(2017) 01 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 47201 of 2015

Asha Jyothi Transport APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 02-01-2017

Acts Referred:
Constitution of India, 1950 — Article 14, Article 226

Citation : (2017) AIR(Karnataka) 90

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. These petitions are filed by the transport contractors. They have called into question the letter of intent issued to the respondent Nos.6 and 7 for transporting Bharath Petroleum Corporation Limited (BPCL) packed LPG cylinders. It is their case that they have been transporting the packed LPG cylinders to various destinations for nearly 21 years and without any black mark on their transport service.

2. Sri Vivek Reddy, the learned Senior Counsel appearing for Sri Mudit Kundila for the petitioners submits that the tender process adopted by the official respondents is illegal, arbitrary and opposed to the principle of natural justice. He submits that the respondent Nos.6 and 7 were permitted to offer additional trucks. He submits that what the official respondents have done amounts to colourable exercise of power. He submits that once the negotiations in the tender process take place, the finality has to be marked about the proceedings.

3. He complains of the violations of the provisions of the tender notification. He read out Clause 42 g), j), portion below j) and clause 3f, General Instructions 8 and 9 of the tender notification.

" 42. Evaluation criteria/method and general guideline for allocation of job:

(g) If the above process still results in not meeting the Corporation''s full requirement of trucks, then negotiations/counter-ofter exercise may be conducted with the balance parties in their original order of ranking till the full requirement of trucks is met.

(i) The contract will be awarded in the proportion of availability of trucks from the transports after considering the allotment of trucks as per ranking in the slabs. Notwithstanding anything contained elsewhere in this tender in the event that Corporation received the same rate for a particular slab/distance slab W.R.T. any source/loading base by a group of bidders, the Corporation reserves the right to believe that these bidders have formed a cartel and the rate quoted as '' cartel rate- and may accept or reject or not reckon such rates/offered trucks/ rankings etc., of such offers. In such cases, the Corporation also reserves the rights to follow the negotiation process with such bidders if deemed fit and amend the evaluation criteria best suited to the interest of the Corporations.

3. Ownership of Truck offered by Tenderers:

(f) Proposed Category - Prospective transporters who wish to enter into transportation job of LPG cylinders and presently do not own any truck at the time of floating of the tender, can participate in the tender under '' Proposed Category- with the following conditions.

* Their offer will be limited to maximum of two proposed owned trucks.

* The EMD for the proposed category would be Rs.2,00,000/- (Rupees two lakhs only).

* The truck shall conform to all statutory requirements & BPCL safety norms.

* The truck should bear the registration in the name of the tenderer or prospective transporters.

* Within 45 days of issuance of LOI, they will own a truck and produce the same for physical verification.

* Bidder cannot offer proposed & existing truck together under this category.

8. Submission for Bids :- Bid along with all the requisite copies of documents as mentioned in Annexure-A should be uploaded in the e-tendering platform. Balance documents as mentioned in check list (Pro forma II) to be submitted in hard copies along with EMD (DD/Pay Order) at the office as per the address mentioned in clause No.13 of General Terms and Condition of Tender.

9. Vendors are advised in their own interest to ensure that their bids are submitted in e-Procurement system well before the closing date and time of bid. If the vendor intends to change/revise the bid already submitted, they shall have to withdraw their bid already submitted, change/revise the bid and submit once again. In case vendor is not able to complete the submission of the changed/ revised bid within due date & time, the system would consider it as no bid has

been received from the vendor against the tender and consequently the vendor will be out of contention. The process of change/revise may do so any number of times till the due date and time of submission deadline. However, no bid can be modified after the deadline for submission of bids.''"

4. He relies on the Apex Court''s judgment in the case of B. S. N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. and others, reported in (2006) 11 SCC 548. Paragraph No.66 : (AIR 2007 SC 437, para 68) of the said decision read out by him is as follows:

" 66. We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under :

(i) if there are essential conditions, the same must be adhered to;

(ii) if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully,

(iii) if, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing;

(iv) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction;

(v) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;

(vi) the contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority;

(vii) where a decision has been taken purely on public interest, the court ordinarily should exercise judicial restraint.''"

5. Sri Prabhuling K. Navadgi, the learned Additional Solicitor General appearing on behalf of the official respondents submits that the tender proceedings are conducted in a transparent and unbiased manner. He submits that out of 15 bidders, 2 bidders offered floor price and were treated as L1 bidders. 4 bidders agreed to match L1 rates. The remaining 9 bidders, who are the petitioners were

not prepared to revise their original rates quoted by them. As they expressed their unwillingness to reduce the price, the letter of intent is issued to the respondent Nos.6 and 7. He submits that the petitioners quoted Rs.9.39/- for transporting 1 cylinder from 0 to 50 kilometers. For the said trasportation-work, the respondent Nos.6 and 7 quoted Rs.8.67/-.

