2025 INSC 215

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of Special Leave Petition (Civil) No. 25394 of 2023)

M/S. ABCI INFRASTRUCTURES PVT. LTD. ..... APPELLANT

VERSUS

UNION OF INDIA AND OTHERS ..... RESPONDENTS

J U D G M E N T

SANJIV KHANNA, CJI.

Leave granted.

2. This is an avoidable litigation. No doubt, there was a mistake on the part of the Appellant – M/s ABCI Infrastructure Private Limited, *albeit,* instead of taking a pragmatic approach, Respondent No. 2 - Border

Road Organisation[1] under the Ministry of Defence, Union of India, adopted an obdurate and overly legalistic stance, causing a delay in the project's execution.

3. We begin by briefly discussing the facts of the case:

- On 23.02.2023, BRO invited bids for the design and construction of two-lane twin tunnels, approximately 4.1 kilometres long, at Shinkun La Pass, including civil, electrical, and mechanical work, with approaches connecting the Darcha-Padam Highway to NHDL specifications in Himachal Pradesh and Ladakh. The estimated cost of the project was Rs.15,04,64,00,000/- (Rs. 1,504.64 crores). The project was to be completed within 48 months. The bid security amount was Rs.15,04,64,000/- (Rs. 15.04 crores)
- Ten bidders, including the Appellant, had submitted their online Technical and Financial Bids on 03.06.2023. The Appellant, like others, had furnished a bank guarantee of Rs.15,04,64,000/-.
- On 05.06.2023, technical bids were opened and seven bidders, including the Appellant, were declared technically qualified.
- On 24.08.2023, the financial bids of seven bidders, including the Appellant, were opened and the results were declared.

[1] Hereinafter, "BRO."

- The Appellant was ranked as L-1 bidder, with the bid price of Rs.1,569/- (Rupees One thousand five hundred and sixty-nine only). According to the Appellant, they had quoted a bid price of Rs.1,569 crores. However, due to what they claim was a system error, the quoted amount appeared as just Rs.1,569.
- The Appellant claims that they discovered the mistake on 24.08.2023 when the financial bids were opened and announced, and therefore, on the next day, 25.08.2023, they informed the authorities that their actual bid was Rs.1,569 crores, not Rs.1,569. They attributed the error to a typographical mistake or a critical technical issue with the server. While we would not accept the plea of system error, the figure quoted was clearly unrealistic, a patent error and a mistake given the scale and nature of the work tendered. Though the mistake was bald-faced, what followed is incomprehensible, with BRO, insisting on accepting the bid, in spite of letters from the Appellant wanting to withdraw from the tender.
- BRO, guided by the Evaluation Committee, instead of accepting the obvious, *vide* letter dated 26.08.2023, called upon the Appellant to justify the quoted amount of Rs.1,569 by providing a detailed price analysis, including the scope of work, completion

schedule, risk allocation, safety requirements, and proof of capability to complete the project, by 31.08.2023.

- On 30.08.2023, the Appellant reiterated that their intended bid was Rs.1,569 crores, not Rs.1,569, attributing the error to a technical or typographical mistake.
- On 07.09.2023, the Appellant sent another letter stating they should not be considered the L1 bidder, and the bank guarantee of Rs.15,04,64,000 may be returned to them without encashment.
- On 12.09.2023, the Appellant again wrote emphasizing that the bid was an error and that the bid security should not be forfeited.
- *Vide* letter 16.09.2023, BRO, unmoved, wrote to the Appellant's bank, the State Bank of India, stating that the Appellant had been declared a defaulter, and their bid security was to be forfeited. The bank was asked to encash the bank guarantee and remit Rs.15,04,64,000 to BRO.
- The Appellant filed a writ petition before the High Court of Himachal Pradesh at Shimla, which stands dismissed by the impugned judgment dated 07.10.2023.

4. The short question before us is whether BRO was justified in accepting the bid of Rs.1,569, and on the failure of the Appellant to execute the

agreement asking for forfeiture *vide* encashment of bank guarantee of Rs.15,04,64,000.

5. A mistake may be unilateral or mutual, but it is always unintentional. If it is intentional, it ceases to be a mistake. Mistakes or errors, though avoidable, are committed inadvertently. They have varied consequences in law. As per Section 20 of the Indian Contract Act, 1872[2] whereby both parties to an agreement are under a mistake as to matter of fact essential to an agreement, the agreement is void. The explanation to Section 20 says that an erroneous opinion as to the value of the thing which forms the subject matter of an agreement is not deemed to be a mistake as a matter of fact. This will not be a case covered by Section 20 of the Contract Act. However, this is not the first time that this question has arisen either before this Court or Courts outside of India. In ***West Bengal State Electricity Board*** v. ***Patel Engineering Company Limited and Others***[3], this Court referred to paragraph 84 of *American Jurisprudence* (2nd Edition, Volume 64 at page 944), which reads:

> "As a general rule, equitable relief will be granted to a bidder for a public contract where he has made a material mistake of fact in the bid which he submitted, and where, upon the discovery of that mistake, he acts promptly in informing the public authorities and requesting withdrawal

[2] Hereinafter, "Contract Act."
[3] (2001) 2 SCC 451.

> of his bid or opportunity to rectify his mistake particularly when he does so before any formal contract is entered into."

