

(1999) 05 GUJ CK 0033

In the Gujarat High Court

Case No : Spl. Civil Application No. 4007 of 1998

Amit B. Thakker

APPELLANT

Vs

Air India and Another

RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 299

Citation : AIR 1999 Guj 341 : (1999) 3 GLR 2749 : (2000) 2 RCR(Civil) 299

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : Y.N. Oza, for the Appellant; Nanavati Associates (for No. 1) and Tushar Mehta, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—The prayer of the petitioner in this petition is for quashing the action of the first respondent awarding the contract for ground handling work on behalf of Air India at S.V.P. International Airport, Ahmedabad to the second respondent. Brief allegations in the writ petition are as under:

2. The petitioner is proprietor of a firm M/s. Meeta Constructions and is engaged in multifarious activities having wide experience in various fields at the management level. In the first week of June, 1997, advertisement appeared in Times of India, inviting tenders from various agencies for taking up ground handling work on behalf of Airport at S.V.P. International Airport at Ahmedabad. In response to this advertisement, the petitioner submitted his tender to the respondent No. 1 on 20.6.1997 @ Rs. 45,100/- per flight as ground handling charges. Subsequently, further details were sought from the petitioner which were submitted by him. The tenders were opened at Bombay. The second respondent quoted rate in its tender at Rs. 55,000/- per flight without equipments and with some other conditions. Thereafter, negotiations were carried out and revised quotations were given @ Rs. 19,000/- per flight along with the terms and conditions which were enumerated in the letter dated

2-12-1997. At the time of opening tenders on 4-9-1997, four tenders were received by the respondent No. 1, out of which tenders at Sr.Nos. 2 and 3 were rejected as they were not as per the requirement. Tenders of the petitioner and the second respondent were considered. The petitioner, through Fax message, intimated his readiness and willingness to reduce the rates already quoted by him. However, the tender was finalised behind the back of the petitioner and the respondent No. 1 had given the contract to the respondent No. 2, which is assailed on the ground that the action of the respondent No. 1 is arbitrary, mala fide and that it has caused unnecessary burden on the exchequer, inasmuch as the person offering higher tender was awarded the contract. On the point of malafide, the allegation is that the persons who are directors of the second respondent are ex-employees of the first respondent and they are having close relations with the Directors of the first respondent and hence favour has been shown to the second respondent by the first respondent. It is further alleged that the second respondent is having their establishment at Bombay whereas the petitioner being local person is having infrastructural facilities at Ahmedabad and the petitioner could have given better services.

2A. Both the respondents have filed separate counter-affidavits.

3. The respondent No. 1, in its counter-affidavit, has mentioned that the ground flight handling at Ahmedabad International Airport was previously performed by Indian Airlines Ltd., on behalf of Air India Ltd. and was charging Rs.53,500/- per flight in the year 1991. It was raised to Rs.85,250/- per flight from 1-4-1997. Since the operation became too much expensive for the Air India to operate International Flights from Ahmedabad, a policy-decision was taken to appoint independent contractor to perform the services of ground flight handling on behalf of Air India. Ground flight handling comprises of various functions enumerated in detail in para 5 of the counter-affidavit filed by this respondent. It is with this view that public advertisement was issued and for scrutinising the tenders, a Sub-Committee was constituted and keeping in view the recommendations of the said Committee, contract was awarded to the respondent No. 2. The said Sub-Committee short-listed only three parties viz; (1) M/s. Aerocare (ii) M/s. Meeta Construction (petitioner) and M/s. Global Aviation Services Pvt. Ltd. (respondent No. 2). By letter dated 1-9-1997, further details regarding experience, etc. were called for and considering the expertise and experience in operating ground flight handling, the contract was given to the respondent No. 2. Allegations of mala fides and arbitrariness have been denied. Allegation of discrimination and favouritism to respondent No. 2 has also been denied.