6. The learned Additional Solicitor General submits that the finalization of the tender is strictly in accordance with the clause 42f of the tender notification, which reads as follows;

'' 42. f) If the requirement of trucks is not met by say L-1, L-2, L-3, L-4, L-5 transporters then negotiations will be carried out with the L-1 party based on the lowest rates received in each Slab in the tender. On finalization of rate with L-1 party, the counter offer of the lowest rate will be given to L-2 to L-5,....transporters. In this process, in case any tendered between L-2 to L-5,..... say L-3 & L-4 transporters refuse to accept the lowest rate the corporation reserves the right to give counter offer of the lowest rate to other high ranking parties in sequence e.g. L-6 & L-7,.....till the full requirement of trucks is met. In the process the original L-3 & L-4 ranking parties will not get any contract as they have refused to accept the BPCL counter offer rate. In such case, the award of job will be distributed to all agreeable transporters in sequence of their ranking keeping in view the agreed lowest rates in each Slab up to the requirement/availability of the trucks."

7. He read out clause 31 of the tender notification to advance the submission that the Tender Accepting Authority is not obliged to give any reason or pass a speaking order for rejecting the bid of a party. The said clause reads as follows:

" 31. BPCL''s right for acceptance/Rejection of Tender:

The Corporation reserves the right to accept or reject any or all tenders in whole or in part and/or to divide the work amongst tenderers in the manner considered suitable by the Corporation at the Corporation''s sole discretion and without assigning any reason thereof. No counter terms and conditions will be accepted."

8. He submits that the petitioners have formed a cartel and tried to arm twist the BPCL. He submits that if the petitioners- request are entertained, the same would result in the disruption of transportation and supply of LPG to the consumers. He submits that the allegation that the petitioners have formed the cartel does not ipso facto attach any stigma to them. They can still participate in the tenders, the notifications for which would be issued in future.

9. He relies on the Hon''ble Supreme Court''s decision in the case of Tamil Nadu Generation and Distribution Corporation Ltd. (Tangedco) and others v. CSEPDI - Trishe Consortium and others, reported in (AIR 2016 SC 4879) passed in Civil Appeal Nos.10182-10183/2016 disposed of on 18-10-2016. Paragraph No.37 of the said decision read out by him is as follows:

'' 37. Before parting with the case we are constrained to add something. We do so with immense pain. The Respondent, before finalization of the financial bid submitted series of representations and seeing the silence of the owner it knocked at the doors of the writ court which directed for consideration of the representations. We are disposed to think that the High Court at that stage should have exercised caution. If the courts would exercise power of judicial review in such a manner it is most likely to cause confusion and also bring jeopardy in public interest. An aggrieved party can approach the Court at the appropriate stage, not when the bids are being considered. We do not intend to specify. It is appreciable the owner in certain kind of tenders call the bidders for negotiations to show fairness trasparently. But the present case is not a one of such nature. Once the price bid was opened, a bidder could not have submitted representations on his own and seek a mandamus from the Court to take certain aspects into consideration. We have stressed this aspect only to highlight the role of the Court keeping in mind the established principle of restraint.'"

10. The submissions of the learned counsel have received my thoughtful consideration. The petitioners are content seeking the writ of certiorari for quashing the tender, proceedings in respect of respondent Nos.6 and 7. For the reasons best known to themselves, they have not chosen to challenge the letter of intent issued to the respondent Nos.6 and 7.

11. The scope for interference is rather limited. As held by the Apex Court in the case of Jagdish Mandal v. State of Orissa and others, reported in (2007) 14 SCC 517, the tender and award of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, the courts will not interfere by exercising the power of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. Power of judicial review will not be invoked to protect the private interest at the cost of public interest.

12. In the instant case, admittedly the petitioners offer is higher than the offer made by the respondent Nos.6 and 7. Whereas the said respondents have offered the rate of Rs.8.67/-, the petitioners have offered Rs.9.39/- for transporting one cylinder by road from 0 to 50 kilometers. It is in public interest that the rate, which is the lowest, is accepted, other things remaining the same. It is also to be noticed that the petitioners were given the fair and full opportunity to revise and reduce the rate quoted by them.

13. The petitioners indicated their unwillingness to reduce the rates, as is evident from their letters at Annexures - R2 to R10. The petitioners have not disclosed the communication of their unwillingness to reduce the rate in the memorandum of the writ petition.

14. I do not see any arbitrariness or illegality on the part of the official respondents. If the respondents were to accept the higher rate quoted by the petitioners, that would have gone against the public interest for which act the

decision-makers would have rendered themselves answerable.

15. Only because the petitioners have been giving the transportation services for BPCL for the last 20 - 21 years, no vested right has accrued to them to demand that they must be continued to transport the packed L.P.G.s. When the respondent authorities have acted in good faith, with good intentions and in public interest, their decisions cannot be belittled, as observed by the Apex Court in the case of Pathan Mahammed Suleman Rehmatkhan v. State of Gujarat and others, reported in (2014) 4 SCC 156.

16. In the result, I dismiss these petitions. No order as to costs.

17. Now that the main matter itself is disposed of, nothing survives for any consideration of I.A.2/2016 for vacating. The same is dismissed as having become infructuous.

