

(2005) 01 KAR CK 0045

In the Karnataka High Court

Case No : Writ Appeal No's. 4506 to 4510 and 4511 to 4513 of 2004

Atul Engineering Udyog

APPELLANT

Vs

Kudremukh Iron Ore Company Limited

RESPONDENT

Date of Decision : 05-01-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2005) ILR (Kar) 1039 : (2005) 2 KarLJ 12 : (2005) 1 KCCR 538

Hon'ble Judges : N.K. Sodhi, C.J;B. Padmaraj, J

Bench : Division Bench

Advocate : Nagananda for Sundaraswamy Ramadas and Anand, for the Appellant; K.C. Shivasubramanian, for common caveator-Respondent-1, N. Devadas, Sr. Central Government Standing Counsel for common Respondents-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, C.J.—Kudremukh Iron Ore Company Limited (for short, "the Company") is a Government of India enterprise and is engaged in the business of mining and processing of iron ore. High chrome cast steel grinding balls are used by the Company for the purpose of grinding iron ore and these are put in a cylindrical drum (ball mill) along with pre-ground iron ore and with the rotation of the ball mill the iron ore gets ground to the desired fitness. These balls are made of iron alloyed with chromium and other elements. The balls of specified quality and hardness wear out slowly resulting in lower cost for grinding and better output. High chrome cast steel grinding balls is a critical item for the operations of the Company at its concentrator plant and it requires these balls in large quantities. The quality of the grinding balls used has an impact on the quality of production and output. The Company has large export commitments and if supplies are not adhered to as per the delivery time schedule, it has to pay huge penalties besides losing reputation in international market apart from, losing foreign exchange. Before an order is placed for the supply of these balls, the Company requires the manufacturers to participate in marked balls test in its

semi-autogenously mills and ball mills to assess the performance of their grinding media for its future reference and for including their names in the bidders list. This test is held by the Company from time to time and those who successfully participate in it are included in the bidders list and this only indicates that those included in the list are capable of manufacturing this important ingredient. Once the bidders list is prepared, the Company floats limited tenders requiring those in the list to bid through sealed tenders for the supply of the aforesaid balls as required by it. It does not risk considering the tenders from suppliers which do not have the capacity to supply the required quantity because if its concentrator plant were to stop even for a day for want of these grinding balls, the production loss would be about Rs. 1.75 crores per day.

2. In March 1999, the company issued a global tender notice which was an invitation for participation in marked balls test. The relevant part of this notice reads as under:

"INVITATION FOR PARTICIPATION IN MARKED BALLS TEST

We invite interested parties to participate in Marked Balls Test in our semi-autogenously mills and ball mills to assess the performance of your grinding media for our future reference and for considering for inclusion in our bidders list".

Amongst others, the appellant which is a partnership firm sent its application for participating in the test and was successful therein. In response to an enquiry from the Company the appellant produced the "Permanent Enlistment Certificate" along with the Registration Certificate issued to it by the National Small Scale Industries Corporation Limited, Kanpur, with which the appellant is registered as a small scale unit making it eligible for participation in the Central Government stores purchase programme. The registration certificate, amongst others, pertained to cast hyper steel and high chrome grinding media casting and mentioned 60 metric tons per month as the quantitative capacity of production of the appellant.

3. The Company required 1300 MT of high chrome cast steel grinding balls with option for additional 600 MT to be supplied at 200 MT per month. On 31-7-2003, 26-9-2003 and 7-1-2004 it floated limited tenders and made purchase enquiries from some Indian parties requiring them to send sealed tenders in duplicate for the supply of specified quantity of high chrome cast steel grinding balls for its ball mills installed at the concentrator plant at Kudremukh. Sealed tenders were also invited from some overseas suppliers. No such offer was made to the appellant. When the appellant came to know that 3 Indian parties along with some overseas suppliers had been invited to participate in the tender for the supply of high chrome grinding balls and that it had not been permitted to participate in the tender, it filed Writ Petition No. 4937 of 2004 in this Court challenging the action of the Company as arbitrary and violative of Article 14 of the Constitution. It is alleged that even though the appellant had successfully

