(1998) 07 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9373 of 1998

Bet-on Projects — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : AIR 1999 P&H 17 : (1998) 120 PLR 546 : (1998) 4 RCR(Civil) 564

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : S.S. Saron, for the Appellant; K.S. Ahluwalia, Addl. A.G. and A.K. Chopra, for the Respondent

Final Decision : Dismissed

Judgement

1. The Director of Punjab State Lotteries invited sealed tenders for six sets of 28 weekly lottery schemes. The tenders could be submitted by "bona fide lottery agents of sound financial standing having the experience in the lottery trade in the capacity of sole selling agents. .... working directly for a State Government at least for a period of two years... ..." There were six sets of lotteries and separate applications had to be submitted "accompanied by earnest money of rupees twenty eight lacs .. .. per set in the shape of bank draft." The tenders had to be submitted in the prescribed proformaby 12.30 p.m. on May 22, 1998. It was stipulated that "the offers received thereafter or without earnest money shall be considered invalid. Any conditional/incomplete tender shall be rejected." The Director had also reserved the right to "accept or reject any or all tenders without giving any reason." With the notice even the format for submission of the tender had been provided. It was specifically mentioned that latest Income Tax assessment order and the latest balance-sheet be attached. In the format a note was given that "any tender not giving complete information. ......" shall be considered "invalid."

2. The petitioner and various other parties submitted their respective tenders.

The tenders were considered by a Committee consisting of. three officers. Even legal opinion was obtained. On consideration of the matter, the Committee which had met on May 26, 1998, rejected the tender submitted by the petitioner. The decision was conveyed to the petitioner vide letter dated June 11, 1998. A copy of this letter has been produced as Annexure P-2 with the writ petition. Aggrieved by the rejection of its tender, the petitioner has filed this petition under Article 226 of the Constitution. It is alleged that the action of the respondents in rejecting the tender without assigning any reason and in not allowing the petitioner to participate in the negotiations was arbitrary and unfair. On this basis, the petitioner prays that the order dated June 11, 1998, by which its tender had been rejected be quashed and that the respondents be restrained from entertaining tenders of the other persons without allowing it to participate in the negotiations.

3. A detailed written statement has been filed on behalf of the respondents. It has been pleaded by way of preliminary objection that the petitioner has not come to the Court with clean hands and that it is estopped from making any claim as it has already withdrawn the earnest money of rupees twenty eight lacs in response to the impugned order. Still further, it has been specifically pleaded that the petition is bad for non-joinder of the necessary parties. On merits, it has been pointed out that the petitioner had not submitted a complete application form. The petitioner had not attached its balance sheet with the tender. In fact, the balance sheet of one M/s. Smile Agency had been attached. It has also been pointed out that the petitioner had not. furnished any proof of having worked directly with a State Government for a period of two years in the trade of lotteries. It had also produced a copy of an agreement dated June 15, 1994, which did not show that the petitioner had the actual experience of working. On this basis, the Committee took the view that the petitioner''s application was liable to be rejected. Still further, it has been pointed out that the claims of the parties that had submitted valid tenders were actually considered. Negotiations were held and nobody was allotted the rights of a sole selling agent at a rate lower than the one offered by the petitioner.

4. It may be noticed that the case was listed for hearing before the Bench on July 24, 1998. A request was made by Mr. Saron that the case be adjourned so as to enable him to file the reapplication. The request was accepted and time as prayed for by the counsel was given to him. However, in spite of the opportunity, no reapplication has been filed.

5. Mr. Saron, learned counsel for the petitioner, has contended that the order rejecting the petitioner''s tender is illegal as it does not assign any reason. Still further, it has been claimed that the petitioner had to be called for negotiations and that the action of the respondents in not doing so was arbitrary and illegal. The claim made on behalf of the petitioner has been controverted by the counsel for the respondents.

6. Mr. A. K. Chopra, Advocate, has informed us that an application has been filed

by him for impleading M/s. Sugal and Damani as respondent. This application has not been listed before us.

The questions that arise for consideration are--

(1) Is the action of the respondents in rejecting the tender submitted by the petitioner vitiated as no reason has been assigned?

(2) Have the respondents acted arbitrarily and unfairly in rejecting the petitioner''s tender and in not calling it for negotiations?

Regarding (1)

7. Mr. Ahluwalia, learned counsel for the respondents, has produced before us the original file containing the proceedings of the meeting of the Tender Committee held on May 26, 1998. A photo copy of these proceedings is taken on record as Mark ''A''. It appears that this Committee consisted of Mr. Vijay Kain, Secretary (Expenditure), Mr. Vinod Kumar Bhalla, Director Small Savings, Punjab, and Mr. Prabhjot Singh Mand, Director (Lotteries), Punjab. Mr. Kain was the Chairman of the Committee. In the meeting held on May 26, 1998, it considered the various offers that had been received. With regard to the tender submitted by the petitioner, the Committee noticed the following facts :--

"(1) The bidder has attached the Balance Sheet of one Smile Agencies. However, the tender has been given in the name of ''Bet-On Projects'' of which Mr. Umesh Sehgal has been shown as the Sole Proprietor.

(2) Regarding the condition of having worked directly for any State Government, the bidder has attached a copy of the agreement dated 15-6-94 between the Arunachal Pradesh Government, Arunachal Sports Council and M/s. Bet On Projects, which shows an Agreement for a period of three years. However, as per the tender condition, the bidder has not attached any proof whether they have actually worked for a minimum period of two years or not. Even the office of Director Lotteries, Punjab does not have any thing in their office record to substantiate this.

