

M/S. BECIL

v.

ARRAYCOM INDIA LTD. & ORS.

(Civil Appeal No. 6978 of 2009)

OCTOBER 20, 2009

**[MARKANDEY KATJU AND ASOK KUMAR
GANGULY, JJ.]**

Contract:

Tender – Acceptance of bid by public authority – Interference by High Court – Scope of – Prasar Bharati inviting tenders for supply of transmitters – Appellant and respondent no. 1 offering quotations – As regards sales tax, respondent no. 1 quoting price inclusive of sales tax but at the same time asking for concessional C/D forms – Department accepting appellant's bid being the lowest – High Court allowing writ petition of respondent no. 1 – HELD: In administrative matters, scope of judicial review is limited and the judiciary must exercise judicial restraint in such matters – Moreover, the view of Prasar Bharati also appears reasonable as it has to pay the amount inclusive of sale tax, since there is no concessional form – If Prasar Bharati has taken up one possible interpretation, High Court should not have intervened – Paragraph 2 of the bid of respondent no. 1 relating to sales tax is ambiguous and this is the fault of respondent no. 1 itself by giving such an ambiguous proposal – Respondent no. 1 should have given a clear cut bid – Paragraph 2 of bid of respondent no. 1 has two interpretations (i) it is an inclusive bid; and (ii) that sales tax can be added to that bid – Prasar Bharati has taken the second interpretation, which is a reasonable and possible interpretation – Judgment of High Court set aside – Judicial review.

A *Tata Cellular vs. Union of India* AIR 1996 SC 11= (1994) 6 SCC 651, relied on.

Case Law Reference:

(1994) 6 SCC 651 relied on para 14

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6978 of 2009.

C From the Judgment & Order dated 2.2.2009 of the Division Bench of the High Court of Delhi at New Delhi in W.P. (Civil) No. 7865 of 2008.

WITH

Civil Appeal No. 6979 of 2009.

D Mohan Parasaran and G.E. Vahanvati, ASG, T.S. Doabia, Neeraj Malhotra, T.V.S. R. Sreyan, Nikhil Nayyar, Manoj Goel, Shuvodeep Roy, Wajeeh Shafiq, Gopal Verma, Puja Jain (for Dua Associates), Ranjana Narayan and Rashmi Malhotra (for D.S. Mehra) for the appearing parties.

E The following Order of the Court was delivered

O R D E R

Civil Appeal No.6978 of 2009 @ SLP(C) 5461/2009

F Leave granted.

G This Appeal has been filed against the impugned judgment of the Division Bench of the High Court of Delhi dated 02nd February, 2009 passed in Writ Petition(C) No.7865 of 2008.

The facts in brief are:

H Respondent No.2 (Prasar Bharti) issued a Notice Inviting Tender (NIT) on 20th October, 2006 for the supply of two transmitters of 1000 KW (or 1 MW) each. The bidding was a

two-stage process involving a technical bid and a financial bid. A
There is no dispute that the respondent No.1(Arraycom) and
the appelland (BECIL) were both technically qualified.

In respect of the financial bid which was opened on 30th B
July, 2007, the quotation given by Arraycom was for a sum of
Rs.51.57 crores and it was stated therein that:

- "1. Prices at INR including Custom Duty, Packaging, C
Forwarding, Freight & Insurance.
2. CST (Central Sales Tax) is inclusive in the above prices. C
AIR will have to give concessional forms C/D.
3. Billing will be done from our Noida office.
4. Validity of offer upto 120 days from the date of opening D
(I.e. up to 16.06.2007)."

The quotation given by BECIL was for Rs.47.35 crores and
it was stated that:

- "1. Prices in INR. FOR destination, including Freight, E
Insurance & Customs Duty.
2. Sales Tax extra @ 4% against form C/D.
3. Sales Tax extra @ 12.5% in case form C/D is not F
provided.
4. Validity of offer upto 31.05.2007."

