



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.1332-1333 OF 2022

Union of India

...Appellant

Versus

Bharat Fritz Werner Limited & Another

...Respondents

ORDER

1. Feeling aggrieved and dissatisfied with some of the observations made by the High Court of Delhi at New Delhi in the last paragraph of its order dated 19.01.2021, while disposing of Writ Petition No. 5700/2020, the Union of India has preferred the present appeals.

2. That respondent no.1 herein filed the writ petition before the High Court of Delhi being Writ Petition No. 5700/2020 assailing the Letter of Acceptance dated 05.06.2020 issued by the Union of India in favour of respondent no.2 herein, in respect of the award of tender pertaining to lot No.3; ICB Ref. No. 21/TCSP/GOODS/P41/2018/TR/TC (Package-41).

2.1 By the impugned order and keeping in view the fact that substantial time has elapsed since the award of the tender in favour of respondent no.2, the High Court declined to interfere in the proceedings and disposed of the writ petition reserving liberty in favour of the original writ petitioner to raise all its pleas and claim the reliefs available to him at this stage in an appropriate civil proceedings. However, while not entertaining the writ petition and/or while disposing of the writ petition, the High Court has made the following observations:

“..We also permit the petitioner to make a representation addressed to the Hon’ble Prime Minister of India highlighting the aspects with regard to wrongful evaluation of the bids and discrimination meted out to some of the bidders. In case such a representation is made, we request the PMO to ensure that the same receives the attention of the Hon’ble Prime Minister of India. We are inclined to grant this liberty to the petitioner in the light of the fact that the petitioner is an Indian manufacturer and we had earlier found merit in the claim of the petitioner in *Macpower CNC Machines Limited v. Union of India [W.P. No. 3942/2020]* that Indian bidders are being discriminated against, even though the tender conditions itself stipulated that Indian manufacturers would be given preference. Keeping in view the fact that the Government of India is laying emphasis on “Make in India (Atma-Nirbharta), the grievances of the petitioner appear to be correct and, in our view, require serious consideration at the highest level.”

2.2 Feeling aggrieved and dissatisfied with the above observations, the Union of India has preferred the present appeals and has prayed to expunge the said observations/remarks.

3. Having heard Shri Balbir Singh, learned Additional Solicitor General of India, appearing on behalf of the Union of India and Shri Gaurav Juneja, learned counsel appearing on behalf of respondent no.1

herein and having gone through the observations made by the High Court in the last paragraph of its order, made while disposing of the writ petition, reproduced hereinabove, we are of the opinion that the observations made by the High Court, reproduced hereinabove, were absolutely unwarranted. The High Court was not deciding a Public Interest Litigation. The High Court did not even decide the writ petition on merits. On the contrary, in the earlier paragraph, it was observed that it had not gone into the merits of the writ petitioner's claim or the respondent's defence. In such circumstances, such general observations should have been avoided by the High Court and the High Court ought to have restricted itself to the controversy between the parties before it. Even otherwise, on the basis of a solitary case, general observations could not have been made by the High Court that the Indian bidders are being discriminated against. We advise the High Courts not to make general observations which are not warranted in the case. The High Courts shall refrain from making sweeping observations which are beyond the contours of the controversy and/or issues before them.

4. In view of the above, the present appeals succeed in part. The observations made by the High Court in its order dated 19.01.2021, namely,

“..We also permit the petitioner to make a representation addressed to the Hon’ble Prime Minister of India highlighting the aspects with regard to wrongful evaluation of the bids and discrimination meted out to some of the bidders. In case such a representation is made, we request the PMO to ensure that the same receives the attention of the Hon’ble Prime Minister of India. We are inclined to grant this liberty to the petitioner in the light of the fact that the petitioner is an Indian manufacturer and we had earlier found merit in the claim of the petitioner in *Macpower CNC Machines Limited v. Union of India* [W.P. No. 3942/2020] that Indian bidders are being discriminated against, even though the tender conditions itself stipulated that Indian manufacturers would be given preference. Keeping in view the fact that the Government of India is laying emphasis on “Make in India (Atma-Nirbharta), the grievances of the petitioner appear to be correct and, in our view, require serious consideration at the highest level.”

are hereby ordered to be expunged/set aside from the order passed by the High Court.

5. The present appeals are partly allowed to the aforesaid extent. No costs.

.....J.
[M.R. SHAH]

NEW DELHI;
FEBRUARY 17, 2022.

.....J.
[B.V. NAGARATHNA]