
(1977) 06 CAL CK 0028
In the Calcutta High Court
Case No : Matter No. 132 of 1976

B.K. Dhar Pvt. Limited

APPELLANT

Vs

Calcutta Metropolitan Development Authority

RESPONDENT

Date of Decision : 24-06-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1977 Cal 379

Hon'ble Judges : Dipak Kumar Sen, J

Bench : Single Bench

Advocate : D.K. De, for the Appellant;

Judgement

Dipak Kumar Sen, J.—The facts which are not in dispute in these proceedings may shortly be stated as follows :--

On or about the 18th Oct. 1974, the Calcutta Metropolitan Development Authority incorporated under the Calcutta Metropolitan Development Authority Act, 1972, the respondent No. 1 herein, invited public tenders for construction of all civil works and supply and erection of mechanical and electrical equipments for a water treatment plant of 273 MLD capacity at Garden Reach. It was intimated that tenders should be submitted between the 11th November and the 6th Dec., 1974 and the "tender papers" containing, inter alia, the notice of invitation, specifications and other terms and conditions in detail would be available for inspection after the 11th Nov., 1974 and also for purchase at a price of Rs. 700 per set. It was declared that no one would be permitted to submit a tender who had not successfully completed and commissioned an integrated water treatment plant of the minimum capacity of 45 MLD; or who could not furnish a solvency certificate from a nationalised bank in his favour for at least Rs. 10 lacs.

2-3. it was indicated further that each tender should consist of three parts consisting of respectively, qualification of the tenderers both financial and

technical, technical particulars of the proposed plant subject to negotiation for variation in design and otherwise and Schedule of prices. The tender of tenderer who would not strictly adhere to the outlined procedure it was declared would be summarily rejected.

4. B. K. Dhar Private Limited, the petitioner herein, submitted a tender for the said works and furnished the required earnest money.

5. After Parts I and II of the tender were opened only two tenders it is alleged were found to be acceptable in terms of the invitation. The said tenders were those of the petitioner and one Central Engineering Syndicate, the respondent No. 2 herein.

6. Though on the 19th Sept., 1975 Part III of the tender was opened the matter was not finalised by the respondent No. 1 for a long time. At the request of the respondent No. 1 the petitioner kept its offer open until the 31st Jan., 1976. On or about 14th Jan., 1976, the respondent No. 1, issued a letter of intent or acceptance of tender in favour of the respondent No. 2.

7. The petitioner being aggrieved thereby has sought to impugn the acceptance of the tender of the respondent No. 2 by the respondent No. 1 in the present application.

8. It is alleged in the petition inter alia that the petitioner has extensive experience in the construction and commissioning of water treatment plants all over India. It is alleged further that at the lime of submitting its tender the petitioner believed that the invitation had been made bona fide and that the respondent No. 1 a statutory authority would conform to its own directives, representations or assurances. The respondent No. 1 however, contrary to its instructions and directives and in viola-lion of the terms and conditions of the said invitation and of the other documents of tender extended certain special dispensations to the respondent No. 2 in respect of its defective tender in preference to the petitioner as follows:--

(a) On the 19th Sept., 1975 the respondent No. 1 permitted the respondent No. 2 to withdraw certain alternative tenders which were offered with their main tender though this was not permissible under the terms and conditions.

(b) The respondent No. 2, it is alleged never completed or commissioned any integrated water treatment plant of the minimum stipulated capacity.

(c) The respondent No. 2 failed to submit with part 1 of its tender any Bank certificate of its solvency as required.

(d) The design submitted by the respondent No. 2. for certain parts of the plant, viz., circular clarifiers, fell below the minimum requirements as laid down in the technical specifications of the tender.

(e) Part III of the tender of the respondent No. 2 contained conditional or variable rates of prices contrary to the terms and conditions.

9. By its letters, including those dated the 30th October, 1975 and the 17th Feb., 1976, addressed to the respondent No. 1 the petitioner complained of the aforesaid violations of the instructions, and directives and terms and conditions of the invitation.

10. It is alleged that the respondent No. 1 was discriminating in favour of the respondent No. 2. For the setting up of a water treatment plant at Howrah, with lesser financial commitment it is alleged that respondent No. 1 made it obligatory that earnest money of Rs. 50,000 should be furnished and allowed no deduction as in the instant case. Applications from other intending tenderers were rejected and tender papers were withheld from them on the ground that their qualifications were inadequate whereas the respondent No. 2 was issued with tender papers in spite of the fact that it was similarly disqualified.

11. The petitioner contends that the respondent No. 1 was bound to adhere to the mandatory terms and conditions laid down in the tender documents and could not legally award a contract contrary thereto.

12. The act of the respondent No. 1 in issuing a letter of intent or acceptance of tender and/or in awarding the contract to the respondent No. 2 is alleged to be illegal, unauthorised and liable to be set aside on the following amongst other grounds:

(a) The respondent No. 1 as a statutory authority could not legally travel beyond its own directives, notifications or conditions.

