
(2007) 09 RAJ CK 0061
In the Rajasthan High Court

Damodar Ropeways and Construction Company Pvt. Ltd.	APPELLANT
Vs	
State of Raj. and Others	RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 4 RLW 3261

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. An advertisement inviting applications from interested parties for construction of Ropeways was published on 4.10.2005 in Newspaper Hindustan Times and Dainik Bhaskar dated 7.10.2005 under the Rajasthan Ropeways Act, 1966 (for short "the Act of 1966")- Copy of this advertisement has been placed on record as Annex. 1. The petitioner gave his bid and submitted letters Annex. 2 and Annex. 3 also to the District Magistrate, Udaipur. The petitioner also deposited requisite amount of Rs. 1000/- vide cash receipt challan Ex. 4 dated 3.11.2005. The notices were issued for three projects, namely, (1) Deendayal Park-Manikyala Lal Verma Park Machla Magra near Kami Mata Mandir, (2) From Foot hill of Dewali to Neemuch Mata and (3) Motir Magri to Nehru Garden. The petitioner applied only for the Deendayal Park- Manikyala Lal Verma Park Ropeway. According to the petitioner, 5 bidder companies gave their offer in response to the above mentioned notice inviting tenders and which are:

- (1) M/s. Usha Breco Ltd., Sahidabad, District Gaziabad, U.P.
- (2) M/s. Damodar Ropeways & Construction Company (P) Ltd. Kolkata.
- (3) Pragati Finsect Ltd., Udaipur
- (4) Omkareshwar Tradelinks Pvt. Ltd., Jaipur

(5) Aravli Airo Ropeway.

3. According to the petitioner, the petitioner applied for only Deendayal Park to Kami Tata Temple Ropeway and did not apply for any other location, still the petitioner was awarded contract for the Ropeway of the location Motimagari to Nehru Garden. The work contract for the location Deendayal Park to Kami Mata Temple was awarded to M/s. Usha Breco Ltd. for which the petitioner applied. M/s. Usha Breco Ltd. subsequently withdrew his offer and in place of M/s. Usha Breco Ltd., the work was given to respondent No. 3 Onkareshwar Tradelinks Pvt. Ltd. According to the petitioner, in fact only M/s. Usha Breco Ltd. and the petitioner were found eligible for award of the contract by the District Collector, Udaipur vide order dated 10.1.2006, copy of which has been placed on record by the petitioner as Annex. 5 and bid of rest of the bidders was rejected. The recommendation of the District Collector was accepted by the Government and it gave approval u/s 8 of the Act of 1966 for award of the work of Deendayal Park to Kami Mata Temple to M/s. Usha Breco Ltd. and for Moti Magri to Nehru Park to the petitioner respectively vide order dated 15.2.2006. Copy of this order has been placed on record as Annex. 6. When the petitioner came to know about thrusting contract of the location Moti Magari to Nehru Park upon the petitioner, the petitioner objected to it vide letters dated 2.8.2006 (Annex. 9A) and 25.8.2006 (Annex. 9B) and requested the District Collector, Udaipur to look into the matter and award the work contract to the petitioner of location Deendayal Park to Kami Mata Temple road. The petitioner also pointed out that the petitioner did not apply for the Location Moti Magari to Nehru Park.

4. According to the petitioner, the respondent Omkareshwar Tradelinks Pvt. Ltd. having no connection whatsoever with M/s. Usha Breco Ltd., got the work contract for the said location Deendayal Park to Kami Mata Temple. In fact M/s. Usha Breco Ltd. entered into a MOU with M/s. Omkareshwar Tradelinks Pvt. Ltd. but since their collaboration was cancelled on account of refusal by M/s. Usha Breco Ltd., the respondent Omkareshwar Tradelinks Pvt. Ltd. got another company M/s. Conveyer & Ropeway Services Pvt. Ltd., Kolkatta to work for the said contract without the respondent issuing fresh contract for the same and without meeting with the grievance of the petitioner. For thus, a public notice was issued by the District Collector, Udaipur on 8.2.2007, which was published in the newspaper and copy of this has been placed on record as Annex. 10 by the petitioner along with the writ petition along with the writ petition. When the petitioner was denied the allotment of work of Ropeways for the location Deendayal Park to Kami Mata temple and the work was given to respondent No. 3, the petitioner ultimately served notice upon the respondent through his counsel. Copy of this notice has been placed on record as Annex. 11. The petitioner, in response to the public notice dated 18.3.2007 published by the District Collector, Udaipur in the newspaper for grant of work to M/s. Conveyer & Ropeway Service Pvt. Ltd., Kolkatta, again objected to it and sought copies of the relevant documents by submitting application before the District Collector, Udaipur (Annex. 12) dated 22.3.2007. The petitioner also submitted a letter

