

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).3757/2006

(From the judgement and order dated 07/02/2006 in WP Nos. 22677/2005 and 22678/2005 and order

dated 13.2.2006 in RP(C) NO. 68/2006 of The HIGH COURT OF DELHI AT N. DELHI)

M/S. R.K. AGRAWAL

Petitioner(s)

VERSUS

M/S. POORVANCHAL CATERERS & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 06/11/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner(s)

Mr. Sudhir Chandra Agrawala, Sr. Adv.

Mr. G. Prakash, Adv.

For Respondent(s)

Mr. T.R. Andhyarujina, Sr. adv.

For RR 1 and 2

Mr. Brajesh Kumar, Adv.

Mr. Ajay Kumar Talesara, Adv.

Mr. G.K. Banerjee, Sr. Adv.

Mr. Sourav Aggarwal, Adv. for

Ms. Ruby Singh Ahuja, Adv

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal stands disposed of in terms of the signed order. No costs.

Singh) (J.S. Rawat) (Kanwal
aster AR-cum-PS Court M

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4676 OF 2006
(Arising out of SLP(C) No. 3757 of 2006)

M/s. R.K. Agrawal Appellant(s)
Versus
M/s. Poorvanchal Caterers & Ors. Respondent(s)

O R D E R

Leave granted.

The facts culminating in the filing of the present appeal in brief are that the Indian Railway Catering and Tourism Corporation Ltd. (for short "the Corporation") invited tenders for grant of licence for operation and management of catering and on board services in train No. 1015-1016 [Kushinagar Express], under a two-packet system, namely, Packets-A and B. Packet-A is technical bid while Packet-B is financial bid.

Clause 14.3 of the Licensing Policy stipulates that Packet-A, i.e., technical bid, will be opened/scrutinised first and the bidders who are found

qualified therein, will be short-listed for being considered in the financial bid. Failure in the first one would disqualify the tenderers for the second one.

Respondent Nos. 1 and 2 submitted their bids which were scrutinized by the Tender Committee. Though the Committee recorded in its minutes that the respondent's turn over as Rs.5.04 crore in catering/hospitality and F&B services related business, yet, and in our opinion rightly, disqualified the respondent in Packet-A for non-compliance with the requirement of the bid in question. In the terms and conditions it was stipulated that the tenders not accompanied with the certificate shall be rejected. On the scrutiny of Packet-B the Committee found and declared the appellant the highest bidder for the licence in question. The Committee disqualified them on the ground that as per the terms and conditions of the tender, these respondents failed to submit Annexure-A2 containing the break-ups of their sales turnover, duly certified by a Chartered Accountant, which was a mandatory document required to be annexed along with Packet-A, i.e., technical bid and held that they cannot be considered eligible for Packet-B.

Aggrieved against their disqualification in Packet-A, the respondents filed Writ Petitions in the High Court of Delhi at New Delhi.

The appellant was not made a party in the writ petitions. The appellant filed an application for being impleaded in the writ petitions as party respondent, which was allowed. Ultimately, the High Court by its order dated 7th

February, 2006 allowed the writ petitions and directed the respondents 3 and 4 to open Packet-B containing the financial bids submitted by the respondents and consider the same along with the others for grant of licence for the trains in question. A petition for review of the said order was filed by the petitioner, seeking direction to the Corporation to go for a fresh bid, which was rejected vide order dated 13th February, 2006. The orders passed in the Writ Petitions and on Review Petition have been impugned in the present appeals.

Having heard the learned senior counsel appearing for the parties and especially in view of the fact that the Tender Committee disqualified the respondents in the first phase of scrutiny, i.e., the scrutiny of Packet-A (technical bid), we are of the considered opinion that the High Court should have ordered for re-bid instead of issuing the impugned directions.

For the foregoing reasons, the impugned orders passed by the High Court are set aside and the Railway Authority is directed to invite tenders afresh for the job in question and to complete the entire process within a period of four months from the date of receipt of this order.

However, in the interregnum, Respondent No.1 who has already been granted the licence in question pursuant to the directions of the High Court shall continue to operate till the licence in question is granted afresh by the authorities concerned. Respondent No.1 shall be liable to pay proportionally for the period for which it would continue the service in question.

The appeal stands disposed of accordingly. No costs.

.....J.

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(ASHOK BHAN)

New Delhi;
.....J.
November 06, 2006.

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(DALVEER BHANDARI)