For the purposes of this decision, we are only concerned G
with the sales tax element in the price bid. We may note, as a
matter of fact, that there is no dispute that Form C under the
Central Sales Tax Act, 1956 is not relevant to the facts of the
case and Form D under the Central Sales Tax Act, 1956 was
abolished with effect from 1st April, 2007. There is also no
dispute that the bids of Arraycom and BECIL were valid and
subsisting at all material times. H

A Based on the quotations, quoted above, Prasar Bharti submitted the following chart of quoted prices before the High Court:

B	Arraycom BECIL Basic price (in Rs.)	49,58,65,385	47,37,48,792
	With 4% sales tax (in Rs.)	51,57,00,000	49,24,90,743
C	With 12.5% sales tax (in Rs.)	55,78,00,000	53,66,00,000

D In contracts to be given by Government authorities or statutory bodies or instrumentalities of the State, Article 14 of the Constitution applies. Hence, there should be transparency by holding an open public auction/tender because such contracts often involve huge amounts of public money. Ordinarily, the lowest bidder should be given the contract, although it is not an invariable rule in all cases. In the present case, the Prasar Bharti found that the appellant's bid was the lowest bid on the basis of the chart which we have quoted above.

E Respondent No.1 before us filed a writ petition in the High Court of Delhi which has been allowed by the impugned judgment and hence this appeal before us.

F In our opinion, the whole controversy is about the interpretation of the second paragraph submitted by respondent No.1(Arraycom). According to the High Court, the bid of Rs.51.57 crores was an inclusive bid and no amount of central sales tax could have been added to that amount. We regret we cannot agree.

G It may be seen that paragraph 2 of the bid of Arraycom consists of two sentences. The first sentence, no doubt, states that the central sales tax is inclusive in the price of Rs.51.57 crores. Had paragraph 2 stopped there, the submission of

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learned counsel for Arraycom would have been correct. A
 However, in paragraph 2, there is a second sentence to the
 effect that AIR (All India Radio) will have to give concessional
 forms C/D. Thereafter there is no third sentence in paragraph
 2 of the bid that even if the concessional forms are not given,
 yet the bid of Rs.51.57 crores is an inclusive bid and nothing B
 can be added to the bid.

Thus, in our opinion, paragraph 2 of the bid of Arraycom
 is ambiguous and this is the fault of Arraycom itself by giving
 such an ambiguous proposal. Respondent No.1 should have
 given a clear cut bid either by stopping after the first sentence,
 or by adding another sentence after the second sentence that
 even if the concessional forms C/D are not given the bid of
 Rs.51.57 crores is an inclusive bid. C

Thus, paragraph 2 of Arraycom's bid has two D
 interpretations (i) it is an inclusive bid; and (ii) that sales tax
 can be added to that bid. Prasar Bharti, who has to make the
 payment, has taken the second interpretation which, in our
 opinion, is a reasonable and possible interpretation.

In administrative matters, the scope of judicial review is E
 limited and the judiciary must exercise judicial restraint in such
 matters, as held by this Court in *Tata Cellular vs. Union of India*
 AIR 1996 SC 11 = (1994) 6 SCC 651. Moreover, the view of
 Prasar Bharti also appears reasonable because Prasar Bharti
 has to pay the amount inclusive of sales tax, since there is no
 concessional forms. If Prasar Bharti has taken up one possible
 interpretation, the High Court should not have intervened. The
 scope of judicial review in administrative matters is limited. F

For the reasons given above, this appeal is allowed and G
 the impugned judgment of the High Court is set aside. No order
 as to costs.

A Civil Appeal No.6979 of 2009 @ SLP(C) No.9381 of 2009

Leave granted.

B This Appeal has been filed challenging the same impugned judgment dated 02nd February, 2009 passed by the High Court of Delhi.

Since, we have allowed the Civil Appeal No.6978 of 2009 arising from S.L.P.(C) No.5461 of 2009, this appeal is also allowed on the same terms. No order as to costs.

R.P.

Appeals allowed.