

(2003) 04 GAU CK 0050

In the Gauhati High Court

Case No : Writ Petition (C) No. 17 (SH) of 2002

Arwish Marak

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 11-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 CTLJ 467 : (2004) 1 GLR 384 : (2004) 1 GLT 12

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : A. Paul, for the Appellant; Anil Sarma, B. Dutta, S.P. Mahanta, M. Wahlang and K. Paul, for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Miss A. Paul, learned counsel for the petitioner. Also heard Mr. Anil Sarma, learned Addl. Advocate General, Meghalays, assisted by Mrs. B. Dutta, learned Government Advocate, for the respondent Nos. 1 and 8 Mr. S. P. Mahanta assisted by Mrs. M. Wahlang, learned counsel for the respondent No. 9 and Mr. K. Paul, learned counsel for the Proforma Respondent.

2. The respondent No. 2 vide Memo No. EE(T)IRRI/TB 39/2000-2001/43-55 dated 4.5.2001, issued a Notice Inviting Tender (NIT), from the registered contractors for construction of Anderkona Headwork including diversion work and approach road (Excluding steel sluice gate), amounting to Rs. 1,20,35,000 (Rupees one crore twenty lakhs and thirty five thousand) only. In response to the said NIT eleven tenderers have submitted their tenders. The petitioner has submitted his tender at 21% above the schedule of rates for the year 1996-97. The respondent No. 3 has also submitted his tender by quoting his rate at 38.40% above the said schedule of rates. The Proforma Respondent, submitted his tender at the rate of 19% above the schedule of rates. From amongst the tenderers who submitted their tenders, the Proforma respondent has quoted the lowest rate of 19% above the schedule of rates (SOR). The petitioner is second

lowest at the rate of 21% above the SOR. However, the Work Order was allotted to the respondent No. 3 who has quoted his rate at 38.40% and the work was allotted to the respondent No. 3 at the 19% above the ASR. By this selection of respondent No. 3, the petitioner has approached this Court by this writ petition.

3. The State respondents did not file their Affidavit-in-opposition but have produced all relevant record in original for perusal of this Court.

4. Miss A Paul, learned counsel for the petitioner, vehemently urged that the Proforma Respondent being the lowest tenderer is entitled to be allotted the work. The counsel also submitted that as the lowest tender was not acceptable to the authorities, the petitioner who is the second lowest tenderer at 21% above SOR is entitled to be allotted the work. The allotment of work to the respondent No. 3 at the rate of 19% in spite of his tender being quoted at the rate of 38.40% is arbitrary and mala tide which shows that the action was whimsical and leads to favouritism. In support of this contention, the learned counsel has drawn the attention of this Court to the following cases :

1. 1995 (1) SCC 478
2. AIR 1994 SC 988
3. AIR 1979 SC 1628
4. 2000 (1) GLT 41

In the case of New Horizons Limited and Anr., Appellant v. Union of India and Ors., Respondents, reported in 1995 (1) SCC 478, the Apex Court held that :

".... the State does not stand on the same footing as a private person who is free to enter into a contract with any person he likes. The State, in exercise of its various functions, is governed by the mandate of Article 14 of the Constitution which excludes arbitrariness in State action and requires the State to act fairly and reasonably...."

In the above judgment of the Apex Court, the only requirement is that the State is to act fairly and justly in allotting the contract.

5. Mr. Anil Sarma, learned Addl., Advocate General, submitted that after the tenders were received by the respondents the profile of the contractors was prepared, the Comparative statement of all the tenders was also prepared and the capability of the tenderers/contractors having been examined in the Comparative statement, the same was sent to the Tender Committee for their approval and, thereafter, the approval of the tender Committee was sent to the Government for final decision. All the procedures regarding acceptance of the tenders were duly examined at different stages and there is no favouritism, arbitrariness or capricious action on the part of the respondents while allotting the contract work to the respondent No. 3.

6. Mr. S. P. Mahanta, learned counsel for the respondent No. 3, while supporting

the contention made by the learned Addl. Advocate General, has also contended that from the perusal of the Profile of the Contractors and their performance as analysis by the Tender Committee, the respondent No. 3 has been offered the work for which he is willing to accept at the lowest rate of 19% above SOR. There is no illegality whatsoever in the action of the respondents while allotting the work to the respondent No. 3 contends the learned counsel.

7. On perusal of the records it shows that the main requirement in the NIT is as follows:

"Only experienced Class I contractors of stand and repute should cast tender for Group No. 1. They should also submit experience certificates of having undertaken and completed such type of work from "an Officer not below the rank of an Executive Engineer and/or having executed and completed works not below Rs. 10,00,000 (Rupees Ten Lakhs only) for the last 3 (three) years."

8. The Profile of the Contractors show that the writ petitioner is financially sound and he was recently allotted the work for construction of mushroom Building for Rs. 11 lakhs, he has sufficient experiences in construction and other structures in Minor Irrigation project but no records of ever having completed a Headwork. The Profile of Respondent No. 3 is that he is financially sound and has sufficient experiences in construction of Headwork, and he has successfully completed Brakehi Headwork and has sufficient machinery and equipments. The Profile of the Perform respondent Shri Nagarsingh Sangma, is that he is financially sound but has no record of ever completing a Headwork, he has sufficient machineries and equipments and has completed many big building projects of PWD.

