(1999) 07 PAT CK 0116

In the Patna High Court

Case No : CWJC No''s. 1601 and 1602 of 1999 (R)

Cairo Impex Pvt. Ltd. and Another APPELLANT

Vs

Bharat Coking Coal Ltd. and Others RESPONDENT

Date of Decision : 22-07-1999

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2000) 1 BLJR 574 : (1999) 3 PLJR 605

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In these two writ applications, the petitioners have prayed for quashing the office order dated 16-8-1999 issued by the respondent No. 3, the General Manager (M&QC), Bharat Coking Coal Ltd., Sales and Marketing Division, Koyla Bhawan, Koyla Nagar, Dhanbad, whereby the tender, which was opened on 31-5-1999, has been cancelled and further for a declaration that the tender dated 19-6-1999 invited by the respondents for sale of same commodity is illegal, arbitrary and without jurisdiction. Since the petitioners are aggrieved by this common order, these two writ petitions have been heard and disposed of at the admission stage with the consent of the learned Counsel appearing for the parties.

2. The petitioners'' case is that the respondents had issued a tender on 17-5-1999 for sale of various qualities of coal including 50.000 MT of Jhama Dust of Damagoria colliery and from NLOCP. The petitioner of CWJC No. 1602/99(R), was interested in purchase of 50,000 MT of Jhama Dust from NLOCP while petitioner of CWJC No. 1601/99 (R), was interested to purchase 50,000 MT of Jhama Dust from Damagoria colliery. The petitioners'' further case is that they deposited the earnest money required as per the general terms and conditions of the tender. It. is stated that the petitioners were found to be highest bidder and the other tenderers, who have submitted their rates, were lower than the

petitioners. It is stated that the petitioners were shocked and surprised to know that an office order was issued on 18-6-1999, cancelling the tender held on 31st May 1999. The petitioners contended that they had fulfilled all the terms and conditions of the tender and there was no irregularity and illegality in holding auction but the respondents, in order to accommodate the other party, have illegally and arbitrary cancelled the tender. Subsequently, respondents have published, a notice in newspaper on 26-6-1999 for auction of the same commodities.

3. Counter-affidavits have been filed by the respondents raising objection with regard to the maintainability of the writ applications in the matter of issuance of tender. It is stated that there were serious illegalities and irregularities in the earlier tender held by the respondents. The tender was opened on 31-5-1999 in presence of the participants and it was found that the H-1 rate in respect of Jhama Dust was Rs. 361/- per MT. The. respondents received a complaint to the effect that they were threatened with dire consequences if they submitted their tenders. It was also stated that the armed men were posted by the Mafia group at the place of tender box and around the General Manager (Sales) Office, who did not allow other parties to submit their Tender Forms and as a result of which they had returned without submitting tender forms due to threat of life. It was also stated by them that the normal market price of Breeze coke is about Rs. 1,500/- per MT whereas the H-1 price offered by the petitioner was only Rs. 361/- per MT. The complainants, therefore, requested the respondent No. 2 to inquire into the matter and to cancel the tender so that genuine parties could book the items of tender at appropriate price. It is further stated in the counter-affidavit that on receipt of complaint an inquiry was made and a decision was taken by the authorities of the respondents to cancel the tender and to refund the earnest, money deposited by the participants. It is further stated that pursuant to the decision taken on 18-6-1999 a re-tender of the articles were made on 19-6-1999 and fresh N.I.T. was issued. The respondents, in this tender, took sufficient protection to safeguard the interest of the respondents so that the genuine and fair price is fetched for the commodities as also to ensure the free participation of all intending Purchasers. This action was necessitated to curve the Mafia interference in the participation of traders at large.

4. I have heard Mr. M.M. Banerjee, learned Counsel appearing on behalf of the petitioners and Mr. A.K. Sinha, learned Sr. Counsel appearing on behalf of the respondents.

5. Mr. Banerjee, learned Counsel, assailed the decision of the respondents cancelling the tender as being illegal, arbitrary, and motivated. According to the learned Counsel, admittedly the petitioners were the highest bidders but on the false complaint made by the persons, who not even participated in the tender, the respondents have illegally cancelled the tender. Learned Counsel further submitted that no reserve price was fixed while issuing tender and, therefore, there was no reason for the respondents to take a decision that the price was

low. Learned Counsel lastly submitted that sofaras tender of Jhama Dust from NLOCP is concerned, there was no complaint and, therefore, cancellation of this tender is wholly illegal and without jurisdiction.

6. On the other hand, Mr. A.K. Sinha, learned Sr. Counsel, firstly, submitted that admittedly the price quoted by the petitioners was not finally accepted, which is evident from the fact that the. petitioners, by letter dated 16-6-1999 addressed to the Chief General Manager informed that they are ready for any type of negotiation for sale. That letter was issued after opening of the tender. According to the learned Counsel, therefore, the respondents have every right to issue a fresh tender and this Court, in exercise of writ jurisdiction, is not. supposed to interfere with the decision of the respondents. Learned Counsel then submitted that there is a vague statement in the writ petition that in order to accommodate the others the respondents have re-issued the tender. According to the learned Counsel, the respondents, on inquiry, found that some illegality or irregularity was committed in issuing the tender and all interested persons have not got opportunity to submit their quotations. In that view of the matter, no legal right accrued to the petitioners and they are not entitled to the relief claimed in the writ petitions.