participated in the mark ball test, the Company did not intentionally issue to it tender documents with a view to prevent it from participating in the bid. It is further alleged that limited tenders had been issued only to a few selected parties with the intention of favouring them. It was contended before the learned Single Judge that the action of the Company was in violation of the instructions issued by the Central Vigilance Commission requiring that all pre-qualifications, evaluation/exclusion criteria, etc., which any organisation wishes to adopt should be made explicit at the time of inviting tenders. It was also urged that the Company failed to put the tender notice on the website thereby denying an opportunity to the appellant and several others from participating in the tender enquiry and this according to the appellant was also in violation of the instructions of the Central Vigilance Commission. The writ petition was contested by the Company and all the allegations made in the writ petition were controverted. It was pleaded that even though the petitioner had successfully participated in the marked balls test it did not have the capacity to supply 200 metric tons of balls per month and it was for this reason that it was not allowed to participate in the tender process. The Company also averred in its written statement that as and when there is a requirement for supply of only 50 MT per month, the appellant will also be considered for such tender. On a consideration of the rival stands taken by the parties, the learned Single Judge came to the conclusion that the appellant did not possess the capacity to supply the requisite quantity of material required by the Company and therefore its action in not allowing the appellant to participate in the tender enquiry could not be faulted with. As regards the violation of the instructions issued by the Central Vigilance Commission, the learned Single Judge found that those were issued subsequent to the tender enquiry made by the Company and therefore, those instructions were not applicable. Consequently, the writ petition was dismissed. It is against this order that the present writ appeal has been filed.

4. We have heard the learned Counsels for the parties. The arguments raised before the learned Single Judge have been reiterated before us and it was strenuously urged on behalf of the appellant that the Company acted arbitrarily in not allowing the appellant to participate in the tender enquiry. The learned Senior Counsel took us through the instructions issued by the Central Vigilance Commission and contended that the action of the Company in not putting on the website the tender enquiry was in contravention of the instructions and that the Company favoured only a handful of suppliers to whom the tender enquiries were sent. We have given our thoughtful consideration to the submissions made by the learned Senior Counsel appearing for the appellants and find no merit in any of the these submissions. We have on record the Registration Certificate issued to the appellant by the National Small Scale Industries Corporation Limited, Kanpur. A perusal of this certificate leaves no room for doubt that the total quantitative capacity of the appellant to manufacture high chrome cast steel grinding balls is 60 metric tons per month. It is not in dispute that the requirement of the Company was for the supply of 1300 metric tons of these

balls with option for additional 600 metric tons to be supplied at 200 metric tons per month. The Company was obviously looking for a manufacturer which could manufacture more than 200 metric tons of material per month. The appellant did not fit into the requirements of the Company and therefore no tender enquiry was made from it. In this view of the matter, the action of the Company in not making a tender enquiry from the appellant cannot be said to be arbitrary. It may be mentioned that the Registration Certificate showing its capacity to manufacture the required material per month was produced by the appellant in pursuance to an enquiry made by the Company. Moreover, this is not a case where the Company can be said to have taken a decision without verification of facts. The Company had inspected the foundry of the appellant on 17-7-2003 and examined the facilities available and it was satisfied that the appellant could supply only 50 metric tons of high chrome grinding balls per month though its production capacity was found to be 60 metric tons per month. As already observed, the high chrome grinding balls is a very critical item for its operations and therefore, the Company could not take the risk of making a tender enquiry from a manufacturer whose capacity to manufacture was much less than the requirements of the Company. It was for this reason that the Company decided not to issue the tender enquiry to the appellant and this reason stands recorded in the internal note sheet of the Company, a copy of which was produced before the learned Single Judge. We are, therefore, satisfied that the action of the Company could not in any way be said to be arbitrary or irrational so as to warrant interference by this Court.

5. The learned Senior Counsel for the appellant laid great stress on the fact that the Company did not put its tender enquiry on the website and therefore violated the instructions issued by the Central Vigilance Commission. Reference in this regard is made to the instructions issued as per letter dated 2nd July, 2004 wherein the Central Vigilance Commission had clarified that the organisations where goods are procured through open tender system and there is urgency and wide publicity could not be given in newspapers because of time constraint, the short term tender should be put on the website of the Department. These instructions were issued long after the Company had made the tender enquiries from amongst the suppliers on its bidders list. These instructions would not therefore apply to the case in hand. It is true that these instructions were made applicable even to the limited tenders as are floated by the Company but those instructions too had been issued after the Company had made tender enquiries. We do not think that the Company violated any instructions issued by the Central Vigilance Commission and in case the appellant feels that there has been violation of any such instructions it could approach the Central Vigilance Commission in this regard. It appears that no such representation was made to the Central Vigilance Commission and such a plea is being raised only for the purposes of the present case. Moreover violation, if any, of any instructions may not by itself vitiate the tender enquiries made by the Company and that could only enable the Commission to take action.

6. We may now refer to some of the judgments cited by the learned Senior Counsel appearing for the appellant. Reference was made to the judgment of the Apex Court in Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others, , wherein it has been held that where a criteria in the tender process has been fixed by the tender accepting authority, the same has to be strictly adhered to and a new criteria cannot be inserted while considering the tenders. Reliance is also placed on the decisions of the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and in Tata Cellular v. Union of India, (1994)6 SCC 651. There can be no quarrel with the propositions of law laid down by the Apex Court in these judgments but we are of the view that the Company in the present case has not acted in contravention of any of the rules laid down by the Supreme Court. These judgments do not advance the case of the appellant.

In the result, we find no merit in the writ appeals and the same stand dismissed with no order as to costs.