(3) The bidder has quoted two rates one (Rs. 102600/- per lac tickets) normal and the other (Rs. 103600/- per lac tickets) as conditional."

8. The Committee then records that it had obtained the opinion from the Legal Adviser. It was advised that the petitioner''s tender was defective. After consideration of the matter, the Committee had decided to reject the tender. Consequently, it is apparent that the members of the Committee considered the matter at length, obtained legal opinion and recorded a detailed note for rejecting the tender submitted by the petitioner. These are also the reasons which have been disclosed in the written statement filed on behalf of the respondents. In view of this position, it cannot be said that the Committee had acted arbitrarily and rejected the petitioner''s tender without assigning any reason.

9. Mr. Saron submitted that the Committee had acted unfairly. Is it so?

10. A perusal of the notice inviting tenders specifically required the concerned parties to give an earnest money of rupees twentyeight lacs per set in the shape of bank draft, enclose the balance sheet and give proof of experience. These requirements had a definite purpose to serve. The respondents wanted to ensure that the prospective agents had a sound financial position. They were experienced and had already done similar work with other State Government. A sole selling agent virtually earns the monopoly of selling a particular kind of lottery tickets for the State Government. It must have a sound financial position. The principal is entitled to ensure that the intended agent is experienced. It was to ensure that the prospective agents were financially sound that the specific provisions for filing of certain documents had been made in the notice inviting tenders. The petitioner failed to come up to the requisite level. It did not attach the balance sheet. In fact, it produced the balance sheet of one M/s. Smile Agencies and not its own. Secondly, the petitioner did not even attach any certificate or clear evidence of having actually worked with a State Government in the matter of sale of lottery tickets. Since the petitioner had failed to comply with the prescribed conditions, the competent authority was entitled to invoke its power under the notice inviting tenders to reject the offer made by the petitioner as it did not give complete information and had failed to attach the relevant documents. It also deserves mention that even though the petitioner had made two offers (one conditional and the second without any condition), it had tendered only one security deposit of rupees twentyeight lacs. Even if this aspect of the matter is overlooked, the fact remains that the other two conditions with regard to the production of balance sheet and the experience certificate were sufficient in law to reject the petitioner''s tender.

11. In view of the above factual position, any suggestion of unfairness or arbitrariness is wholly misconceived. Three officers of the State Government had considered the matter. They had examined the petitioner''s tender and rejected it. On examination of the file, we are satisfied that the reasons given by them were legally tenable. In any case, there is not even a suggestion of any bias etc. against any of the officers. In the circumstances, the contention raised on behalf of the petitioner cannot be accepted.

12. Resultantly, it is held that the action of the respondents in rejecting the petitioner''s tender was not arbitrary or unfair. It was based on reasons which were legally tenable. Consequently, the order calls for no interference.

13. Regarding (2)

Mr. Saron contended that the petitioner was entitled to be called for negotiations held on May 29, 1998. The action of the respondents in not associating the petitioner with the proceedings at the time of negotiations vitiates the proceedings. Is it so?

14. A perusal of the original file which has been produced before us shows that

the Tender Committee had decided to reject the petitioner''s offer on May 26, 1998. In this very meeting, it had further decided that "in order to maximise the revenues to be received by the State Government on the basis of the......offers and to ensure that the State''s interests are fully protected," it decided to "call all the....... four tenderers for further discussion in respect of the rates quoted by them.......on 29-5-98 at 11.30 a.m. at Punjab Bhawan, Chandigarh." It is apparent that only four parties whose tenders were found to be in order were called for negotiations. Since the petitioner''s tender had been rejected, it was not associated. This action of the Committee was, in no way, illegal. Out of all the contenders, the eligible ones had been chosen and then negotiations were conducted with the object of maximising the revenues to be received by the State Government. The action was absolutely just and fair.

15. Mr. Saron also referred to the decisions of their Lordships of the Supreme Court in G.D. Zalani and another etc. Vs. Union of India and others, and LIC of India and Another Vs. Consumer Education and Research center and Others, . There is no quarrel with the proposition laid down in these cases.

16. However, the principles governing the tenders had been clearly laid down by their Lordships of the Supreme Court in Tata Cellular Vs. Union of India, . It has been inter alia held that a tender "must be unconditional". It must "conform to the terms of obligation." It must be made in the proper form. The person by whom the tender is made must be "able and willing to perform his obligations." In the present case, one of the offers made by the petitioner was conditional. It had also failed to give proof of its income by producing the balance sheet and the experience certificate. Resultantly, the Committee had found that the application form was incomplete and thus rejected the petitioner''s tender. It cannot be said that the Committee had acted unfairly or illegally.

17. It may also be noticed that in the written statement filed on behalf of the respondents, the particulars of the various parties that had made offers had been disclosed. It has been particularly pointed out that one of the tenders was of M/s. Sugal and Damani, Ludhiana, which had made the offer for all the six sets separately. Thus it had deposited a security of rupees one crore and sixty eight lacs. These parties were interested in the proceedings. Their rights were sought to be adversely affected without impleading them. A specific objection was raised on behalf of the respondents that the writ petition was incompetent as necessary parties have not been impleaded. The petitioner had the liberty to implead them. It failed to do so.

18. Taking the totality of the circumstances into consideration, we find that there is no merit in this writ petition. It is consequently dismissed. The respondent shall be entitled to their costs which are assessed at Rs. 10,000/-. The interim order dated June 23, 98, shall stand vacated.