
(2008) 04 DEL CK 0055
In the Delhi High Court
Case No : Writ Petition (C) 8090 of 2007

Ashwani Garg

APPELLANT

Vs

N.D.M.C.

RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Citation : AIR 2008 Delhi 145

Hon'ble Judges : T.S. Thakur, J;Siddharth Mridul, J

Bench : Division Bench

Advocate : Anusuya Salwan, for the Appellant; Arvind Shah, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—The petitioner is a contractor by profession. He has, in this petition, assailed the validity of Clause 17 of the Notice Inviting Tender (NIT), issued by the respondent-New Delhi Municipal Council (NDMC), according to which any contractor who has a near relative posted as a Divisional Accountant or as an officer in any capacity between the grades of Engineer in Chief and Junior Engineer in the NDMC is not eligible.

2. The petitioner argues that the condition aforementioned offends his fundamental right to carry on his trade and profession guaranteed under Article 19(1)(g) of the Constitution of India. A similar question arose for consideration before a Division Bench of this Court in S.N. Engineering Works Vs. Mahanagar Telephone Nigam Ltd., . The Court was in that case examining a similar disability arising in terms of a tender condition stipulated by the MTNL. As in the present case, the tender condition stipulated by the MTNL also stated that a contractor would be ineligible for submitting a tender in case any of his near relative was posted as JAO/AAO/AO or an officer in any capacity between the grades of SE and AE, both inclusive. The question, Therefore, was whether the said condition was vocative of the fundamental right guaranteed to the petitioner/contractor to carry on his profession as a contractor. Relying upon the decisions of the

Supreme Court in C.K. Achuthan Vs. The State of Kerala and Others, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab, , State of Madras Vs. V.G. Row, and Naraindas Indurkha Vs. The State of Madhya Pradesh and Others, , the Division Bench held that the condition under challenge was not offensive to Article 19(1)(g) of the Constitution of India. The Court observed:

It follows that the petitioners were not entitled to bid tenders with the MTNL. Even at the risk of repetition we may state and sum up that the petitioners have not been totally prohibited from carrying on the activity of digging ducts, trenching, laying cable lines and pulling cables through ducts and allied works. All that the respondent has done is to restrain itself from entering into the contract with such contractors as have their relations of defined category serving in the MTNL. As the test of eligibility is to be applied on the date of bidding the tenders and maintained throughout the execution of the work under the contract, the question whether such relation in the MTNL has actually influenced the tender or the work is immaterial. What is sought to be achieved is avoiding the possibility of such influence being exercised and maintaining fairness and neatness in the dealings of MTNL. The restriction can be imposed by an executive fiat and is neither arbitrary nor unreasonable. It does not offend Art. 14 of the Constitution. It satisfies the test laid down by the Supreme Court in the State of Madras v. V.G. Rao (Supra)

3. The above decision was then followed by a Single Bench of this Court in Hindustan Trading Corpn. and M/s. United Engineers Vs. MTNL and Others, . There also a similar question had fallen for consideration of the Court and the stipulation contained in the NIT assailed as being offensive to Article 19(1)(g).

4. In the light of the above two decisions which are directly on the point, we see no room for taking a different view. The argument that, since the prohibition is total the option of prescribing a lesser alternative should have been explored, has not impressed us. The prohibition, in our opinion, is not total as argued by the learned Counsel. It is not as though the petitioner is totally barred from carrying on his profession as a contractor. It is only qua contracts in the NDMC where the petitioner's brother is working as a Junior Engineer that the petitioner falls within the purview of the disabling provision contained in the NIT. The petitioner is indeed free to carry on his profession as a contractor in respect of other contracts offered by any government or non-governmental agency.

5. There is no merit in this writ petition which fails and is hereby dismissed but in the circumstances without any order as to costs.