
(2022) 01 CHH CK 0107

In the Chhattisgarh High Court

Case No : Writ Petition (Civil) No. 3774 Of 2021

A.S. Advertisers

APPELLANT

Vs

Municipal Corporation Bhilai

RESPONDENT

Date of Decision : 25-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 226

Citation : (2022) 01 CHH CK 0107

Hon'ble Judges : Arup Kumar Goswami, CJ;N.K. Chandravanshi, J

Bench : Division Bench

Advocate : Anup Majumdar, Fouzia Mirza

Final Decision : Dismissed

Judgement

Arup Kumar Goswami, CJ

Heard Mr. Anup Majumdar, learned counsel for the petitioner.

Also heard Ms. Fouzia Mirza, learned senior counsel assisted by Mr. Sakib Ahmed, learned counsel for the respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for setting aside and quashing the order dated

08.09.2021, whereby, the contract entered into with the petitioner in connection with installation, operation and maintenance of traffic signals and

unipoles was cancelled and all signals and boards erected by the petitioner were directed to be removed within a period of three days.

3. The case presented in the writ petition, in short, is that the petitioner, which is a partnership firm, is engaged in the business of advertisement and it

had responded to a tender issued by the Municipal Corporation, Bhilai, (for short, the Corporation), inviting bids for installation of traffic signals

at various locations under the Municipal area, Zone No. 2, of the Corporation.

4. The Corporation, by an order dated 08.02.2021, offered the petitioner to provide services for installation of traffic signals and unipoles. Consequent

thereto, the Corporation entered into a contract dated 24.05.2021 for a period of five years for installation of traffic signals and unipoles for

advertisement. On the very date of execution of the agreement, no objection certificate from Police authorities was obtained. On receipt of a notice

dated 28.05.2021 from the Executive Engineer, Zone No. 2 to deposit exhibition fee, the petitioner deposited the exhibition fee.

5. On completion of the requisite terms and conditions of the contract, the work order was issued to the petitioner on 14.06.2021. The petitioner had

invested an amount of Rs. 1.25 crores for installation of traffic signals and unipoles. However, on 08.09.2021, the respondent No. 2 cancelled the

contract on the ground that the advertisement display board is not within the standard parameters and is not safe from the traffic point of view and

that there was gross violation of condition Nos. 14 and 15 of the agreement.

6. It is pleaded that none have informed the petitioner about any deviation from the standard parameters while installing traffic signals and unipoles and

that the respondent No. 2 acted on his whims and caprice and the unilateral cancellation of the contract had taken place without giving any opportunity

of hearing to the petitioner and also without taking into confidence the Commissioner of the Corporation.

7. It is urged that the impugned action of the authority is violative of the principle of natural justice and Article 14 and 19 (1) (g) of the Constitution of India.

8. A return was filed by the respondents, by way of preliminary submission, without filing para-wise reply on the ground that preliminary submission

was sufficient to establish that the petitioner is not entitled to the reliefs as claimed by him. It is also stated that the respondents reserved their right to

file a detailed para-wise reply to the petition, if the occasion arises or is directed by the Court.

9. When a return is filed, the answering respondent is required to take all such pleas as may be available and has to deal with the case presented in the

writ petition. The respondents cannot take a chance in the context of adversarial litigation that after arguing on the basis of preliminary submissions

and failing therein, they would seek further opportunity to file a detailed para-wise reply. It is also not understood how the respondents can reserve

their right on their own to file a detailed reply later on. If at all any such recourse is to be taken, appropriate orders have to be obtained from the Court

before filing a return by way of making preliminary submission and reserving liberty to file a detailed para-wise reply later on.

10. It is for the Court, in an appropriate case, to grant further liberty to the respondents to file additional pleadings to bring in further details or better

particulars, but the respondents cannot claim as a matter of right that it will file para-wise reply, if the preliminary submissions fail to support the case.

11. Having said so, we take note of the stand taken in the return filed by the respondents. It is stated that invitation of Expression of Interest, (for

short, EOI) for 19 square spots, was advertised in two local vernacular dailies, namely, Patrika and Nav pradesh on 31.01.2021. On 7.02.2021, four

bidders including the petitioner submitted their offers. As two bidders did not submit relevant documents in respect of Envelope B, their Envelope C

was not opened. As the petitioner had offered highest offer, which is Rs. 10,000/- per square spot per year, his offer was accepted. The financial

offer was presented before the Tender and Purchase Committee and it recommended the matter to be placed for permission for issuance of work

order. A complaint was received in respect of the unipoles installed and on an enquiry conducted pursuant to the receipt of such complaint, it was

found that apart from financial irregularities, the Executive Engineer, who is Zone Commissioner No. 2, executed an agreement dated 24.05.2021 in

violation of the terms and conditions of the EOI and issued the work order dated 14.06.2021 without the approval of the sanctioning authority, which is

the Mayor in Council and the approval of the Commissioner, Municipal Corporation Bhilai, and accordingly, notice dated 08.09.2021 was issued. It is

pleaded that Clause 8 of the agreement is in violation of Clauses 14 and 15 of the EOI and Clause 19 of the agreement is in violation of Clause 26 of

the EOI.