given by the District Collector, Udaipur to the petitioner, dated 2.4.2007, by which the petitioner was asked to inform the District Collector, Udaipur whether the petitioner has sufficient land for installing the Ropeway. The petitioner replied to the letter dated 2.4.2007 of the District Collector, Udaipur by reply dated 10.4.2007 (Annex. 14). In background of these facts, the petitioner submitted this writ petition in this Court on 16.7.2007.

5. According to the petitioner, the action of the respondent Nos. 1 and 2 in permitting a total stranger to bidding process for location Deendayal Park to Kami Mata Temple while deliberately keeping the petitioner out of it is nothing but a colourable exercise of powers at the instance of the private respondent No. 3 calculated solely for the benefit of the private respondent. According to the petitioner, under the Act of 1966, in case the licensee is unable to undertake project of Ropeway then the same has to be cancelled u/s 10 of the Act of 1966 and in case any amendment is required to be made in the original license, the same has to be made in accordance with the procedure provided u/s 10(I) of the Act of 1966 and a fresh license has to be issued. Therefore, according to the petitioners, the action of the respondent is clearly against the provisions of Sections 10, 11 and 12 of the Act of 1966. It is also submitted that the respondent deliberately, without considering the petitioner's grievance, decided to allot the work to respondent No. 3 which again demonstrates the malafides of the respondent Nos. 1 and 2. The petitioner never applied for the Ropeway Moti Magri to Nehru Garden and that has been allotted to the petitioner. M/s. Usha Breco Ltd. withdrew its bid after it was allotted to M/s. Usha Breco Ltd., then a stranger was allotted the work by the respondent. It is submitted that there is no reason for denying the work of Deendayal Park to Kami Mata temple to the petitioner when the petitioner was found eligible for award of the work contract.

6. This Court on 17.7.2007, after taking note of the fact that according to the petitioner, the District Collector decided to allot the work of Ropeway between Deendayal Park to Kami Mata temple to M/s. Usha Breco Ltd., for which the petitioner applied and when M/s. Usha Breco Ltd. to whom the work was allotted, withdrew from the work, then the work was given to M/s. Conveyer & Ropeway Service Pvt. Ltd., who was never bidder for the location concerned. This Court admitted the writ petition and granted interim order to maintain the status quo till further orders.

7. Respondent No. 1 and 2 the State and the District Collector, Udaipur submitted their reply and respondent No. 3 also submitted reply to the writ petition. Respondent No. 3 also submitted an application under Article 226 (3) of the Constitution of India for vacating the stay order.

8. According to the learned Counsel for respondent No. 3 the petitioner deliberately misled the court and obtained favourable order. The petitioner deliberately stated false facts as well as the writ petition of the petitioner has been filed after inordinate delay. It is also submitted that respondent No. 3 already invested about more than rupees fifty lacks on the project and the

petitioner in his writ petition stated that respondent Nos. 1 and 2 are likely to grant contract to the private respondent or to some other person without following due process of law, knowing it well that the work was already given to respondent No. 3 long back and respondent No. 3 has invested huge amount for establishing Ropeway work. According to learned Counsel for the respondent No. 3, the writ petition of the petitioner deserves to be dismissed only on the ground that the petitioner deliberately stated false facts and further stated misleading facts in the writ petition and has filed the writ petition after inordinate delay.

