
(2010) 07 DEL CK 0365

In the Delhi High Court

Case No : Writ Petition (C) 9451 of 2009 and C.M. App. No's. 7309-12 of 2009

D.D. Bhalla

APPELLANT

Vs

Airports Authority of India and Others

RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Citation : (2010) 07 DEL CK 0365

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Vinay Mohan Sharma, Ravinder Yadav, Joydeep Bhattacharya, Neha Sharma, Shalini Agnihotri and Anil Jain, for the Appellant; Anjana Gosain and S. Fatima, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The Petitioner was awarded a contract by the Respondent No. 1 Airports Authority of India ("AAI") for providing CNS facilities in the new runway 29/11 at the IGI Airport, New Delhi on 3rd November 2008 for an amount of Rs. 41,79,126/-. By the impugned order dated 19th March 2009, the AAI cancelled the said contract and the Petitioner has filed this petition challenging the said order. Also challenged in this writ petition is a show cause notice dated 6th April 2009 issued by the AAI to the Petitioner asking him to show cause why he should not be debarred from participating in the AAI Tenders and the subsequent order dated 6th May 2009 passed by the AAI debarring him from participating in AAI tenders for a period of three years. The fourth prayer is for a direction to the Respondent AAI to open the tenders of the Petitioner that have already been received but not processed.

2. Mr. Vinay Mohan Sharma, learned Counsel appearing for the Petitioner first submits that a show cause notice dated 29th December 2008 issued by the AAI to the Petitioner has been taken as the notice preceding the termination of the contract. AAI has proceeded on the basis that the Petitioner's reply to the said show cause notice was not found satisfactory. It is pointed out that the Senior

Manager Engineering (E) AAI, Respondent No. 4 herein, referred to a letter dated 1st January 2009 of the Petitioner and described it as reply to the show cause notice dated 29th December 2008 whereas that letter was a request by the Petitioner for issuance of gate passes. It is claimed that the dispute regarding non-supply of 13 qualified personnel by the Petitioner was sorted out by the Petitioner with the Respondent at a personal meeting on 30th and 31st December 2008 itself. Mr. Sharma therefore, submits that any allegation contained in the show cause notice dated 29th December 2008 stood wiped out and the said document could not be relied upon. In fact subsequent thereto, on 16th January 2009 a formal agreement was signed between the parties. Mr. Sharma submits that if the AAI proposed to terminate the contract with reference to show cause notice dated 29th December 2008, it could not have signed an agreement on 16th January 2009 with the Petitioner herein. It is accordingly contended that there is no basis whatsoever for cancelling the contract dated 19th September 2009.

3. According to the Petitioner, the action of Respondent No. 4 in engineering the termination of the contract was malafide because the Petitioner had in 2007 made a complaint against the misdeeds of Respondent No. 4 in relation to tampering with the bids submitted pursuant to the earlier tenders floated. The Petitioner also made a specific complaint against one Shri V.K. Gupta regarding reimbursement of certain payments. The third submission made by Mr. Sharma is that the order dated 6th May 2009 debarring the Petitioner from participating in the AAI tenders for a period of three years is wholly without jurisdiction. It is submitted that the General Manager Engg (E) was not the "accepting authority" and, therefore, had no power to debar the Petitioner in terms of the contract. Such power vested only with the Senior Manager Engg (E) i.e. the Respondent No. 4.

4. Without prejudice to the above submissions, it is submitted that the order dated 6th May 2009 "is conspicuously vague and essentially non-speaking, arbitrary, unreasonable and discriminatory as it fails to deal even with a single point/contention of the Petitioner raised by him in his reply to show cause notice dated 6th April 2009." It is submitted that the allegation that gate passes were only for five persons and insufficient in terms of the contract was "taken wholly out of context and without any relevance or linkage to the alleged non-performance of contract by the Petitioner." It is the Petitioner's case that he was never allowed to commence work in spite of repeated requests. It is submitted that the Respondent No. 4 without the Petitioner's consent extended another contract, namely, ARMO of 11 KV Sub-station Internal and External E.I., Operational area by one month up to 5th April 2009 knowing fully well that the Petitioner had to depute that staff for the contract in question i.e. provisions of CNS facilities for new runway at IGI Airport. It is submitted that the Petitioner had more than the requisite manpower to start the work. It is submitted that the intimation regarding debarment of the Petitioner was sent to other government departments where he had worked as a contractor with a view to defame and

embarrass him and tarnish his reputation. It is submitted that the debarment of the Petitioner is disproportionate and harsh.

5. It is submitted that the Petitioner has been singled out for the purpose of debarment. Out of a total of five electrical contracts that were cancelled on the ground that the work had not commenced, only the Petitioner has been debarred. Finally, it is submitted that the response of the vigilance department after rejecting the Petitioner's complaint dated 5th February 2008 was an attempt to "cover-up" the misdeeds of the Respondent No. 2 and this was surprisingly done on the same date the Petitioner was debarred for a period of three years.