12. On that very date itself, i.e., on 08.09.2021, a show cause notice was issued to the Executive Engineer concerned to submit his explanation with

regard to the irregularities and illegalities committed by him in execution of the agreement and issuance of the work order within a period of three

days. Subsequently, by an order dated 16.09.2021, he was placed under suspension. A complaint was also filed on 16.09.2021 before the Station

House Officer, Supela Bhilai, on the basis of audit report prepared by the Chartered Accountant in connection with irregularities, corruption and huge

loss to the Corporation. It is pleaded that the Executive Engineer colluded with the petitioner and by practising fraud, executed the agreement and

issued the work order.

13. A rejoinder-affidavit was filed by the petitioner to the aforesaid return wherein it is stated that the tender notice was the 3rd tender notice issued

on the subject. It is stated that Clauses of the agreement dated 24.05.2021 would indicate that the approval was obtained by the

Commissioner, Municipal Corporation.

14. Admitting that Clauses 14, 15 and 19 were modified in the contract, it is asserted that such modification was on the demand of the petitioner. It is

asserted that the Commissioner was well aware of the contract and the conditions mentioned therein by the Executive Engineer (Zonal Commissioner)

and that the issue has been raised at the behest of rival groups. The drawings and designs of unipoles and traffic signals submitted by the petitioner

were duly deliberated upon and thereafter only, agreement was entered into with the petitioner. The petitioner had installed four signals and he is

continuing to maintain the same. It is stated that financial offer was opened only when technical offer was found to be compliant and that letter dated

26.03.2021 issued to the petitioner conveys that Municipal Commissioner had given his approval and asked for the agreement.

15. It is stated that the contract for traffic signals for the period of 2016-2021 granted in favour of the petitioner was also cancelled without any

justification and the Corporation had paid maintenance charges in lakhs to some other vendor. No case is set out by the respondents that the Executive

Engineer / the Zonal Commissioner had no authority to award the work and prescribe the terms and conditions of the contract. Role of the

Commissioner is also suspicious inasmuch as no objection was raised by his office prior to receipt of the complaint. The allegation of fraud and mis-

representation was also denied.

16. The learned counsel for the parties have furnished English translation of (i) Clauses 6, 14, 15, 16, 24, 26, 32 and 35 of the EOI, (ii) Clauses 4, 8, 17,

19, 25 and 37 of the agreement and (iii) a comparative chart, which is part of paragraph 11 of the reply of the respondents as well as (iv) letter dated 25.01.2021, which was filed by the petitioner with covering memo dated 21.09.2021.

17. Mr. Anup Majundar, learned counsel appearing for the petitioner, by drawing attention of the Court to the letter dated 25.01.2021, submits that the petitioner had submitted a format for the advertisement and it was indicated therein that the petitioner would be willing to do the work if it is granted the work as per the format of the unipoles for advertisement annexed by the petitioner and therefore, it cannot be said that the petitioner had resorted to any unfair practice. On due consideration, the proposal of the petitioner was accepted by all concerned and then only the agreement was executed and the work order issued in favour of the petitioner. It is submitted that the plea taken that the Executive Engineer acted on his own without obtaining any sanction from any authority is a plea taken for the purpose of this case without any material to substantiate the said allegation. It is also submitted by him that the complaint was engineered by the rival group for its own vested interest. The petitioner having invested huge sum of money, which is to the tune of about Rs. 1.25 crores, the cancellation of the contract arbitrarily without affording any opportunity of showing cause cannot be sustained in law.