6. Thereafter, reference was made to two decisions of the Supreme Court of the United States in ***Moffett, H. and C. Co.*** v. ***Rochester***[4] and ***Hearne*** v. ***New England Marine Ins. Co.***[5] wherein it is observed that where the mistake is apparent and the party promptly informs the other as soon as it is discovered but before entering into a contract, equitable orders may be passed. However, the mistake should be clear, explicit, and undisputed. Further, a mistake on one side may be a ground for rescinding but not for reforming a contract where the minds of the parties have not met, yet there is no contract and hence none to be rectified. Relief may not be granted where it is inequitable. While accepting this legal position, this Court in ***West Bengal State Electricity Board*** (supra) has propounded the following exceptions to the general principle on a person seeking relief in equity on account of mistake:

> " **27.** ……..
> (1)Where the mistake might have been avoided by the exercise of ordinary care and diligence on the part of the bidder; but where the offeree of the bid has or is deemed to have knowledge of the mistake, he cannot be permitted to take advantage of such a mistake.

[4] 178 U.S. 373 (1900).
[5] 22 L. Ed. 395.

> (2) Where the bidder on discovery of the mistake fails to act promptly in informing to the authority concerned and request for rectification, withdrawal or cancellation of bid on the ground of clerical mistake is not made before opening of all the bids.
>
> (3) Where the bidder fails to follow the rules and regulations set forth in the advertisement for bids as to the time when bidders may withdraw their offer; however where the mistake is discovered after opening of bids, the bidder may be permitted to withdraw the bid."

7. This judgment also refers to a decision of the Superior Court of New Jersey in ***Spina Asphalt Paving Excavating Contractors, Inc.*** v. ***Borough of Fairview***.[6] The said case is related to the rectification of mistakes in the bid specifications. Relief granted in the said case was upheld by the Superior Court with the caution that generally an error in the statement of a price would not be treated as immaterial and it is only when the case of error was patent and the true intent of the bidder obvious that such an error might be disregarded.

8. In ***West Bengal State Electricity Board*** (supra), the private party, the bidder did not succeed for several reasons, including the factum that the error was not obvious and self-evident. Further, the correction of such mistakes after one and a half months after the opening of the bids would have violated the express clauses relating to the computation of

[6] 304 NJ Super 425.

the bid amount. Thus, waiver of the rule or conditions in favour of the one bidder would have created unjustifiable doubts in the minds of others impairing the rule of transparency and fairness and providing room for manipulation for awarding contracts.

9. The decision in ***West Bengal State Electricity Board*** (supra) was referred to and followed where a relief to the bidder was apparent before this Court in ***M/s Omsairam Steels & Alloys Pvt. Ltd.*** **v.** ***Director of Mines and Geology, BBSR & Ors***.[7] This decision observes that while the Court must exercise a lot of restraint in exercising the power of judicial review in contractual commercial matters, the doctrine of proportionality nevertheless applies when the error or mistake is writ large and equity merits the grant of some relief. Reference was made to the decision in ***Coimbatore District Central Cooperative Bank*** v. ***Coimbatore District Central Cooperative Bank Employees Association and Another***[8] where discussing the question of proportionality or punishment imposed on the striking workmen it is observed:

> "**18.** "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the

[7] 2024 INSC 520.
[8] (2007) 4 SCC 669.

case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.

19. de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [*Judicial Review of Administrative Action* (1995), pp. 601-05, para 13.085; *see also* Wade & Forsyth: *Administrative Law* (2005), p. 366.]

20. In *Halsbury's Laws of England* (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

> "The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness."

Accordingly, in the said case the Appellant was directed to make a payment of Rs.3 crores within the stipulated period and on the said

payment the security deposit in the form of a bank guarantee of over Rs.9 crores was directed to be refunded.

10. The present case does not fall under any exception, for the error or mistake in quoting a price of Rs.1,569/-, does not require any argument and cannot be debated as it is self-evident. A contract of this nature for an estimated value of more than Rs.1,500 crores spread over 48 months requiring construction of roads and tunnels of the length of more than 4 kilometres in a hilly terrain can never be executed for a mere Rs.1,569/-.

11. At the same time, we agree with BRO, that the Appellant was at fault and had made the mistake, of having failed to add the required zeros in the financial bid. The plea of a system glitch should not be accepted, as others had successfully uploaded their bids without a problem.

12. BRO justified encashing the bank guarantee by citing delays caused by issuing a second notice inviting bids. This claim is baseless, as BRO was aware of the Rs.1,569/- error. Instead of declaring the bid *non est* due to the clear mistake, BRO asked the appellant to justify the bid, cancelled the notice, declared the Appellant a defaulter, invoked the bank guarantee, and issued a fresh notice inviting bids.

13. Thus, BRO's claim that the delay was entirely due to the Appellant's mistake is flawed, ignoring BRO's own lapses. Mistakes, including by authorities, should be resolved through corrective steps. A practical approach could have avoided the delay, which was caused by BRO's refusal to acknowledge the Appellant's genuine error and the unwarranted cancellation of the bid.

14. The alleged two-month delay by the Appellant is incorrect. The error, submitted on 03.06.2023, became apparent only when financial bids were opened on 24.08.2023. The Appellant promptly acknowledged the mistake on 25.08.2023.

15. A fresh tender was issued, and financial bids opened on 09.01.2024 revealed the lowest bid of Rs.1,290 crores, lower than the earlier Rs.1,351 crores. Thus, while delayed, the contract was awarded at a lower cost.

16. In view of the aforesaid discussion, we direct the Appellant to pay Rs.1 crore to BRO, as a consequence of their error. Upon receiving this payment, BRO shall return the Appellant's original bank guarantee or demand draft of Rs.15.04 crores within one week.

17. The impugned judgment is set aside, and the appeal is allowed in the aforesaid terms. There would be no order as to costs.

.....CJI.
(SANJIV KHANNA)

….....J.
(SANJAY KUMAR)

….....J.
(K.V. VISWANATHAN)

NEW DELHI;
FEBRUARY 14, 2025