(1984) 08 CAL CK 0001

In the Calcutta High Court

Amalendu Press and Another APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 23-08-1984

Acts Referred:

Citation : 89 CWN 640

Hon'ble Judges : S.K. Mookherjee, J

Bench : Single Bench

Advocate : U.S. Chatterjee, S.P. Talakdar, Bina Roy and Ratna Siddhanta, for the Appellant; T. Roy, S.K. Panja, Basudeb Banerjee and Indira Basu, for the Respondent

Judgement

S.K. Mookherjee, J.—The petitioners in the present writ application, along with 19 other persons or concerns, including Respondents nos. 3 & 4, submitted tenders in response to an invitation for tender, issued by the Election Authority of the Calcutta Municipal Corporation, dated 6th July, 1984, for printing Electoral Rolls/amendments to the Electoral Rolls..... of the Calcutta Municipal Corporation. The printing was to be in respect of full page, half page and quarter page and the rates were to be submitted in two sets with paper and without paper. Subsequently, the "without paper" rates were abandoned and we are not concerned with the same and, for our present purposes the rates for "with paper" printing alone are relevant. There were 21 tenderers, and after an examination of the several tenders, the tender submitted by Respondent no. 3, who, was the proprietor of a firm known as "quick Printers", has been accepted by the Election Authority after some modification on 20th July, 1984. It is the grievance of the petitioners that, in accepting the tender of the Respondent no. 3, the Election Authority has acted arbitrarily and in a discriminatory manner. The petitioners have also alleged malafide and colourable exercise of power on the part of the Election Authority and have prayed for writ of certiorari and Mandamus for recalling or rescinding the final order of acceptance and for quashing of the same.

2. The application was initially moved ex parte when, after hearing the

petitioners, I directed the service of the copy of the said application on the respondents and issued an interim order, limited upto 30th July, 1984, restraining the respondents, inter aha, from giving effect to the final order or issuing work order in favour of the firm of Respondent no. 3. Upon notice being Served, the respondents nos. 2, 3, 5 and 6 have appeared through their respective Learned Lawyers and Respondent no. 1 being a formal party and not being a necessary party; and no relief having been prayed for against respondent no 4, the notices on the said respondents nos. 1 and 4 were dispensed with, with the consent of the appearing parties, particularly, in view of the urgency of the matter and with the consent of the appearing parties, I took up the application for final disposal.

3. The substantial grievance of the petitioners is that, in accepting the tender of Respondent no. 3, the Election Authority has acted illegally, arbitrarily and in colourable exercise of its power as also malafide by not insisting upon compliance with the original tender conditions, It is also contended in behalf of the petitioners that the Respondents were not entitled to accept the modified tender of Respondent no. 3.

4. While developing the above submissions on behalf of the petitioners, it has been urged by Mr. Uday Shankar Chatterjee, assisted by Mr. Saurendra Prasad Talukdar, that the said Respondent no. 3 was granted the contract inspite of non-fulfilment of the following tender conditions :

i) Printing on the papers of Titagarh Paper Mill.

ii) Furnishing of the Security deposit of Rs. 5000/- before allotment of work order.

iii) Filing of income tax clearance certificate along with the tender and

iv) Filing of Sales Tax clearance certificate along with the tender.

5. In addition to the above, Mr. Chatterjee has argued that opportunity was illegally given to Respondent no. 3, through negotiation with him alone behind the back of the other tenderers, including the petitioners, to modify and reduce his rate with regard to the full page "printing" to enable him to get the contract and pointed out that originally the. said respondent submitted a rate of Rs. 30/- per page for ''full page with paper,'' which was," through negotiation with him alone, reduced to Rs. 29/- and no such opportunity was given to the petitioners and other tenderers, who had submitted tenders in the instant case. According to the petitioners, this amounted to an Elimination and malafide and colourable exercise of power.

6. Being aggrieved as aforesaid, the petitioners have, prayed for a writ of mandamus, commanding the respondents to cancel or rescind the final order, alleged to have been passed, on 20.7.84, The petitioners have also prayed for a writ of certiorari for quashing of the said final order.

