(2016) 01 RAJ CK 0062

In the Rajasthan High Court

Case No : SB Civil Writ Petition No. 641/2014

Ashok Kumar Meena APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 01 RAJ CK 0062

Hon'ble Judges : Bela M. Trivedi, J.

Bench : Single Bench

Advocate : R.K. Goyal, for the Appellant;

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—1. The petition has been filed by the petitioner under Article 226 of the Constitution of India challenging the order dated 21/23.12.2013 (Annex. 9) withdrawing/cancelling the letter of intent issued in favour of the petitioner.

2. The short facts giving rise to the present petition are that pursuant to the advertisement dated 29.2.12 (Annex. 1) issued by the respondent - Indian Oil Corporation inviting applications for appointment of the Rajeev Gandhi Gramin LPG Distributorship, the petitioner had applied for the same under the category of Scheduled Tribe candidate for village Pragpura, Tehsil Kotputli, District Jaipur. Thereafter the respondents informed the petitioner vide letter dated 31.12.12 (Annex. 2) regarding his selection for the distributorship. According to the petitioner, thereafter the Controller of Explosives, Faridabad also approved the lay out and construction plan of the proposed storage facilities as per the letter dated 6.5.13 (Annex. 6), however vide letter dated 7.11.13 (Annex. 7), the Chief Area Manager, informed the petitioner that the letter of intent issued in his favour was proposed to be withdrawn on the grounds mentioned therein, and called upon the petitioner to submit his explanation, if any, in that regard. The petitioner therefore submitted the reply dated 12.11.13 (Annex. 8). However, the

concerned respondents have cancelled/withdrawn the letter of intent with immediate effect vide the letter dated 21st/23rd December, 2013 (Annex. 9).

3. It is sought to be submitted by the learned counsel Mr. R.K. Goyal for the petitioner that the respondents relying upon the so-called vigilance report have cancelled the letter of intent, without supplying the copy of such report to the petitioner. According to him the petitioner had given detailed explanation to the show cause notice dated 7.11.13 contending inter alia that earlier the alternate land offered by him was gifted by his father vide registered gift-deed dated 9.3.12 and the same was entered in the revenue record in the name of the petitioner on 28.3.12, however subsequently the partition had taken place between the co-tenant of the entire land and the said land had fallen into the share of his father. He also submitted that there was no contradiction in facts with regard to the ownership of land offered by the petitioner and the respondents had acted arbitrarily at the instance of the respondent No. 5, who had also applied for the said distributorship.

4. However, the learned counsel Mr. Samit Bishnoi for the respondent Nos. 2, 3 and 4 submitted that there are disputed questions of facts involved in the writ petition as regards the ownership of the land shown by the petitioner and therefore this court should not entertain the same. Relying upon the decision of the Supreme Court in case of Sanjay Kumar Shukla Vs. Bharat Petroleum Corporation Ltd. & Ors. , (2014) 3 SCC 493, he submitted that the court while exercising extraordinary jurisdiction should be extremely cautious in interfering with decision taken by the respondents in the contractual matters. He further submitted that on the basis of the complaint received by the Vigilance Department of the respondents, it was found that the initial land shown by the petitioner was not suitable and the alternate land shown by him did not belong to the petitioner on the date of the application made by him and therefore his letter of intent was withdrawn.

5. Having regard to the submissions made by the learned counsels for the parties and to the documents on the record, it appears that one of the conditions mentioned in the advertisement (Annex. 1) issued by the respondent -IOC was that the candidate should own the plot with the minimum area of 20x24 meters for the construction of the storage godown, and that if it was in the joint name of the family members, the candidate was required to submit the consent letter of every co-owner. It was also stipulated that such plot should be free from any overhead transmission lines or telephone lines. So far as the facts of the case are concerned, it appears that the land shown by the petitioner as owned by him alongwith the application did not belong to him exclusively and there was a high tension line passing over the said land. Therefore the said land having not been found suitable, the petitioner had shown alternative land, which according to the respondents was not registered in his name on the date of his making application. It is also stated by the respondents in their reply that the said land was shown by another applicant as his land with NOC of other co-owners. The

said fact was highly disputed by the counsel for the petitioner. However, from the reply dated 12.11.13 given by the petitioner to the show cause notice (Annex. 8), it appears that the contradictory stand was taken by the petitioner as regards the status and ownership of the land shown by him in his name. The learned counsel for the petitioner has failed to show as to how the alternate land shown by him was of his exclusive ownership, when as per his own reply it belonged to the Joint Hindu Family of his father. In the reply, the petitioner himself has admitted categorically that the said land did not belonged to his family unit at the time of application or any time thereafter. Under the circumstances, there being disputed questions of facts involved in the petition and the petitioner having also failed to show that the alternate land was of his ownership on the date of application made by him for the distributorship, this court is not inclined to entertain the present petition.

6. As per the settled legal position, the court exercising jurisdiction under Article 226 should be very cautious in interfering with the decisions of the respondents in contractual matters. In this regard, a very pertinent observations made by the Apex Court in case of Sanjay Kumar Shukla Vs. Bharat Petroleum Corporation Ltd. & Ors. (supra) are required to be reproduced, which read as under:-

"17. In Air India Ltd. Vs. Cochin International Airport Ltd. & Ors., there was a further reiteration of the said principle in the following terms:-

"7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in Ramana Dayaram Shetty v. International Airport Authority of India, Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India, CCE v. Dunlop India Ltd., Tata Cellular v. Union of India, Ramniklal N. Bhutta v. State of Maharashtra and Raunaq International Ltd. v. I.V.R. Construction Ltd. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by malafides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."

(emphasis supplied)

18. Similar reiteration is to be found in Master Marine Services (P) Ltd. Vs. Metcalfe & Hodgkinson (P) Ltd. & Anr.; Tejas Constructions and Infrastructure Private Limited Vs. Municipal Council, Sendhwa and Another and several other pronouncements reference to which would only be repetitive and, therefore, is best avoided.

19. We have felt it necessary to reiterate the need of caution sounded by this Court in the decisions referred to hereinabove in view of the serious consequences that the entertainment of a writ petition in contractual matters, unless justified by public interest, can entail. Delay in the judicial process that seems to have become inevitable could work in different ways. Deprivation of the benefit of a service or facility to the public; escalating costs burdening the public exchequer and abandonment of half completed works and projects due to the ground realities in a fast changing economic/market scenario are some of the pitfalls that may occur."

7. In the aforestated factual and legal premises, the court does not find any merits in the present petition. The petition is accordingly dismissed. By this order, the stay application also stands dismissed.

