(2002) 03 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5865 of 2001

Brijkishore Gupta APPELLANT

Vs

Chairman-Cum-Managing Director, Bharat Sanchar Nigam Ltd., and others RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2002) 4 MPLJ 128

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : O.P. Mishra, for the Appellant; O.P. Namdeo, For respondents Nos. 1 to 4, for the Respondent

Judgement

Dipak Misra, J.

The petitioner is the proprietor of Adarsh Industrial Security services, which is an organisation belonging to Ex-servicemen. Tenders were invited for supply of security guards by Bharat Sanchar Nigam Limited (in short "the BSNL"). An advertisement to that effect was published in daily newspapers. Last date of submitting of the tender for the same was 27-2-2001. Certain conditions were provided in the notice inviting tender. The petitioner submitted his offer for Satna Telecom District and deposited earnest money of Rs. 40,000/- in the office of the Administrative Officer in cash and obtained the receipt No. 050, dated 3-7-2001.

According to the writ petitioner one of the conditions incorporated in the N.I. T. was that the contractor who would be selected and if he would fail to provide security as per instructions of the Officer-in-charge he would be liable to pay compensation. The petitioner received letter dated 31-7-2001, Annexure P/1, whereby he was informed to contact the office of the T.D.M. Satna on 6-8-2001 in connection with tender. The tenderer-petitioner did, as required, and he was advised to sign duplicate tender form in that regard on the ground the previous tender forms were missing due to negligence on the part of the Department. The petitioner raised objection to the same. He made complaint in this regard on 2-11-2001 to the General Manager of the BSNL, Jabalpur, vide Annexure P/3. In spite of the complaint being made nothing was done.

It is averred in the writ petition that tender form submitted by Sangat Singh, respondent No. 5 herein, was against the terms and conditions of providing tender for security but number of formalities in his case were ignored and he was allowed to fill up a duplicate form. With these averments prayer has been made to issue a writ in the nature of mandamus commanding the respondent Nos. 1 to 4 to permit the petitioner to work on the basis of previous contract which was awarded in his favour. A further prayer has also been made to issue a direction to the said respondents to cancel the entire proceedings relating to the tender and call for a fresh tender.

A return has been filed by the respondent Nos. 1 to 4 contending, inter alia, that vide memorandum No. 2-31/2000-resting dated 30-9-2000 issued by the Government of India, Ministry of Communication, Department of Telecommunications, a decision was taken to corporaterise the functions of the Department of Telecommunications and transferring of the business of providing telecom services in the country currently run and entrusted with the Department of Telecom Services (DTS) and the Department of Telecom Operation (DTO) as was provided earlier by the Department of Telecom to the newly formed company BSNL with effect from 1-10-2000. It is putforth in the return initially the Department was engaging security guards through private security services by calling tender and now in view of the policy decision of the Government of India relating to provide security services in case of Public Sector Undertakings have been entrusted to the organisation of retired defence personnel in view of the scheme of their rehabilitation formulated by Director General of Resettlement for sponsoring Ex-servicemen security agencies on their panel. In view of this in many places security services have been entrusted to Ex-servicemen Welfare Societies. It is setforth in the counter affidavit that the tenders were invited on 18-6-2001 for the contract of security of Telecom installation and building in Satna, SSA under the control of the respondent No. 3, the Telecom District Manager, Satna. The last date for depositing the tender form was 3-7-2001 by 3 p.m. The tenders were to be opened in the presence of Tender Evaluation Committee and four tenderers including the petitioner were present. The respondent No. 5, Sainik Security Service, a security service run by the Ex-serviceman was accepted and his offer was the lowest. A copy of the proceeding dated 30-7-2001 has been brought on record as Annexure-R/2. It is putforth that none of the tenderers including the petitioner raised any objection at any stage of the tendering process and the procedure adopted in the tendering process was fair and transparent. The tender forms were opened in presence of the four tenderers and no complaint or objection of any kind was pointed out or raised by the petitioner. The tender of the respondent No. 5 being the lowest was recommended and forwarded to the General Manager, Telecom Area Jabalpur, for his approval.

