
(1996) 10 CAL CK 0004
In the Calcutta High Court
Case No : Writ Petition No. 1823 of 1996

Abdul Samad Sardar

APPELLANT

Vs

Central Inland Water Transport Ltd.

RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:

Citation : (1998) 2 ILR (Cal) 458

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ruma Pal, J.

1. Tendars were called by the Respondent No. 1 for cargo handling contracts. The Petitioner submitted a tender. The question involved in this writ application is whether the Respondent No. 1 was justified in excluding the Petitioner from negotiations held in connection with acceptance of the tenders by the Respondent No. 1.

2. The tender notice had been published by the Respondent No. 1 in English, Bengali and Hindi Newspapers. The advertisements provided, inter alia, that tenders would be received upto 2.30 p.m. on May 31, 1996 and would be opened at 3 p.m. on the same date in the presence of the intending tenders. The advertisement also provided that the Respondent No. 1 reserved its right not to accept the lowest and/or any tender and/or cancel tender/tenders and the right to call for negotiations without assigning any reason whatsoever. There was a subsequent corrigendum published which extended the date for receipt of the tenders upto June 10, 1996. Otherwise the terms and conditions previously advertised remained unaltered.

3. Apart from the writ Petitioner three other firms submitted their tenders including the Respondent No. 3. The tenders were opened in the presence of all. Admittedly/Mt was found that the rates quoted by the writ Petitioner were the

lowest in respect of most of the items. However, the Petitioner was not called for negotiations by the Respondent No. 1. The contract was ultimately awarded to the Respondent No. 3 on August 12, 1996. According to the "Petitioner the Respondents had no right to exclude the Petitioner from the negotiation and the same was wholly arbitrary. It is stated that the rates negotiated by the Respondent No. 1 with the Respondent No. 3 would result in a loss of Rs. 1,75,000.00 per day to the Respondent No. 1. According to the writ petitioner by reason of the acceptance of the Respondent No. 3's rates over the period of the contract (three years) the Respondent No. 1" would suffer a loss of Rs. 3,28,52,500.00.

4. The Respondent No. 1 has stated that in face advertisements which had been published, the Respondents had expressly reserved the right not to call any party for negotiations. It is stated that the Petitioner had not been called because of the "bitter experience" of the Respondent No. 1 as regards the functioning of the contractor. The "bitter experience" was non-payment by the Petitioner of his workers when he had been earlier engaged by the Respondent No. 1 as the cargo handling contractor. By reason of such non-payment cargo handling had suffered. According to the Respondent No. 1 the Petitioner had stopped cargo handling on two separate occasions and had threatened to terminate the contract on a number of occasions. According to the Respondent No. 1 the Petitioner's sudden stoppage of cargo handling had resulted in huge financial losses for the Respondent No. 1 apart from the fact that the Respondent No. 1 could not keep its commitments with regard to the shipment of essential commodities such as Dal, Rice etc. to the North East.

5. The system of appointment of employees by the contractors is that although the contractor is changed the workers' union remains same. The workers in this case had raised various demands, against the writ Petitioner and had also made demands of the Respondent No. 1 that the Petitioner should not be appointed as labour contractor. Two writ petitions had been filed by the workers/labourers against the Respondent No. 1 with regard to the non-payment of dues by the writ Petitioner. Those writ petitions are still pending. As far as the procedure for selection of Respondent No. 3 is concerned it is stated that the matter was considered by a Unit Level Tender Committee consisting of four officers of the Respondent No. 1 which recommended the exclusion of the writ Petitioner.

6. The recommendation was thereafter referred to the Inter-Departmental Tender Committee for finalisation. The latter committee accepted the recommendation of the Unit Level Tender Committee. Two other tenders apart from the Respondent No. 3 had been called for negotiations. The other two tenders were in fact the existing contractor tendering under two different names. Since the existing contractor was unable to resume work on the existing terms the Respondent No. 3 being the only remaining tender was called upon to make his rate equal to that of the existing contractor. The writ Petitioner subsequently agreed to the request of the tender committee.

7. According to the Respondent No. 1 the quantity of work was not guaranteed and the financial implication arising out of the difference between the Petitioners and the Respondent No. 1."s rate was 5.33% if Food Corporation of India reimbursed the cost of one of the contracts otherwise it was 7.33%. The Letter of Intent was issued on August 12, 1996 after the matter was considered at all levels. The Respondent No. 1 has also submitted that the writ application should be dismissed because of delay and laches in filing the writ application.

8. The Respondent No. 3 has submitted that the Respondent No. 3 after the award of the contract had been able to bring to an end a strike which had been called by the labourers for nearly two months as a result of disputes between labourers and the previous contractors. The strike was ended on August 22, 1996. Wide publicity had been given to the part played by the Respondent No. 3 in bringing an end to the strike of the labourers. The Respondent No. 3 had entered into, a settlement, with the workers. The Respondent No. 3 has already started working. The Respondent No. 3 has alleged that the Petitioner has sought to reap the benefit of the efforts of the Respondent No. 3 by filing this writ ? application at this late stage.