7. After having heard the learned Counsel for the parties and on consideration of the facts and evidence, the main question falls for consideration is as to whether a legal and valid right has accrued to the petitioners which is amenable to writ jurisdiction. Admittedly, the tender notice was issued by the respondents inviting offers from the interested persons for purchase of different products of coal including Jhama Dust. A copy of the tender notice dated 17-5-1999 and the general terms and conditions of the tender has been filed and annexed as Annexures 1 and 2 to the writ application. Clauses 20 and 26 of the general terms and conditions are quoted hereinbelow:

20. The seller reserves the right to accept and/or reject any application/bid also to cancel/modify the scheme/terms and conditions partially at any time without assigning any reasons whatsoever. The seller also reserves the right to accept and/or reject bids either for full or partial quantity(s) without any notice to the bidder.

26. Management reserves the right to modify/amend/withdraw/ cancel the tender without assigning any reason whatsoever.

8. The tender was opened on 31st May 1999 and price quoted by the petitioners was found highest. In the meantime, the respondents received a complaint dated 3-6-1999, whereby it was informed that the tender was submitted by only certain Mafia group of Dhanbad at a very low bid and the genuine parties were restrained from participating in the tender. It was further complained that name and address of the genuine parties, who bought the tender forms, were leaked out to the Mafia group by the Sales Officer itself, resulting phone-call threats to the actual traders and consumers. It was further alleged that the Mafia Group

submitted Ex. 2 or 3 tenders for each sources quoting different rates just to show that there were no malpractices. It was further alleged that the price quoted by those tenderers was very low as the minimum price of the item in question was not less that Rs. 1,500/- per MT.

9. The allegations made in the complaint appears to have some substance for the reason that the petitioner knowing that the price quoted was low, made an offer to the respondent that the petitioner is ready for any type of negotiation on the sale of Jhama Dust from Damagoria Colliery. Respondents, however, after inquiry, took a decision to cancel the tender and the same was communicated on 18-6-1999. The respondents, accordingly, issued a fresh tender notice. In the fresh tender notice, in order to avoid any mischief that may be done by any of the prospective buyers, it is provided that the tender form will be made available from the office of the Chief General Manager, BCCL, Dhanbad and the General Manager (Sales) BCCL, Calcutta and also from the Regional Sales Manager. CIL, Patna. Provision has also been made in the fresh tender notice that sealed tender will also be accepted by registered post so that the genuine participants may not be restrained by any mussled man.

10. Having regard to the sequence of facts narrated hereinabove, it is clear that although the petitioners were found highest bidders but the tenders submitted by them were not finally accepted and it was not finalised. In that view of the matter, 1 am of the opinion that no legal right has accrued to the petitioners which can be amenable to writ jurisdiction. Moreover, in view of the provisions of general terms and conditions of the tender notice quoted hereinabove, the Respondents had reserved their right to accept and/or reject and also to cancel/ modify or withdraw the tender without assigning any reason whatsoever. In that view, of the matter also the action of the respondents cannot be said to be illegal and arbitrary.

11. As noticed above, although the tender of the petitioners was found highest, one of the petitioners made offer for further negotiation with regard to the price. It is, therefore, clear that although the tender was opened on 31st May 1999 but the price quoted by the petitioners was not finalised. The action of the respondents in cancelling the tender after taking into consideration all the facts stated above cannot be said to be illegal or arbitrary.

12. Mr. Banerjee, learned Counsel, during course of argument, relied upon a decision of the Supreme Court, in the case of Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others, and submitted that when tender notice does not specify the "viability range" nor does it say that tenders coming within the viability range will be considered, then the authorities, issuing tenders, have no jurisdiction to cancel the tender on the ground that price quoted by the bidder is low. In my opinion, the fact of the case before the Supreme Court was quite different from the facts of the instant cases.

13.1 will now refer some of the decisions of the apex Court in which principles have been laid down with regard to power of this Court to interfere in the matter of tender. In the case of Tata Cellular Vs. Union of India, , their Lordships of the Supreme Court observed:

It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent, arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14, if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

14. In the case of Kasturi Lal Lakshmi Reddy v. State of Jammu & Kashmir 1980 SC 1992, the apex Court observed:

Where any Governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less that the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or Section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Government is responsible and in public interest. But, one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one end it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy consideration, which must necessarily weigh with Government in talcing action and, therefore, the Court would not strike down Governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But, where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law.

15. It is, therefore, clear that while accepting the tender and entering into a contract the State or its instrumentalities must protect the financial interest of the State first and for that purpose it can even not accept the tender and finalise the contract if the authorities are satisfied that for the public interest and for the interest of revenue of the State it is just and proper to refuse the lowest or the highest tender. However, the action of the State in doing so must not be unfair, unreasonable or motivated or in order to accommodate and benefit the others instead of the State.

16. In the instant case, as noticed above, the respondents after cancelling the tender issued a fresh tender notice and provision has been made for submission of sealed tender even by registered post. The petitioners, therefore, will get all opportunity to submit their fresh tender quoting the price and if they would be found highest bidder the commodity shall be sold to them.

17. Having regard to the facts and circumstances of the case and the discussion made above, ! am of the considered opinion that there is no justification in interfering with the impugned order passed by the respondents cancelling the tender. There is, therefore, no merit in these writ petitions, which are accordingly dismissed.