6. According to learned Counsel for the Petitioner, the central issue in the present case is that of corruption and when the Petitioner picked up courage to point it out he was punished by the Respondents by not only terminating his contract but debarring him from participating in tenders for a period of three years. It is alleged that for the very same work, a fresh contract consequent upon the termination of the Petitioner's contract was awarded and the government exchequer suffered a loss of over Rs. 2.82 lakhs on that score.

7. In reply to above submission, Ms. Anjana Gosain, learned Counsel for the Respondents submits that the Petitioner was aware of the terms and conditions of the contract on 3rd November 2008 itself and that it was only a formal agreement which was required to be signed subsequently. In terms of the contract, the Petitioner had to take over the site on 18th November 2008. Despite reminders being sent on several dates i.e. 12th, 24th and 25th November 2008, the Petitioner did not take over the site. The work of runway 29/11 at the IGI airport was a time bound one and no delay in commencing the work could be tolerated. In those circumstances, another reminder was sent on 10th December 2008 with a further request to send the stamp paper on which the agreement had to be drawn. It was made clear that if the labour was not deployed by 18th December 2008 a show cause notice would be served.

8. Thereafter when no steps were taken, a show cause notice was issued to the Petitioner on 29th December 2008 requiring a reply within seven days. Although no formal reply was received, a letter dated 1st January 2009 giving the names of five employees was received. This was followed by letters dated 13th February 2009, 16th February 2009 and 9th March 2009 giving details of the staff. However, in these letters the Petitioner did not indicate the preparedness to undertake the work. In view of the urgency and the fact that the contract was a time-bound one, a letter terminating the contract was issued and a short notice tender was floated on 20th March 2009.

9. Ms. Gosain submitted that since despite the first show cause notice dated 29th December 2008 the Petitioner did not commence work, it was decided to terminate the contract. Thereafter a show cause notice dated 6th April 2009 was issued to the Petitioner to which a reply was received on 13th April 2009.

Consequent thereto, the impugned order dated 6th May 2009 debarring the Petitioner for a period of three years was passed.

10. Since the Petitioner had made serious allegations in his complaint which included charges of corruption, his complaint was referred to the Vigilance Department. The question of debarment of the Petitioner was considered by a Committee of three persons. The decision was left to the General Manager since the Petitioner had levelled allegations against the accepting authority. This in fact demonstrated the fairness of the procedure. Six months' time had been lost before the debarment of the Petitioner. In the circumstances, it was submitted by the learned Counsel for the Respondent that the decision taken by the AAI to terminate the contract debarring the Petitioner for a period of three years was justified. She relied upon the judgment of this Court in *Integrated Techno Systems Pvt. Limited v. New Delhi Municipal Council* 143 (2007) DLT 541.

11. The Petitioner does not deny that at no point in time he was able to provide 13 qualified persons as required under the contract. His case was that he was prepared to provide five persons at any point in time. Over three shifts he would provide ten. However, this did not meet the requirement of having to make available 13 qualified persons for the contract. Once having accepted the contract, the Petitioner cannot go back and interpret the contract just to suit his convenience. Clearly there was an unpreparedness on the part of the Petitioner to undertake the work in terms of the contract.

12. This Court has considered the above submissions. The work of construction of the new runway at the IGI airport is certainly a time bound one. Any delay in the completion of the said work would entail adverse consequences for the AAI including loss of time and money. If the AAI insisted on zero tolerance in completing the work on time, no fault can be found with such decision. If the AAI does take specific action pursuant to its show cause notice dated 29th December 2008 then certainly such action could not be termed as arbitrary. It appears that the Petitioner was nevertheless given sufficient opportunities to fulfill its obligation.

13. Also the Petitioner's allegation that the action was malafide only because he made a complaint of corruption against the senior officers of AAI is also without merit. Those complaints were taken seriously and examined by the Vigilance Department. The report of the Vigilance Department showed that these complaints were not substantiated. Faced with this situation, the Petitioner is now seeking to blame the Vigilance Department for "covering up" the misdeeds of the officials of the AAI, this Court fails to appreciate the Petitioner not sparing the Vigilance Department as well. Such a plea has to be substantiated by some positive material. The Petitioner has failed to discharge the burden.

14. This Court has examined the decisions in *Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another*, , *S. Brahmanand and Others Vs. K.R. Muthugopal (D) and Others*, , *Tata Cellular Vs. Union of India*, ,

Meerut Development Authority Vs. Association of Management Studies and Another, , M/s. Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd. and another, , Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , Raghunath Thakur Vs. State of Bihar and Others, and Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, . While it is the settled law, as explained in the above decisions that an instrumentality of the State has to be fair and reasonable in its dealings, it is the validity of the order of termination in the circumstances of the present case which is required to be examined. In the considered view of this Court, the Petitioner has not been able to persuade the Court to hold that the action of the Respondent No. 1 terminating the contract and debarring him for a period of three years suffers from unfairness or arbitrariness. Further, no fault can be found with the procedure adopted in arriving at the said decisions.

15. Consequently, this Court finds no merit in the writ petition. This petition is dismissed with costs of Rs. 5,000/- which will be paid by the Petitioner to the Respondents within a period of four weeks.

16. The writ petition and the pending applications are dismissed.