding process, the High Court was not justified in interfering with such a decision of the BEC.

The High Court has also gone wrong in finding fault with the decision of the BEC by holding that such a subsequent decision could not have been taken by the BEC without notice to or in the absence of the appellant. When the decision making process had not reached any finality and was still in embryo and there was no acceptance of the bid of respondent No.1 by the Competent Authority, no right (much less enforceable right) accrued to respondent No.1. In such a situation, there was no question of giving any notice or hearing to respondent No.1.

In any case, there is yet another very forceful and strong reason to interfere with the decision taken by the High Court. Notice inviting tenders of RFQ was published way back on May 26, 2010. Almost

six years have passed. With this passage of time, it becomes all the more important to have fresh tendering for establishment of 'New Modern Slaughter House', Meerut by giving wide publicity.

We, thus, allow this appeal and set aside the impugned order passed by the High Court. There shall, however, be no order as to costs.

.....CJI.

(T.S. THAKUR)J.

(A.K. SIKRI)J.

(R. BANUMATHI) NEW DELHI;

FEBRUARY 17, 2016.