(b) The respondent No. 1 having made representations or given assurances that certain conditions or terms of its "tender documents" were mandatory and/or would be carried out and your petitioner having acted on the basis thereof the respondent No. 1 could not operate in breach of any of the said conditions or terms.

(c) The discrimination shown by the respondent No. 1 in favour of the respondent No. 2 was unauthorised and illegal.

(d) The attempts to award the contract to the respondent No. 2 were mala fide and in abuse of statutory powers.

13. On the 26th Feb., 1976, a Rule Nisi was issued calling upon the respondents to show cause why a writ in the nature of mandamus should not be issued directing the respondent No. 1 to cancel or withdraw any letter of intent or letter of acceptance of tender or any document awarding a contract pursuant to the invitation to tender issued on the 10th Oct., 1974 in favour of the respondent No. 2 and also why appropriate directions should not be given to the respondent No. 1 to act according to law.

14. No affidavits have been filed by the respondents in opposition to the petition. At the hearing Mr. D. K. De, learned counsel for the petitioner, cited several decisions in support of the contentions made in the petition. The first, decision

cited was in the case of *S. Raman Goud v. Government of Andhra Pradesh* reported in (1970) 1 AnWR 342. The facts in this case were that the appellant was the highest bidder in respect of a certain portion of a bamboo forest in a public auction held by the Forest Department. Pursuant to the conditions of sale as laid down the appellant deposited one-third of the amount of his bid. The bid was not confirmed as was required under the terms and conditions, but a Committee consisting of a Collector, the Deputy Registrar of Co-operative Societies and the District Forest Officer by their decision allotted the said portion of the bamboo forest to a Co-operative Society instead of the appellant. On these facts a Division Bench of the Andhra High Court followed the decision of the Supreme Court in the cases of *K.N. Guruswamy Vs. The State of Mysore and Others*, and *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, and held that the respondents viz., the Forest Officers had ignored the provisions of the conditions of sale and that the appellant had a right under such terms and conditions to have his highest bid considered by the District Forest Officer for confirmation. A writ was issued accordingly in favour of the appellant.

15. The next decision cited by Mr. De was in the case of *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, . This was also a case of public auction where the right to cut timber for a fixed period for certain forest lots was purchased on a bid. Thereafter a portion of such lots was cancelled by the Divisional Forest Officer. The successful bidder moved an application under Article 226 of the Constitution.

16. On these facts the Supreme Court held that the Divisional Forest Officer who cancelled a particular lot allotted to the successful bidder was a public authority and by his acts the Divisional Forest Officer by-passed an order of a subordinate authority. It was held that the successful bidder had been deprived of a valuable right. The Supreme Court followed its earlier decision in *K.N. Guruswamy Vs. The State of Mysore and Others*, and held that though the order was administrative and not quasi-judicial yet the same had to be made in consonance with the rules of natural justice inasmuch as it affected the right of the successful bidder which was a right to property. The order of the Divisional Forest Officer was set aside by the Supreme Court.

17. The last case cited by Mr. De was *Union of India (UOI) Vs. K.P. Joseph and Others*, where the Supreme Court laid down as follows:

"To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because that an administrative order can abridge or take away rights that we have imported the principle of natural justice."

18. On the strength of these decisions Mr. De contended that the contract awarded in favour of the respondent No. 2 should be cancelled.

19. Learned counsel for the respondents, on the other hand, has contended that the only right which the petitioner could claim was that his tender should be

considered by the appropriate authority. In the instant case it was so done. It was further contended that no person had a right to insist that a Government or a statutory authority must enter into a contract with it. All that a person could claim was equal terms to bid for a contract. In support a decision of the Supreme Court in the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, was cited.

20. It was also stated from the bar that the contract which had been awarded in favour of the respondent No. 2 had been almost fully performed and that the Rule has become infructuous.

21. On the facts and circumstances alleged in this petition it appears to me that the grievance of the petitioner is not entirely unjustified. The allegations in the petition have not been controverted by the respondents. The respondent No. 1, a public authority, should not put itself in a position where such allegation can be made against it and go uncontroverted.

22. But, on the other hand, the contentions of the respondents that the petitioner has no right to be awarded a contract is also of equal force. The contract was awarded on the 14th Jan., 1976 and an interim order which was passed in favour of the petitioner was vacated. As a result of this the respondent No. 2 has proceeded with the contract and must be held to have altered its position to its detriment and cancellation, of the contract awarded in its favour at this stage would lead to unnecessary complications.

23. In this view of the matter I discharge the Rule which has been issued in the instant case. The costs of this application, however, will be paid by the respondent No. 1 to the petitioner. Learned counsel for the petitioner submits that a sum of Rs. 20,000 had been deposited with the respondent No. 1 by way of security. The petitioner will be at liberty to withdraw the said sum from the respondent No. 1.