9. On merit, the learned Counsel for the respondent No. 3 submitted that the scheme of Rajasthan Ropeways Act, 1966 clearly provides the entire procedure for undertaking preliminary investigation. The applications are invited u/s 6 of the Act of 1966 from intending promoters to undertake the necessary preliminary investigation in regard to proposed Ropeway. As per Section 8 of the Act of 1966, the Licensing Authority can accord sanction to the intending promoters to make survey as may be necessary. As per Sub-section (2) of Section 8, the licensing Authority, before according sanction under Sub-section (1), may also require the intending promoters to submit such detailed estimates, plans, sanctions and specifications and such further information as it may think necessary for the full consideration of the proposal. Once the sanction is accorded under Sub-section (1) of Section 8, then after due consideration of the details supplied by the intending promoters, as required under Sub-section (2) of Section 8, the Licensing Authority publishes a draft of proposed licence authorising the construction by or on behalf of such promoters subject to such restrictions and conditions as the Licensing Authority may think proper. According to the learned Counsel for respondent No. 3, the Hence authorising the construction of Ropeway can be given only to the person who undertook the preliminary investigation under Chapter III of the Act of 1966. In the present case, from the documents submitted by the petitioner himself, it is clear that M/s. Usha Breco Ltd. was selected for preliminary investigation u/s 8 of the Act of 1966 as back as on 10.1.2006 (Annex. 5). The petitioner did not challenge this order dated 10.1.2006 even in this writ petition and more than 1-1/2 years have already passed to the order dated 10.1.2006. The petitioner even did not challenge now-awarding of the work to the petitioner to carry out the preliminary investigation for installing the Ropeway for the location for which, according to the petitioner, he applied and that is Deendayal Park to Kami Mata temple. The State accorded sanction on 15.2.2006 for allotment of work to M/s. UshaBreco Ltd. for the location Deendayal Marg to Kami Mata temple and for allotment of work to the petitioner for the location Moti Magri to Nehru Garden. Looking to the nature of the work, the work is done by the parties in collaboration with other and the petitioner himself in his letter dated 13.3.2006 itself clearly requested that sanction for the work be accorded to it alongwith M/s. Arawali Aero Rope Travels Pvt. Ltd. and before this Court, the petitioner projected that there cannot be consortium or one cannot have collaboration with the bidder for the purpose of undertaking preliminary investigation for setting up the Ropeway. Without

challenging the orders dated 10.1.2006 and 15.2.2006, the petitioner is not entitled to any relief inasmuch as that the work can be awarded only to the promoters who undertook the preliminary investigation. The petition did not and cannot undertake the survey for the Deendayal Park to Karni Mata temple location for setting up Ropeway. Therefore, the writ petitioner of the petitioner deserves to be dismissed only on this ground.

10. The learned Counsel for the respondent No. 3 vehemently submitted that the petitioner deliberately suppressed this important material fact that respondent No. 3 gave his bid for the location Moti Magri to Nehru Garden location. Respondent No. 3 has placed on record the copies of his applications as Annex. R.3/3, which are two applications, one for consideration of location Moti Magari to Nehru Garden and another for Deendayal Park to Karni Mata temple. The respondent No. 3 submitted MOU executed between M/s. Usha Breco Ltd. along with respondent company as Annex. R 3/4. Respondent No. 3 also deposited requisite amount of Rs. 1000/- for each location and copies of cash challan receipts are placed on record by respondent No. 3 along with the reply as Annex. R.3/5. The petitioner's own collaborator disclosed by the petitioner in his correspondence, M/s. Arawali Aero Rope Travels Pvt. Ltd. was also given letter by the office of the District Collector on 13.1.2006 conveying the M/s. Arawali Aero Ropeway Travels (P) Ltd. that before the said company is allowed to take up survey on the route Moti Magari to Nehru Garden, it is required that the company should indicate the route and the map clearly indicating the ownership of the land where the said company M/s. Aravli Aero Ropeway Travels (P) Ltd. proposed to set up platforms etc. The similar letter was given by the District Collector to respondent No. 3 on 13.1.2006. In response to the Collector's letter dated 13.1.2006, M/s. Aravli Aero Ropeway Travels (P) Ltd. furnished certain information to the District Collector, Udaipur vide its letter dated 20.1.2006 and along with this letter, submitted sketch plan with detail map which were duly signed by the petitioner-Company itself. Copy of these documents are placed on record by respondent No. 3 along with the reply as Annex.R3/8. Therefore, according to the learned Counsel for the respondent the petitioner itself has collaboration with other company for getting the work, has objected in the writ petition about respondent No. 3's collaboration with other bidder and that too even stated in the writ petition that respondent No. 3 is absolutely stranger to the entire work. The learned Counsel for respondent No. 3 also placed on record certain documents which are Annex. R.3/14, R 3/15, R 3/16 and R 3/18 dated 4.8.2006, 8.8.2006, 10.8.2006 and 11.8.2006 to show that the matter was considered thoroughly as required bylaw at various levels by various departments of the State Government and thereafter the proposed license was published by the District Collector, Udaipur on behalf of the State of Rajasthan on 15.11.2006 u/s 9 of the Act of 1966. Since from the very beginning, respondent No. 3 and M/s. Usha Breco Ltd. had collaboration and MOU was already executed between them but subsequently M/s. Usha Breco Ltd. shown its inability to undertake the work, therefore, respondent No. 3 took M/s. Conveyer & Ropeway