7. Mr. Tapas Chandra. Ray, appearing with Mr. Sumit Kr. Panja, on behalf of the

respondents 2, 5 and 6 has assailed the propriety and validity of the submissions, made on behalf of the petitioners, and submitted that the present; writ application should be dismissed. Mr. Roy has firstly contended that the present application for writ is, not maintainable in the absence of a proper demand for justice. Secondly, Mr. Roy has contended that, as far as the allegation of non-submission of income tax clearance certificate by respondent no. 3 is concerned the same has been filed by respondent no. 3 before acceptance of the tender and that is substantial and sufficient compliance with the relative tender condition. On the question of printing on papers of Titagarh Paper Mill, Mr. Roy''s submission was that such papers, not being available in the market, due to closure of the said Mill for a long time, papers of equal weight and size of same other popular and recognised paper Mill were permitted to be used and there can be no objection in law to such permission.

8. About the allotment of the work order before receipt of the security in terms of clause (3) of the tender conditions, Mr. Roy has contended that originally a demand draft drawn A/c Payee in favour of Election Authority, Calcutta Municipal Corporation, was furnished by the respondent no. 3 but, to avoid controversy, a modified bank draft was filed later and the same has been found acceptable by the Authority concerned and the matter should end there. Thirdly, Mr. Roy has contended that giving of opportunity to Quick Printers (Respondent no. 3), whose tender rates-were the lowest except for the full page, to reduce their rate for the same by Rs. l/- (From Rs. 30|- to Rs. 29|- the lowest tender rate) per page was reasonable and necessary, particularly, in view of the urgency of the work which Was the subject matter of the tender, Lastly, Mr. Roy has relied upon the right of the Election Authority to accept or reject any tender without assigning any reason, as embodied in the tender conditions.

9. Mr. Basudeb Banerjee, appearing with Miss Indira Base, on behalf of respondent no. 3, has filed an affidavit in opposition, taking inter alia the same stand as has taken by Mr. Tapas Roy. It is the contention of Mr. Banerjee that the aggregate rate Rs. 58|- (full page Rs. 30|- plus half page Rs. 18.50/- plus Or. page Rs. 9|50|-) of respondent no. 3, was the lowest and since the fate of Dey''s printers with regard to the full page with paper was Rs. 29|- his client reduced his full page rate (Rs. 30/-) by Rs. 1|- and made it Rs. 29|-, thereby bringing down his aggregate rate to Rs. 57|-He has also assailed the veracity of the allegations, made on behalf of the petitioners, about the failure of his client to fulfil the tender conditions and challenged the allegations of malafide.

10. At the hearing, Mr. Roy appearing on behalf of the Municipal Authorities, produced before me the entire records from the custody of his client, relating to the present tender and its acceptance. It appears from the said records that the Municipal Authorities were of the view, - rightly and not unreasonably, - that the order could not be split up and, that accordingly it must be allotted to one press, which would be able to carry it out with regard to all the sizes. The rates with paper, quoted by respondent no. 3, were the lowest except for full page which,

as originally given by him was Rs. 30|- as against Respondent no. 4 ''Dey''s printers'' Rs. 29|- which was the lowest. Eventually, however, when Respondent no. 3 reduced his full page rate to Rs. 29|- his rates for all the sizes (full page, half page and quarter page) became the lowest, both individually and in the aggregate. The records also show that the modified Bank Draft, furnished as Security by Respondent no. 3, was found to be in order and quite acceptable and that the I.T. clearance certificate had already been filed by him and, further that in the prevailing circumstances it was necessary also to permit use of papers of equal weight and size of other popular and recognised mills in place of paper of Titagarh Paper Mill.

11. In the light of what has been stated above, I propose how to take up the petitioners'' contentions sariatim.

i) Printing on papers of Titagarh Paper Mill

As set out above, due to closure of the Titagarh Paper Mill for a long time, papers of the said Mill are not available in the market, and, in the circumstances, the use of paper of equal weight and size of other popular and recognised mills, as permitted by the Election Authority, is quite reasonable and necessary and no legitimate objection can be taken to the same. The petitioners'' contention in this behalf is, accordingly, overruled.

ii) Furnishing of the Security Deposit.

The tender conditions required deposit of a security of Rs. 5000/- and a Bank draft of Rs. 5000/- was submitted by Respondent no. 3 which appears to have been accepted by the Election Authority. As the tender conditions did not prescribe specifically for cash security and as, further, a bank draft is normally as good a security as cash, I do not think that the acceptance of the Bank Draft as security has been either improper or unreasonable. I, accordingly, overrule the petitioners'' contention under this head.

iii) Non-filing of income tax clearance certificate with the tender.

The income tax clearance certificate, as seen above, has been filed by Respondent no. 3, though not with the tender, and as, in such matters, substantial compliance is sufficient and strict compliance need not be insisted upon, I am inclined to accept Mr. Roy''s submission and over-rule the petitioners'' contention.

iv) Non-filing of Sales Tax clearance certificate along with the tender.