18. Ms. Fouzia Mirza, learned senior counsel appearing for the respondents submits that the execution of the contract agreement was in violation of terms and conditions of the EOI and therefore, it cannot be urged that as the agreement is executed, the parties are bound by the terms and conditions of the executed contract. It is submitted by her that without obtaining any approval from the Competent Authority, the Executive Engineer executed the contract agreement and also issued the work order and therefore, he was placed under suspension on 16.09.2021 and subsequently, a charge-sheet was issued against him on 22.11.2021. It is submitted that while the EOI required that the size of the standard advertisement board would not be more than 3 meter x 1 meter and because of safety concerns, the same is required to be installed at 4.50 meters from the road, in the agreement, the size of the Board was altered to 6 x 6 meters and installation of the Board at 7 meters. Similarly, the penalty clause was also altered to the advantage

of the petitioner by deviating from what was stipulated in the EOI. It is submitted that the entire exercise was tainted and the award of contract,

cannot, in any view of the matter, be justified. By placing the relevant records and drawing the attention of the Court to pages 28 and 29 of the

records, she submits that it is manifest from the above that the concerned file was not sent to the Commissioner. Ms. Mirza submits that setting aside

of the order of cancellation dated 08.09.2021 would result in an illegal order. She has placed reliance on the decisions of Honâ??ble Supreme Court

in the cases of Gadde Venkateswara Rao v. Government of Andhra Pradesh and Others, reported in AIR 1966 Supreme Court 828 , Raj Kumar Soni

and Another v. State of U.P. and Another, reported in (2007) 10 SCC 635 and Municipal Council, Neemuch v. Mahadeo Real Estate and Others,

reported in (2019) 10 SCC 738 .

19. We have considered the submissions of learned counsel for the parties and have perused the materials on record as well as the file produced by

Ms. Mirza.

20. AtÂ pageÂ 10Â ofÂ theÂ writÂ petition,Â thereÂ isÂ anÂ EOIÂ dated 11.01.2021, by which offers were called for on or before

27.01.2021 from entities as indicated therein with regard to the subject matter of the present writ petition. At page 11, similar EOI dated 29.01.2021,

whereby, offers were invited on or before 08.02.2021. In the said EOI, it is indicated that the same has been issued for the 3rd time. In the pleadings,

no such details have been given but it would appear that for the subject matter of the present tender, notice was issued earlier on two occasions.

21. In the writ petition, it is stated that EOI was issued for Municipal Area, Zone No. 2. In the reply of the respondents, it is stated that the same was

for installation of traffic signals in various locations under the Municipal Corporation, Bhilai. A perusal of the EOI dated 29.01.2021 would go to show

that the EOI was issued in respect of Bhilai Municipal Corporation Area and not to Zone No. 2 only. It was indicated that the terms and conditions

can be obtained from and deposited in the office of Executive Engineer, Zone No. 2 of Bhilai Municipal Corporation and that tenders will be

scrutinized in the office of Executive Engineer, Zone No. 2 of Bhilai Municipal Corporation.

22. It appears that the traffic signals are to be set up and erected by the

successful bidder and he would be allowed to recover cost of signals by generating income by flashing and displaying advertisement.

23. Clauses 6, 14, 15, 16, 24, 26, 32, 34, 35 of translated version of the EOI, read as follows:

â?? Clause 6 : The work of installation of traffic signal would have to be done as per the drawing/design approved by Commissioner Municipal Corporation Bhilai.

Clause 14: The size (square) of the advertisement board which would be displayed by the agency on standard traffic pole would not be more than 3 meter x 1 meter and in view of the safety the advertisement board would be installed at the height of 4.50 meter from the road.

Clause 15: The advertisement board on the cantilever traffic pole, by the agency would be installed at the maximum 3 meter x 1 meter and at the height of approximately more than 7 meters from the traffic, so that it should not cause any type of hindrance to the traffic.

Clause 16 : All advertisement boards/patal should be installed by the agency as per the safety norms and in the event of fall etc. of any of the above the second party would be responsible for the accident.

Clause 24 : Municipal Corporation Bhilai reserves the right to cancel the advertisement right (NOC) given in the event of non-compliance of the prescribed terms and conditions by the agency.

Clause 26 : Maintenance of Traffic Signals etc. would be done continuously by the agency and in case of the traffic signals being off, it would be started as soon as possible within 24 hours. If signals remain closed for more than 24 hours then penalty of Rs. 1000/- per hour would be imposed, which has to be deposited by the agency within a working day or else further proceedings for the cancellation of the agreement would be initiated.

Clause 32: In case of any dispute or objection at any intersection/square, the offer may be partially or fully cancelled and in that situation the decision of Commissioner would be final and binding.

Clause 35: The Agency would have to mandatorily follow the laws and bye-laws, decisions and the instructions given by the Government from time to time.â??

24. Clauses 4, 8, 17, 19, 25, 37 of translated version of the agreement, read as

follows:

Clause 4: The work will be done by the agency, as per the terms and conditions on the basis of structural design of the Unipole for the advertisement which is attached with the tender. If a suitable place would not be found at any of the squares and intersections for the installation for the installation of the unipole then the permission would be granted by Municipal Corporation to install the Unipole at the place selected by the Agency under the jurisdiction of Municipal Corporation.

