(2009) 10 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2210 of 2009

Badriprasad Baldeoprasad (M/s) APPELLANT

Vs

The M.P. State Civil Supply Corporation Ltd. RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

Citation : (2010) 1 MPJR 5

Hon'ble Judges : S. Samvatsar, J;Piyush Mathur, J

Bench : Division Bench

Judgement

Heard counsel.

Petitioner has filed this writ petition challenging the order dated 28/ 04/2009 (Annexure P/1) whereby the respondents have cancelled the contract allotted to the petitioner for supply of sweepage sugar.

Facts of the case, briefly stated, are that respondent No. 1 had invited tenders for supply of sweepage sugar by issuing advertisement Annexure P/ 3 dated 31/03/2009. In pursuance of the aforesaid advertisement, present petitioner had submitted his tender for supply of sweepage sugar at the rate of Rs.987.57 per quintal. Offer of the petitioner, being the highest, was accepted. After acceptance of the tender, an agreement for supply of sweepage sugar was entered into between the parties on 21/04/2009 on deposit of a sum of Rs.3,32,390/- by the petitioner.

Subsequently, on vide order dated 28/04/2009, the said contract of the petitioner was cancelled on the ground that the rate quoted by the present petitioner is not suitable. Hence, this writ petition.

After service of notice, respondents No. 1 and 2 have filed their return raising a plea - first - that this Bench has no territorial jurisdiction to hear the present petition as the cause of action has accrued in favour of the petitioner at Main Seat at Jabalpur; second - that remedy of arbitration is available to the petitioner, hence, this writ petition is not maintainable; and third - that the contract was cancelled on the ground that the authority which had accepted the contract and had entered into the agreement has no authority to do so.

As regards the question of territorial jurisdiction, the parties have cited large number of authorities on the point. Counsel for the respondents No. 1 and 2 in support of his argument, has placed reliance on the judgments in the cases of M/s. Progressive Constructions Ltd. Vs. Bharat Hydro Power Corporation, , American Pipe Co. vs. State of U.P., AIR 1983 Cal 186, and State of Orissa and Another Vs. Prathibha Prakash Bhavan, stating that since Notice Inviting Tender was issued by the office at Jabalpur; the petitioner submitted his tender at Jabalpur and the work order was issued to him at Jabalpur, this Bench has no jurisdiction to hear the present writ petition.

Shri Vinod Bhardwaj, learned Senior Advocate appearing on behalf of the petitioner has contended that the order Annexure P/1 whereby the contract of the petitioner was cancelled was served on the petitioner at Gwalior, hence, the Court at Gwalior has jurisdiction to hear the case. In support of his contention, learned Senior Advocate lay hands on a judgment of the Apex Court in the case of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, .

Having perused the judgment in the case of Kusum Ingots and Alloys Ltd. (supra) it is clear that even if slight part of cause of action has accrued in a court then that court has jurisdiction to try the proceedings. In the instant case, the order rejecting the contract was served on the petitioner at Gwalior. Hence, part of cause of action has definitely accrued to the petitioner at Gwalior and as such, Gwalior Bench has jurisdiction to hear the writ petition.

So far as question of maintainability of writ petition on the ground of alternative remedy is concerned, counsel for the respondents No. 1 and 2 has invited attention of this Court to Clause 12.10 of the agreement which provides that if there is any dispute between the petitioner and the Corporation in respect of any of the conditions of the agreement, then the Managing Director shall be appointed as sole arbitrator for resolving the said dispute.

In the case in hand, from perusal of the agreement itself it is clear that by the said agreement the petitioner was directed to supply sweepage sugar at the rate of Rs.987.57 paise per quintal. This rate was accepted by the Corporation at the time of acceptance of contract. Thus, there cannot be a dispute about the rate for supply of sweepage sugar. Hence, this dispute will not be covered by Clause 12.10 of the agreement.

Admittedly, the tender of the petitioner was accepted at the rate of Rs.987.57 paise per quintal which is not disputed by the respondents also.

Counsel for the respondents submits that this contract was accepted by the authority, which was not authorized to do so.

Having perused the order Annexure P/1 dated 28/04/2009, we find that this is not a ground on which the contract was cancelled. This order refers to a letter dated 24/04/2009. We, therefore, directed the counsel for the respondents to produce the said letter at the time of hearing. On perusal of the letter dated 24/04/2009, it appears that the contract was not cancelled on the ground that unauthorised authority had accepted the tender.

The Apex court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, has laid down that administrative orders cannot be supplemented by other grounds which are not incorporated in the order.

In the instant case, order Annexure P/1 dated, 28/04/2009 nowhere suggests that the contract of the petitioner was cancelled on the ground that the same was accepted by unauthorised authority, while the contract in the present case was cancelled on the ground that the rate was not suitable. Once the rate was accepted by the authority and the authority has entered into agreement for supply of goods on that rate, said contract cannot be unilaterally revoked by any of the parties.

In contractual matters, the jurisdiction of this Court is limited to see that the action of the State or its authorities is not arbitrary and unfair.

In the present case, after acceptance of the tender of the petitioner for supply of sweepage sugar at the rate of Rs.987.57 per quintal and entering into the agreement, the contract between the parties has definitely concluded. Therefore, it will be arbitrary and unfair on the part of the respondents to cancel the contract on the ground that rate is not suitable.

Resultantly, we allow this writ petition and set aside the impugned order Annexure P/1 dated 28/04/2009 cancelling the contract of the petitioner.