The Municipal Records, produced before me, do not show that this certificate has been filed by respondent no. 3 but the records also show that he was being asked to file the same immediately. Filing of this certificate was a necessary condition for acceptance of the tender and as, evidently, its purpose was to assure and confirm the integrity and honesty of the tenderer, it must be regarded as a basic requirement of his eligibility, although, in the matter of the time factor attached, namely, filing with the tender, substantial compliance may be sufficient and strict compliance need not. be insisted upon. It is necessary, therefore, that, before the work order is allotted on acceptances of the tender this certificate should be filed, and, in the facts and circumstances of the present case, I am inclined to allow Respondent no. 3 to file it, if not already filed to entitle him to the work order in question.

12. In the above view, I would overrule the petitioners contention under this head provided Respondent no. 3 file the relevant Sales Tax clearance certificate, if not already filed, within 27th August, 1984. In default, this Rule will succeed and the writs and orders, prayed for by the petitioners, would issue.

13. v) Opportunity given to Respondent no. 3 to reduce his rate for full page for acceptance of his tender.

The records show that the Respondent no. 3''s tender was the lowest, except for the full page, for which his original rate was Rs. 30|- per page as against the lowest Rs. 29|- of Respondent no. 4. The difference was of a rupee per page and, as his other rates, namely, for half page and quarter page and also aggregate, were the lowest and as this last mentioned, that is, the aggregate rate, was the relevant and most important, in view of the fact that the work could not be split up and had to be given to one press for purpose of convenience and uniformity, it was not improper on the part of the Election Authority to ask him to reduce his full page rate to the lowest Rs. 29/- in the interest of Corporations finance. Remembering also that the job in question was time oriented and the immediate time schedule was. 31.8.84, the Election Authority did not act in an unreasonable, arbitratory or capricious manner in taking the above course.

14. As to the change of discrimination, it is necessary to refer to the table of rate on the record, which shows that the individual and. aggregate rates for the different items were much higher in the case of all the other tenderers and it would have served to useful purpose to ask them to reduce their rates to the lowest as the difference was considerable.

15. Moreover, as stated above, the printing job in question was to be given to a single press for convenience and uniformity and, accordingly, the aggregate rate alone was relevant. In the circumstances, it was clearly open to the Election Authority to accept Respondent no. 3''s tender as his aggregate rate even before reduction was the lowest, and, in that context, negotiation with Respondent no. 3 for reduction of rates "in the interest of Corporations finance" cannot be held to be discriminatory and would not vitiate the acceptance of his tender with malafide or turn it into colourable exercise of power.

16. Before concluding it is necessary for me to dispose, of the two submissions of Mr. Roy which have been noticed above but not dealt with hereinbefore, namely-

1. That this application is not maintainable in the absence of a demand for justice and

2. That the acceptance of the tender of Respondent no. 3 cannot be challenged at all in view of the right reserved to the Election Authority to accept or reject any tender without assigning any reason.

17. As to the first it is enough to say that it is well settled (vide) From Fram Nusservanji Balsara Vs. State of Bombay and Another, , Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , Narendra Nath Chakravarty Vs. Corporation of Calcutta and Others, , Gadadhar Ghosh Vs. State of West Bengal, , Khagendra Nath Sen Vs. University of Calcutta and Others, , Amar Kr. Naik vs. State of W. B. & Ors. 80 C.W.N. 526 that, where it is apparent that such demand would be an "empty formality" or manifest that it would be an "idle ceremony" "useless or futile" or where as in the instant case, the prayer is also for a writ of certiorari such demand need not be made. I would, accordingly, reject the submission of Mr. Roy.

18. As to the second also, it is well settled (vide Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, which has discussed and explained the earlier authorities) that such protective clauses, though not invalid in law and generally effective in the absence of arbitrary, capricious or unreasonable excise of power would be available as sufficient protection to the acceptance of the Respondent no. 3''s tender unless the same is hit by non-submission of the essential pre-requisite, Sales Tax clearance certificate, - basic requirement for assuring and confirming the integrity and honesty of the tenderer. In the result, this application will fail, if respondent no. 3 files, with the Election Authority, the relevant Sales-Tax clearance certificate, if not already, filed within 27th August, 1984. In default this application will succeed and the writs and orders prayed for by the petitioners, will issue.

Let the matter appear oh the list on Tuesday (28.8.84) for final disposal in terms of this judgment.