Clause 8: The agency as per the map attached with the tender, would at every square, install 4 numbers of unipole (Double Side) signals. Size (square) would not be more than 6 x 6 meter and in view of safety advertisement, board would be installed at a height of 7 meters from the road, so that there should not be any obstruction in the traffic.

Clause 17: The Municipal Corporation Bhilai reserves the right to cancel the advertisement rights (NOC) given in the event of non-compliance of prescribed conditions by the agency.

Clause 19: Maintenance etc. of traffic signals would be continuously done by the agency. In the event of signals remaining off, then the maintenance work would be started as soon as possible within 24 hours. If the signals remain off for more than 24 hours then a penalty of Rs. 100/-per hour would be levied which has to be deposited by the agency within a working day, otherwise the contract would be cancelled and further proceeding would be initiated.

Clause 25 : In case of any dispute or objection at any square or intersection, the offer can be partially or completely terminated and in this situation, the decision of Commissioner would be final and valid.

Clause 37: The agency would have to comply with the applicable and prevalent Rules, Acts, Orders, Decisions, Resolutions of the Central Government, State Government, Local Bodies and Municipal Corporation from time to time, the fee to be imposed in future and the surcharge etc. has to be paid compulsorily.

25. A perusal of the clauses above would go to show that there is vast difference in respect of the size of the advertisement board. While Clause 4 of the EOI permitted the board to be 3 meters x 1 meter, which is equivalent to 3

square meters, in the agreement it was increased to 6 meters x 6

meters, which is equivalent to 36 square meters. Similarly, penalty has been reduced in Clause 19 of the agreement dated 24.05.2021 by 10 times

inasmuch as while the EOI fixed a penalty of Rs.1,000/- per hour if the signal remains closed for more than 24 hours, the same was reduced to

Rs.100/- per hour. The height for installation of the board was also increased to 7 meters in the agreement from the permissible limit of 4.50 meters

from the road due to safety considerations as indicated in the EOI.

26. When the EOI laid down the parameters and the terms and conditions, the same have to be scrupulously complied with.

27. It appears that the petitioner had given a counter-offer with regard to the size of advertisement boards and yet, in the letter dated

25. 01.2021, it was indicated by the petitioner that the petitioner would do the work in terms of Clause 14 of the tender notice which laid down the size

of the board and the height of installation. Even if it is assumed for a moment that the Executive Engineer had the authority to award the contract, he

could not have executed a contract with the petitioner, fundamentally changing the terms and conditions from the EOI.

28. A perusal of the file produced by Ms. Mirza would go to show that the file was not sent to the Commissioner of Bhilai Municipal Corporation for approval.

29. In *Gadde Venkateswara Rao (supra)*, the Honâ??ble Supreme Court observed that High Court was right in refusing to exercise its extra-ordinary

discretionary power under Article 226 of the Constitution of India, as if the High Court had quashed the order, it would have restored an illegal order

inasmuch as it would have given the health center to a village contrary to the valid resolutions passed by the Village Panchayat Samithi.

30. In the same vein, the Honâ??ble Supreme Court in *Raj Kumar Soni (supra)*, held that even if there was any technical violation of rules of natural

justice, that was not a fit case for interference, as such interference would result in restoration of an illegal order.

31. In case of *Municipal Council, Neemuch (supra)*, the Honâ??ble Supreme Court observed that interference by the High Court would be

warranted only if the decision impugned is vitiated by an apparent error of law i.e. when the error is apparent on the face of the record and is self-

evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at such a decision. It has been reiterated that the test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice.

32. The contract agreement dated 24.05.2021 entered into by respondent No. 3 with the petitioner and the work order issued violate principles governing distribution of public largess. Entering into a contract in gross deviation of the terms and conditions of the EOI and resultant issuance of the work order cannot be countenanced as the same is against public interest. It is in that circumstance, notice dated 08.09.2021 was issued cancelling the contract.

33. Assuming that there was breach of natural justice or any other legal infirmity in issuing the notice dated 08.09.2021, we are of the considered opinion that this Court ought not to exercise its discretion to set aside the notice dated 08.09.2021 as setting aside will result in resurrection of the contract agreement dated 24.05.2021 and the work order dated 14.06.2021, which are patently illegal.

34. Taking that view, the writ petition is dismissed.

35. We, however, hasten to add that we have not expressed any opinion on the allegations of fraud and corruption as articulated by Ms. Mirza, as a disciplinary proceeding as well as an FIR / complaint are pending. We place it on record that we have decided the case only on the basis of legal principles governing award of contract.

36. No cost.