9. The records have been produced by the Respondent No. 1. They bear out the submissions made by the Respondents. I am not prepared to hold on the basis of the material before me that the Letter of Intent issued by the Respondent No. 3 was antedated as suggested by the writ Petitioner. The application of the Respondent No. 1 was duly filled in and supported by certificates issued by:

1. Damodar Valley Corporation;
2. Assam State Electricity Board ;
3. West Bengal State Electricity Board ;
4. Burn Standard Company Ltd.
5. Feroz Gandhi Unchahar Thermal Power Project;
6. U.P. State Electricity Board;
7. Bharat Refractories Ltd.;
8. India Firebricks & Insulation Company Ltd.;
9. Assam Petrochemicals Ltd.;
10. Assam Gas Company Ltd.;
11. Biecco Lawrie Ltd.
12. I.T.C. Ltd. Tribeni Tissues Divn.

U. Company Bank has also certified the reputation and the financial solvency of the Respondent No. 3.

10. As far as the Petitioner is concerned, his application is supported by three certificates dated March 2, 1983, March 7, 1983 and August 2, 1988 all issued by the Respondent No. 1 itself. The certificate of solvency has been granted by the Indian Bank.

11. One of the writ petitions filed by the workers against the Respondent No. 1 contains diverse allegations, inter alia, against the writ Petitioner for not making payment of the workers' dues. On the basis of the allegations of the contractors workers have prayed for a direction on the Respondent No. 1, inter alia, for a direction on the Respondent No. 1 to bear the liabilities of the previous contractors. The Petitioner on the other hand has stated that the Respondent No. 1 had wrongfully withheld payment of bills of the Petitioner and that the dispute had been referred to arbitration and an award had been made in favour of the Petitioner by the arbitrator. The award is passed on June, 1994. The writ application by the workers has been filed in August 1996 claiming non-clearance of their dues by the writ Petitioner.

12. Without going into the merits of the allegations against the Petitioner as raised by the workmen and the Respondent No. 1, it is sufficient to say that there was some evidence on the basis of which the Respondent No. 1 chose not to call the Petitioner for negotiations. Negotiations may be resorted to by the State Respondents to obtain a more acceptable rate. Where the Petitioner's rate was in any event lower, there was no scope for further negotiations for such purpose.

13. Even though the Petitioner had submitted a tender which was lower in respect of a substantial number of items than the other tenders it was still open to the Respondent No. 2 to prefer the offer of the Respondent No. 3. Not only does the advertisement provide for the same but the decisions on the subject support the view that the government may reject a lower tender provided it has a valid reason to do so. The reason must not be arbitrary and not extraneous. See *Trilochan Mishra, etc. Vs. State of Orissa and Others*, and *Union of India and others Vs. Hindustan Development Corpn. and others*,

14. It cannot be said on the basis of the records and the facts of this case that the Respondent No. 1 acted irrationally in not calling the Petitioner for negotiations or in awarding the contract to the Respondent No. 3.

15. The procedure in selecting the Respondent No. 1 cannot also be said to be unfair. The matter was considered by two committees consisting of senior officers of the Respondent No. 1. It is not suggested by the Petitioner that apart from not calling the Petitioner for negotiations there has been any procedural impropriety committed either by the unit level tender committee or by the inter-departmental tender committee.

16. The Court's power in judicially reviewing the choice of a successful tenderer by an authority is limited to scrutinising whether the authority has acted whimsically, capriciously or unreasonably or was actuated by bias. There is no

averment nor indeed any evidence sufficient to sustain any of these grounds. As held by the Tata Cellular Vs. Union of India,

The modern trend points to judicial restraint in administrative action. The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

17. The fact that the Respondent No. 3 was negotiating with the workers with regard to the strike was indeed given wide publicity by the print media. It is also true that the Petitioner filed the writ application on August 28, 1996 whereas the Respondent No. 7 had been awarded the contract on August 12, 1996. However, it is not necessary to decide whether the Petitioner had knowledge of the acceptance of the Respondent No. 3's tender earlier. But it is clear from the records that the Respondent No. 3 has acted on the basis of the grant of the contract and has expended considerable efforts in bringing -about the settlement of the workers and resolving the strike. It would be inequitable to set aside the contract in favour of the Respondent No. 3.

18. When the Respondent No. 3 has altered its position on the basis of the contract as awarded and when the settlement with the workers would be disrupted if any change were made in the contractors at this stage.

19. For all these reasons the writ application is dismissed. Interim Orders if any, are vacated. There will be no order as to costs.