Service Pvt. Ltd. as technical partner and sought approval from the District Collector, Udaipur which was recommended for sanction of the State Government, by the District Collector, Udaipur vide letter dated 1.2.2007 (Annex. R. 3/21). The State Government vide order dated 6.3.2007, approved the said change as recommended by the District Collector allowing collaboration of respondent No. 3 with M/s. Conveyer and Ropeway Services Pvt. Ltd. This was communicated to respondent No. 3 by the District Collector vide letter dated 7.3.2007. Copies of these communications are Annex. R. 3/23 and R 3/24. The petitioner also placed on record the details of the expenditure incurred by the petitioner for undertaking this project which according to the learned Counsel for the petitioner, exceeded rupees fifty lacks then the petitioner has filed this writ petition.

11. Almost same is the stand taken on behalf of respondent Nos. 1 and 2 in the reply.

12. The learned Counsel for the petitioner submitted rejoinder to the reply filed by the respondents.

13. The learned Counsel for the petitioner assailed the action of the respondents on the grounds mentioned above which I need not to repeat here and the learned Counsel for the respondents sought vacation of the stay order and the dismissal of the writ petition.

14. Both the parties argued the matter in detail. Hence the writ petition itself is decided.

15. It is clear from the facts pleaded by the parties and the material came on record that the applications from intending promoters to undertake necessary preliminary investigation in regard to proposed Ropeways were invited by the public notice dated 4.10.2005. The petitioner, who was one of the intending promoters, itself submitted letters to the District Collector, Udaipur Annex. 3 and Annex. 4 wherein the petitioner itself clearly mentioned that the petitioner is also discussing with local companies for taking their help for undertaking preliminary survey for setting up referred Ropeway. The petitioner applied only for one project Deendayal Park to Manakya Lal Verma Park. The petitioner failed to explain and give any reason for not challenging the decision of the District Collector dated 9.1.2006 for more than 19 months despite having knowledge that the decision has been taken by the District Collector, Udaipur to not to allot the work in question to the petitioner. Strangely in the letter dated 13.3.2006 given by the petitioner after more than three months to the District Collector, the petitioner only requested that accord sanction to the petitioner and M/s. Arawali Aero Rope Travels. (P) Ltd. to undertake preliminary investigations for setting up of Ropeway for the location Deendayal Park to Kami Mata temple but without objecting to the District Collector's decision dated 9.10.2006 or according sanction by the State Government to M/s. Usha Breco Ltd. for Deendayal Park to Kami Mata temple vide order dated 15.2.2006. Not only this, even in the