4. The respondent No. 2 in its counter-affidavit has disclosed in detail in para 4 that it has requisite expertise and it is already representing 11 International Airlines as General Sales Agent or Passenger Sales Agent. It is also stated that respondent No. 2 has experience and technical personnel to handle International Flight operations particularly, ground flight handling work. It is also stated that

respondent No.2 is performing its part of the contract since 1-5-1998 without any complaint and effectively. On the point of mala fide, it is clarified by this respondent in para 8 that three Executives retired from Air India between 3 to 7 years earlier have been engaged in the services of the respondent No. 2. Other experience and expertise has also been disclosed in para 8 of the counter-affidavit by this respondent.

5. Learned Counsel for the parties were heard at length. The main grievance of the learned Counsel for the petitioner has been that though the petitioner's tender was lowest, it was rejected without any reason and that the rate quoted by the respondent No. 2 was highest still it was granted to this respondent which amounts to arbitrariness, malafide and unnecessary burden on the State exchequer. Mr. Oza, vehemently argued that such arbitrary and mala fide action of the respondent No. 1 is liable to be quashed and the contract granted to the respondent No. 2 is also liable to be quashed. Mr. Nanavati, on the other hand, proceeded on the admission (assumption) that the rate quoted by the respondent No. 2 was, no doubt, higher, yet he argued that it was not invitation of tender where certain commodities were to be purchased or where certain work has to be undertaken which require no special skill or expertise. On the other hand, the ground flight handling comprises of various functions highlighted in para 5 of the counter-affidavit and that in the interest of passengers for taking flight on International routes, the expertise and effective ground flight handling services was the main consideration with the respondent No. 1. When comparative study of experience of the petitioner and respondent No. 2 was made, experience and expertise of the respondent No. 2 was much on the higher side than that of the petitioner. This contention is not without substance. Experience and expertise of the respondent apparently seems to be on higher side which is reflected in paras 4 and 8 of the counter-affidavit filed by the respondent No. 2. In reply to this, Mr. Oza contended that so far as Ahmedabad International Airport is concerned, this type of contract was awarded for the first time and hence the question of expertise or experience at Ahmedabad loses its significance, however, I am unable to accept this contention. It may be for the first time such a contract was awarded by the respondent No.1 but while awarding such contract, past experience and expertise of the intending tenderers was also a matter to be considered by the respondent No. 1. The vast experience in various International Airlines discloses in para 4 of the counter-affidavit as well as in para 8 of the counter-affidavit of respondent No. 2 shows that no such experience or expertise is available with the petitioner. On the other hand, from the writ petition itself it appears that the petitioner is Proprietor of M/s. Meeta Construction and he is a qualified Engineer. He is a Government registered Civil Contractor and has been working with major Government organizations like ONGC, Reserve Bank of India, LIC, Indian Airlines Ltd., Airport Authority of India and carrying out various civil and interior and furniture work. This is to be found in para 3 of the writ petition. Thus, whatever qualification is possessed by the petitioner is that he is a qualified Engineer and his experience has been confined

to civil, interior and furniture work and not to ground flight handling work at any Airport. Even if the petitioner has been rendering civil engineering services with Indian Airlines and Airport Authority of India, it cannot be weighed as experience in ground flight handling,

6. The latest verdict of the Apex Court in such matters is to be found in the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, . The Apex Court has laid down that when a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition. For example, the dispute is purely between two tenderers, the Court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved. - In intervening in such a commercial transaction, it further observed that unless the Court is satisfied that there is a substantial amount of public interest or transaction is entered into mala fide, the Court should not intervene under Article 226 in disputes between two rival tenderers.

7. It is also observed that it is necessary to remember that price may not always be the sole criterion for awarding a contract. Often when an Evaluation Committee of experts is appointed to evaluate offers, the Expert Committee's special knowledge plays a decisive role in deciding which is the best offer. Price offered is only one of the criteria. The past performance of the tenderers, the quality of the goods or services which are offered, assessing such quality on the basis of the past performance of the tenderer, its market reputation and so on, all play an important role in deciding to whom the contract should be awarded. At times, a higher price for a much better quality of work, can be legitimately paid in order to secure proper performance of the contract and good quality of work which is as much in public interest as a low price. Thus, from the above observations of the Apex Court, it is clear that in matters of such nature merely low rate should not be the criterion for awarding contract. On the other hand, unless public interest is involved and affected, the action should not be interfered with simply on the ground that by accepting higher rate, some burden to the exchequer is likely to be caused. After all, if better services are to be obtained for rendering to passengers of International Flight if some higher price is paid to the person offering such services, it cannot be said that public interest is adversely affected; rather public interest is adequately served when efficient services are rendered by experienced experts offering such services.