According to the said respondents the petitioner was awarded the contract in respect of previous year but he continued as a matter of practice, till the new tender was finalised. It is putforth that the petitioner deposited the earnest money of Rs. 40,000/- on 3-7-2001 and participated in the tender process. It is admitted by the respondent that a letter was sent to the tenderers who participated in the proceeding in the office of TDM, Satna on 6-8-2001 in connection with security guards tenders which were under consideration as the entire file relating to the tender process was stolen from the office for which a report was lodged at the Police Station, Kotwali, Satna. It is further putforth neither the petitioner nor any tenderers raised any objection at any stage during the process and the tenders were opened in the presence of four tenderers by the Tender Opening Committee and thereafter particular of rate etc. were noted in the register as well as tenderers who were present. It is putforth that no complaint was ever received in the office of the General Manager at Jabalpur. The allegations relating to illegality and irregularities in conducting the tendering process has been denied. According to the respondents the duplicate tender forms were sought to be obtained from the tenderes in view of the fact that the file had been stolen after the tenders were opened and the tendering process was completed. Various other aspects have been highlighted to show that there was no illegality and there was totally transparency.

I have heard Mr. O.P. Mishra, learned counsel for the petitioner and Mr. O.P. Namdeo, learned counsel appearing for the respondents No. 1 to 4. It is submitted by the learned counsel for the petitioner that the method which was sought to be adopted by the respondents to fill the tender forms is unknown to law and a Public Sector Undertaking cannot take recourse to such a method. It is urged by him that stand taken by the respondents that the file has been stolen creates a cloud and suspicion in the entire transaction and suspicion of this nature is not to be countenanced in law.

Combatting the aforesaid submissions, it is putforth by Mr. Namdeo, learned counsel for the respondents that the petitioner was present when the tenders were opened and he cannot take advantage of the file being lost at this juncture. He has referred to the Annexure R/2, dated 3-7-2001 where the petitioner was present on behalf of his firm. On a perusal of the Annexure R/2 it does not appear that the respondent No. 5 was present.

The real thrust of the matter is whether this Court should accept the stand taken in the return and the photocopies of the documents brought on record. We need not have suspicion with regard to the documents brought on record but, a significant one, that fact cannot be lost sight that the original file has been lost. The petitioner and other tenderers were called to the office of the TDM, Satna, and they were asked to fill up duplicate tender forms as pleaded by the petitioner. It is also admitted case of the respondents that all the tenders were called for the purpose of consideration of their tenders, as the entire file relating to the tender forms was stolen. True it is, an FIR has been lodged. The petitioner has filed the photocopies of all his documents and the compared rate chart. He has tried to point out certain defects in the said tender form. He has also emphasised that the rate chart produced by him is different. From the rate chart produced by the respondents No. 1 to 4, it is apposite to mention here, I need not have to advert to the law in the field. Though Mr. Namdeo laboured hard to deal with numerous legal principles in this regard. He has referred me to the decision rendered in the case of Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, . In paragraph No. 7 their Lordships have held as under:--

"The law relating to award of contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in R.D. Shetty vs. International Airport Authority, (1979) 3 SCC 498; Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others Vs. Union of India (UOI) and Others, ; Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, ; Tata Cellular vs. Union of India, (1994) 6 SCC 11; Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, and Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, . The award of contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, is corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State is corporations, instrumentalities and the agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."

In the aforesaid decision emphasis was on the larger public interest. It is well settled in law while awarding Largess whether it is a State or an instrumentality of the State ought to be guided by the concept of Article 14 of the Constitution of India, as has been setforth by the Apex Court in the case of Mahabir Auto Stores and others. vs. Indian Oil Corporation and others. AIR 1990 SC 1431. The same enunciation has also been made by the Apex Court in the cases of Tata Cellular Vs. Union of India, and Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, . Later on concept of public interest was also emphasised.

In the present case, all these principles cannot be adverted to, for the simple reason, the stand of the petitioner is that the tenderers were called for further discussion and at that juncture they were asked to file duplicate tender forms. It is also the admitted case of the respondents No. 1 to 4 that entire file relating to tender was lost. The documents brought on record by the petitioner and the documents brought by the respondents No. 1 to 4 are different. When a dispute of this nature has arisen and the file, as admitted by the functionaries of the respondents No. 1 to 4, has been lost, I am of the considered opinion, there should be a fresh tender so that no dent is created in the writ petitioner''s interest and such other ancillary factors are met with and there is no irregularity or irrationality in the matter. While awarding the contract to the successful tenderer, the owner has to keep in view the principles laid down in the case of Tata Cellular (supra).

In view of my preceding analysis, I am inclined to direct that the respondents No. 1 to 4 shall float a fresh tender so that, no party is aggrieved and transparency as required in a welfare State is maintained.

Accordingly, the writ petition stands disposed of without any order as to costs.

Order accordingly.