petitioner's letter dated 2.8.2006 (Annex. 9A) given seven months" latter, the petitioner only stated that the petitioner applied for the preliminary survey for the location Deendayal Park to Kami Mata temple and, therefore, the petitioner may be given this survey work. The petitioner did not object, for the reason best known to it against already granted approval in favour of M/s. Usha Breco Ltd. for the location in question. Same is the position in the petitioner's letter dated 25.8.2006 (Annex. 9B). Therefore, it appears that from the very beginning the petitioner was well aware that not only the petitioner has been given the work of location Moti Magari to Nehru Garden but he was knowing it well that the work of Deendayal Park to Karni Mata temple has been given to some one else. It appears that the petitioner might have wrote the letter to create evidence only, otherwise there was no reason for not objecting to the respondents accord of sanction to the M/s. Usha Breco Ltd. for the location Deendayal Park to Kami Mata temple and writing again and again that the petitioner did not apply for Moti Magari to Nehru Garden location. The cause of action accrued to the petitioner on 9.1.2006 itself and thereafter, finally on 15.2.2006 when sanction was accorded by the State Government u/s 8 of the Act of 1966 to the M/s. Usha Breco Ltd. for undertaking preliminary investigation in regard to the proposed Ropeway. The petitioner did not choose to challenge the order of the District Collector dated 10.1.2006 and the State Government's order dated 15.2.2006 even in this writ petition as is clear from the prayer of the petitioner in the writ petition, wherein the petitioner prayed for quashing of only notice dated 8.3.2007 (Annex. 10) and letter dated 2.4.2007 (Annex. 13), which are the notices issued by the District Collector informing the public that there is change in the technical support to the promoters and the public can look into the details of the proposals and letter of the District Collector dated 2.4.2007 asking the petitioner to inform the District Collector whether the petitioner has land available with it or not.

16. The writ petition of the petitioner suffers from serious delay and latches. The writ petition of the petitioner is liable to be dismissed on account of the petitioner's submitting wrong facts that respondent No. 1 and 2 are likely to grant contract to respondent No. 3, whereas the sanction was accorded in the knowledge of the petitioner by the State Government to the third party and not to the petitioner vide order dated 15.2.2006 for preliminary investigation in regard to proposed Ropeway. The petitioner in the writ petition projected that respondent No. 3 had no connection whatsoever with M/s. Usha Breco Ltd. whereas respondent No. 3 has placed on record MOU of above two companies and projected that respondent No. 3 is stranger, has no connection whatsoever in the proceedings for grant of sanction by the competent authority for undertaking the necessary preliminary investigation in regard to setting up the proposed Ropeway, whereas respondent No. 3 has placed on record his application showing his offer for establishing Ropeway work for Deendayal Park to Kami Mata temple and also placed on record the copy of the cash challan receipt by which respondent No. 3 deposited requisite fees of Rs. 1000/- for obtaining the

sanction for-undertaking preliminary survey. The petitioner deliberately did not place on record the notice issued u/s 9 of the Act of 1966 dated 15.11.2006 whereby the competent authority published the proposed licence to authorise construction of the Ropeway by respondent No. 3, which was issued about 20 months ago from the date of filing of the writ petition by the petitioner. The license authorising the construction of Ropeway can be given in accordance with Sub-section (1) of Section 9 and this material piece of evidence, that is the proposed licence must have been in the knowledge of the petitioner. The petitioner in his writ petition, stated that respondent did not consider objections filed against the proposed Ropeway projected for Deendayal Park to Kami Mata temple, whereas the respondent has placed on record the detail order of consideration of objections submitted against the accord of sanction for the Ropeway for the location Deendayal Park to Karni Mata temple which is Annex. R 3/19. The petitioner had full knowledge of these facts which is apparent from Annex. R. 3/36 which is the copy of the application submitted by the petitioner's representative for inspection of file according sanction to respondent No. 3 for the location Deendayal Park to Kami Mata Temple. On this application, the petitioner's advocate mentioned that he inspected the file for an hour, from 1 pm to 1.30 pm and 3 pm to 3.30 pm. Therefore, before the petitioner filed the present writ petition, he had knowledge of all the facts referred by the respondents in their reply and the petitioner has suppressed all the material facts from this Court.

17. In view of the above discussion, the writ petition of the petitioner is dismissed with cost of Rs. 10,000/- and the stay order granted by this Court dated 17.7.2007 is vacated.