8. After considering the entire material on record, I am of the view that the action of the respondent No. 1 cannot be said to be arbitrary. An action is said to be arbitrary when it lacks reasonableness. An action is also said to be arbitrary when by such action, favour has been shown to one person over the other though both are equally placed in matters of experience and expertise. Likewise, an action can be said to be arbitrary if it has no nexus with the real purpose for

which the contract is going to be awarded. These elements are missing in the present case, hence the action of respondent No. 1 cannot be said to be arbitrary.

9. On the point of mala fides, the requisite reply is contained in the counter-affidavit of the second respondent which has been mentioned in the foregoing portion of this judgment. On the factual side, it cannot be said that the action of the respondent No. 1 suffers from vice of mala fide.

10. Mr. Oza, relying upon Annexure-VI, the report of the Committee which made recommendations, contended that under recommendation No. 3, initially such contract was given for a period of one year and during this period, efforts should have been made for recruitment and training by Air India, but this recommendation was not taken into consideration whereas the contract was given to respondent No. 2 for a period of two years which reflects mala fide. I am not inclined to accept this contention. Mr Nanavati has rightly contended that no doubt, the Committee was constituted to examine and recommend in the matter and four recommendations were made, but the recommendation of the Committee that Air India should consider self-handling by recruiting staff, is not accepted and the Airport Authority is not ready to accept such handling of the work. He also rightly contended from the counter-affidavit that efforts were made to post about 12 staff. Evidently, this effort did not materialise. It was under these circumstances, the Airport Authority has decided to award the contract to private parties for a period of two years. In view of the aforesaid, again it is difficult to uphold the contention that the action of the respondent No. 1 is mala fide.

11. It can, therefore, safely be concluded that simply because the tender quoting higher rate by the respondent No. 2 was accepted, the action of the respondent No. 1 is arbitrary or mala fide or is going to cause unnecessary loss to the exchequer. On the other hand, in the interest of efficient service to be rendered at the International Airport, such action was taken and this action does not infringe public interest within the ambit of the judgment of the Apex Court in the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, . The action also cannot be said to be lacking transparency nor it can be said that it was taken violating the guidelines of the Committee. It cannot be said that no opportunity of hearing was given to the petitioner. Negotiations were carried out even after obtaining the tenders. Additional informations were sought and mainly on the ground of experience and expertise that the contract was granted to the respondent No. 2 even though it has quoted slightly higher rates.

12. The Division Bench of this Court, in the case of Prabhudasbhai Bhikhabhai Patel Vs. State of Gujarat and Others, , has also taken a similar view. It was observed that giving of tender is an administrative decision. The High Court cannot substitute its own decision in place of the decision of the State Government. Such decision to award contract can only be set aside if it is established that it is arbitrary and discriminatory. Merely because lowest rate was not accepted, it cannot be said that the decision is arbitrary. Efficient and

satisfactory completion of work factor is to be taken into account. If the decision of the State Government is for the sake of efficient and satisfactory completion of work, such decision need not be interfered with under Article 226 of the Constitution of India.

13. In the instant case, the respondent No. 2 has practically offered efficient services for a period of one year without any complaint from any corner since May, 1998 as stated in para 4.4 of the counter-affidavit of this respondent.

14. In view of the aforesaid discussion, I find no cogent reason for interfering with the action of the respondent No. 1 in awarding the contract to respondent No. 2. The writ petition, has therefore, no merit and is liable to be dismissed.

15. The writ petition is accordingly dismissed. No order as to costs.