
(2002) 05 DEL CK 0214
In the Delhi High Court
Case No : CWP 5736 of 2001

Bharat Rasayan Agro Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-05-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Insecticides Act, 1968 — Section 7A

Citation : (2003) 68 DRJ 694

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : V.K. Sharma, for the Appellant; Manmohan and Kumud Nijhawan and 3, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—In this writ petition, the petitioner herein has prayed for issuance of an appropriate writ for quashing the bid/tender dated 23rd July 2001 and also a direction upon the respondents to remove two conditions and issue fresh bid/tenders therefore.

2. The basic fact of the matter is not in dispute.

3. Sealed tenders were invited from eligible bidders by the third respondent herein on behalf of second respondent for supply of Synthetic Parathyroid Water Dispersible Powder (WDP)/Wettable Powder equivalent 2.5% conforming to WHO specifications for the quantities mentioned therein.

4. The said notice inviting tenders had been issued under the Malaria Control Project of the Government of India. The date of receipt of tender which was initially fixed on 11th September 2001 was extended to 18th September 2001 without allegedly making any corresponding change as regards opening of the bids which was fixed on 11th September 2001.

5. The writ petitioner is a manufacturer of Alphacypermethrin 5% WP and

Deltamethrin 2.5.% WP holding Certificates and licenses Therefore had been issued by the Central Insecticides Board and Registration Committee, Government of India to manufacture the said products.

6. The contention of the petitioner in this writ petition is that the said conditions had been introduced with a view to ousting the Indian companies/firms from participating in the tender contrary to the guidelines issued by the World Health Organization.

7. The respondents, however, denied and disputed the aforementioned contention. It has been stated that the said conditions do not in any way debar the Indian companies from participating in the tender. So far as the qualification required Therefore is concerned, it is contended that the same had been issued in consonance with the standard laid down Therefore in the World Bank bidding documents.

8. As regards the impugned eligibility condition, the respondent in their counter-affidavit contend:

"Therefore, it would be incorrect to say that the condition of registration of the Firm with Central Insecticides Board of India (CIB), does in any way debar all the Indian Companies. Moreover, the contention of the Petitioner that if Registration Certificate is granted to Indian Companies/Firms only few years back, Therefore, they cannot fulfill the aforementioned condition of having manufactured or supplied the said goods in any one form the date of bid opening is absolutely wrong and incorrect. There shall be no adverse report of the goods offered for supply during previous two years from the date of the bid opening.

Where bid offered is made for more than one Schedule, the Bidder of the manufacturer must demonstrate having manufactured and supplied the quantities sufficient to meet the aggregate of the above qualifying criteria for the individual offered Schedules."

9. It has further been stated:

"However, it is the Petitioner who has mentioned that "it is not either of the conditions, but the aforementioned two conditions read together would have the affect the barring all Indian Companies of the last five years is not true as the Qualification Requirement requires the past performance for supply for any one of the last five years and not all the five years. It means even if a bidder who has supplied the goods in the year, say 2000-2001, can qualify for the Tender."

10. The guidelines by the World Bank are as under:

"The manufacturer and the product offered should be registered with Central Insecticides Board of the Directorate of Plant Protection and Quarantine, Department of Agriculture, Ministry of Agriculture, Government of India before signing of contract as per Sub-clause 13.3.(f) of ITB Data Sheet."

11. One of the Qualification Requirements for an eligible bidder, as specified in

the Tender, was as under:

"The bidder or the manufacturer whose product is offered by the Bidder must be in the insecticide business including agriculture/crop protection application for at least three years and must have manufactured and supplied satisfactorily the goods as specified in the Schedule of Requirements to the extent of at least 80% of the quantity indicated under "Section VI- Schedule of Requirements" against each Schedule in any one of the last five years from the date of bid opening. There shall be no adverse report of the goods offered for supply during previous two years from the date of bid opening."

12. The notice inviting tender was issued for fulfilling an important object. In law, there is no bar for the respondents to lay down such conditions which according to them would be best suited for the purpose for which the tender had been invited. The court has no say in the matter.

13. The contention of the respondents, as noticed hereinbefore, as also the guidelines issued by the World Bank, in our opinion, do not in any manner come in the way of Indian manufacturers to participate in the bid. The said guidelines of the World Bank are as follows:

"The Bank, for its part, it required by its Articles of Agreement to".....ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations," and it has established detailed procedures for this purpose. While in practice the specific procurement rules and procedures to be followed in the implementation of a project depend on the circumstances of the particular case, four considerations generally guide the Bank's requirements:

(a) the need for economy and efficiency in the implementation of the project, including the procurement of the goods and works involved;

(b) the Bank's interest, as a cooperative institution, in giving all eligible bidders from developed and developing countries an opportunity to compete in providing goods and works financed by the Bank;

(c) the Bank's interest, as a development institution, in encouraging the development of domestic contracting and manufacturing industries in the borrowing country; and

(d) the importance of transparency in the procurement process."

14. The project was floated by the World Bank. The decision to lay down the conditions was taken by an expert body. The court in exercise of its jurisdiction under Article 226 of the Constitution of India would not interfere with a decision taken by an expert committee in as much as the court does not have the requisite expertise therefore.

15. In V. Srihari Vs. State of A.P., , a Division Bench of Andhra Pradesh High

Court, of which one of us was a member, held:

"5. Having regard to the aforementioned latest pronouncements of the Supreme Court of India, we are of the opinion that in a litigation of this nature, this Court, should not exercise its discretionary jurisdiction under Article 226 of the Constitution of India to interfere with a policy decision adopted by the State, particularly when the same affects the fiscal measures undertaken by it."

16. In *M.P. Oil Extraction and Another Vs. State of M.P. and Others*, , it has been held:

41. "The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not overstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in overstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."

17. In *BALCO Employees Union (Regd.) Vs. Union of India and Others*, , the apex court reiterated that the courts are not to interfere with the economic policies. It was held:

"The policies of the Government ought not to remain static. With the change in economic climate, the wisdom and the manner for the Government to run commercial ventures may require reconsideration. What may have been in the public interest at a point of time may no longer be so."

18. The manufacturers of drugs who intend to get benefit of the contract were to apply for registration with Central Insecticide Board of India. Insecticides Act, 1968 prescribes the process of registration and the timeframe therefore. It has been pointed out by the respondents that the goods under procurement are not immune for the said project and the first procurement had been made as early

as 1998-99. Furthermore, in terms of the bid document it is not imperative that the tenderer must get itself registered with the Central Insecticide Board provided they get this registration with CIB within 21 days from the date of signing of the contract note.

19. The respondents have stated:

"The criterion on the performance of Bidders regarding past supply is for assessing their capacity and credentials to ensure that the contract is awarded to an established Bidder having sound track record. This is ensured by way of incorporation of clauses in Section VII-A- "Qualification Requirements". Hence, the condition of past of supply criterion is not against the spirit of fair competition but it merely ensures that contract is awarded to an "Established Bidder". It is important to understand that the criterion on past performance is not special for this tender but it is a common feature in all the World Bank Tenders and other Domestic Tenders. In International Competitive Bidding, the conditions are drafted taking global view of the supply of the goods and it does not restrict merely to the manufacturing capacity in the country of purchase."

20. Such a condition cannot be said to be irrational so as to attract the principles of "Wednesbury unreasonableness."

21. Furthermore, four contracts have already been awarded and some of them, according to the respondents, are Indian manufacturers.

22. The petitioner, Therefore, in our opinion cannot be given the relief as prayed for. This writ petition is dismissed with costs. Advocate's fee assessed at Rs. 5000/-.