9. The Comparative statement prepared shows that the respondent No. 3 Shri Upendranath Saha, whose rate was 38.40% above is at par with the current SOR of 2000-01. The contractor is an experienced Headwork contractor with sound financial capacity. Considering the escalation of various rates of 1996-97, SOR, there is no compromise with quality and workmanship the allotment of work at 38% above SOR of 1996-97 may be considered by the Tender Committee.

10. On the basis of the above recommendation of the Executive Engineer, the Tender Committee has examined the case of the petitioner and in paragraph 3 of the proceedings of the Committee, the Committee found as follows :

"Construction of Andherkona Headwork including diversion work and approach road (including steel sluice gate)

Tender value : Rs. 120,35,000

SOR = As per MPWD SOR for roads and bridges & E&D works for the Year 1996-97 of Tura Circle,

In all there are 11 (eleven) tenderers in the fray. Sl. 3 & 4 have not renewed their registration at the time of tender, hence, their tenders were treated, invalid. Rate quoted by the remaining tenderers varies from 19% above to 41% above

MPWD, SOR 1996-97. From the contractor's profile furnished by the B.E. (I) concer, it was noted that Sl. 1, 2, 5, 6 & 7 though good and reliable, there were no records to show that they had undertaken any major work including the Headwork in the page. Sl. 8, 10 & 11 were still having pending major works with the Department. Hence, the committee recommended Sl. 9 Shri Upendranath Saha, a good, reliable and financially sound Class I Contractor who had successfully and satisfactorily completed major Headwork in the past, at the lowest quoted rate at 19% above the SOR. The committee further advised that since the recommended rate exceeds 10% above, the matter need be referred to Finance Department for final approval."

11. The above recommendation of the Tender Committee was also duly approved by the Government in the Agriculture Department vide letter, No. IRRI(G) 81/96/Pt.II/135, Dated 26.3.2002 addressed to the Chief Engineer (I), Meghalaya, and on the basis of the State Government's approval the work was allotted to the respondent No. 3 by work order dated 24.4.2002 issued by the Executive Engineer, West Garo Hills, Irrigation Division, Tura.

12. From perusal of the record it shows that the tender of the writ petitioner as well as of the respondent No. 3 and the proforma respondent were examined at various stages by the Executive Engineer concerned, the Tender Committee and also by the Government and, final approval of the Government was obtained. The whole process was made by following the procedures. The Tender Committee consist of high Officials of the Government including the Chief Engineer and the Superintendent Engineer of the Irrigation Department of the Government, with the Commissioner and Secretary, Agriculture, as the Chairman, besides two other experts from the accounts of the Agriculture Department. Therefore, there is transparency in the entire procedure for allotment of the work to the respondent No. 3. The rate allotted was also at the lowest of 19% above SOR, whereas the petitioner has quoted at 21% above SOR. Therefore, there is no arbitrariness or favouritism or capriciousness in the matter of allotment of the work to respondent No. 3. The records produced also shows that the matter was examined as discussed above. When there is no arbitrariness, capriciousness or favouritism, in the process for allotment of work and the procedure was duly followed, the interference by this Court is very limited.

13. The project in which the respondent No. 3 is awarded is a vital project as it relates to Headwork for the Irrigation Project of the Department. The respondent No. 3 having done similar type of works in the same department has the quality and ability to do the same in respect of the work allotted to him in the instant case also. Moreover, he has agreed to do the same at the lowest rate. The issue of the NIT offers an opportunity to all those interested to compete for the contract work and at the same time it also offer opportunity to the Government to choose the best of the competitors on the competitive price without prejudice to the quality of work. The procedure adopted in this case has eliminated favouritism and discrimination in awarding the work to respondent No. 3 and he

was found to be the best bidder and also at the lowest rate. This is in consonance with the public interest. Therefore, there is no illegality in the allotment of the work to the respondent No. 3. Moreover, the Apex Court in the case of W. B. State Electricity Board, Appellant v. Patel Engineering Co. Ltd. and Ors., Respondents, reported in (2001) 2 SCC 451, in paragraph 33 of the judgment has clarified the decision regarding allotment of works as follows :

"33. We may, however, clarify that the appellant is not obliged to award contract to any of the bidders at their quoted price bid. It is always open to the appellant to negotiate with the next lowest bidder for awarding the contract on economically-viable price bid."

With regard to the jurisdiction of this Court to exercise judicial review over administrative action, the law is first settled by the Apex Court in the case of Tata Cellular v. Union of India reported in (1994) 6 SCC 651 which was also reiterated, by the Apex Court in the case of Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, where the Apex Court has laid down the criteria for interference by the Court in administrative action wherein in paragraph 25 of the judgment it has held as follows :

"25. This principle was reiterated in Tata Cellular v. Union of India in which it was, inter alia, laid down that the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made particularly as the Court does not have the expertise to correct administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The Court pointed out that the duty of the Court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers ?
2. Committed an error of law ;
3. Committed a breach of rules of natural justice ;
4. Reached a decision which no reasonable tribunal would have reached; or
5. Abused its powers."

14. Therefore, in view of the law laid down by the Apex Court I am of the opinion that there is no infirmity in the process of allotment of work to respondent No. 3 in which this Court is required to exercise its power of judicial review.

15. For the reasons aforesaid, I find no merit in this petition and accordingly it is dismissed. However, considering the facts and circumstances of the case there will be no order as to costs.