(2003) 11 PAT CK 0043

In the Patna High Court

Case No : C.W.J.C. No. 8930 of 2003

Dev Anand APPELLANT

Vs

Bharat Sanchar Nigam Ltd. RESPONDENT

Date of Decision : 28-11-2003

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2003) 3 BLJR 2386 : (2004) 102 FLR 403 : (2004) 1 PLJR 408

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner has prayed for setting aside/quashing of the appointment/selection of M/s. Choudhary Electric, Hajipur, Vaishali (respondent No. 4) as Dealer for post-paid services and Distributor for pre-paid services of Bharat Sanchar Nigam Limited Cellular Mobile Telephone Service as, according to him, respondent No. 4 is not an eligible candidate in terms of the tender documents issued by the respondent-authorities.

2. According to the case of the petitioner, he carries on business in the name and style of "M/s. Aditya Enterprises". In the year 2002, respondent-authorities published a tender notice inviting tender for appointment of Dealer/Distributor for post-paid and pre-paid services of Bharat Sanchar Nigam Ltd., Cellular Mobile Telephone Services for the district of Hajipur. The petitioner alongwith other submitted tender papers after purchasing the tender documents. According to the petitioner, the sales tax assessment orders and latest sales tax clearance have not been furnished by respondent No. 4 while submitting their tender document, on account of which their tender document ought to have been rejected by the respondents, but their document has been considered and has been awarded higher marks than the petitioner. It is further stated that the petitioner is the lowest bidder among all other candidates so far the weightage on account of commission is concerned and apart from this, he is most suitable

candidate and thus, according to him, the action of the respondents in allotting higher marks to respondent No. 4 is wholly illegal, arbitrary and mala fide. He has further alleged that the tender submitted by respondent No. 4 has been accepted on negotiations whereas the petitioner was not even called upon for the said purpose while making selection and, thus, according to him, the action of the respondent-authorities is violative of Article 14 of the Constitution of India.

3. Learned counsel for the petitioner has, inter alia, submitted that the impugned settlement of respondent No. 4 is bad as they were not eligible for participating in the eligibility bid as per the Instructions and Guidelines to Tenderers contained in Section-II of the Tender Notice, a photo copy whereof has been annexed to the writ petition and is placed at page 32. Learned counsel submitted that respondent No. 4 did not file document relating to self attested copy of Sales Tax Registration and Latest Sales Tax Clearance from Sales Tax Authority as per the requirement contained in sub-paragraph (iii) of 1.0 of Section II of the Instructions and Guidelines to Tenderer, which was one of the eligibility criteria for submission of tender. He further submitted that even though respondent No. 4 did not fulfil the eligibility criteria, yet the settlement has been made with them by negotiations ignoring the claim of others, including the petitioner.

4. A counter-affidavit has been filed on behalf of respondents No. 1 to 3 and a separate counter-affidavit has been filed on behalf of respondent No. 4 also. The petitioner has filed a common reply to both the counter-affidavits.

5. In the counter-affidavit filed on behalf of respondent No. 1 to 3 it is stated that four Distributors, including the petitioner and respondent No. 4, submitted their tender, out of which three were found provisionally eligible. One M/s. Chaurasia Electricals was not considered due to not meeting of tender requirement of showroom. The tenders of others were opened and evaluated as per the Tender Evaluation Criteria (in short ''TEC'') and respondent No. 4 was allotted 53.5 marks and placed at rank 1 whereas petitioner got 49.5 marks and placed at rank 2. It is further submitted that the rate of commission quoted by respondent No. 4 was higher and, therefore, TEC recommended that the rate of commission may be negotiated with respondent No. 4 and on negotiation they agreed at 51 % rate of commission whereas as per the quotation, the petitioner''s rate was 54%.

6. Mr. Shahi, learned counsel for the respondent-BSNL and its officials has not disputed that the respondent No. 4 did not comply with the requirement aforementioned. He rather admitted that the Latest Sales Tax Clearance from the Sales Tax Authority, which was one of the documents required for submission alongwith the tender, was not submitted by respondent No. 4 alongwith the tender. However, he with reference to paragraph 11 of the counter-affidavit contended that the proof of applying to Latest Sales Tax Clearance to competent authority was submitted by respondent No. 4 along with their tender and accordingly they were declared provisionally eligible by the competent authority as per the recommendation of the TEC with remarks that they may be asked to

submit the Sales Tax Clearance Certificate before awarding the work. According to Mr. Shahi, the criteria, referred to above, is not mandatory as is evident from the provisions contained in Section-II of Instructions and Guidelines to Tenderer.

7. I find substance in the submission of Mr. Shahi, learned counsel appearing for the respondents. It is true that as per paragraph 1.0 of Section-II, self attested copy of Sales Tax Registration and Latest Sales Tax Clearance from the Sales Tax Authority were also to be submitted with the tender, but, in my opinion, it was not a mandatory condition as is evident from the very same Section-II, which provides that under what circumstances the bid is to be summarily rejected. According to the said provision, bid without EMD, which is one among ten documents to be submitted with the tender, is to be summarily rejected. Moreover, this Court does not find any substance in the submission of the learned counsel for the petitioner that the negotiations made with respondent No. 4 was violative of Article 14 of the Constitution.

8. The question is that on consideration of documents and as per the Tender Evaluation Criteria, respondent No. 4 was given higher marks and was placed at rank 1 whereas the petitioner was placed at rank 2 and as the requirement for negotiation with respect to rate of commission was felt, they were called upon and on their agreeing at lower rate, they were selected. It is not that it was because of negotiation that respondent No. 4 was placed at rank 1.

9. Further, from the counter-affidavit filed on behalf of respondent No. 4 it appears that respondent No. 4 submitted sales tax clearance certificate to the respondent-authorities, a photo copy whereof has been annexed as Annexure A. They also deposited Rs. 5 lacs as Bank guarantee and after acceptance of tender, they spent a huge amount in construction of show-room as per the direction and map provided by the respondent-authorities.

10. Under such circumstances, this Court does not feel inclined to interfere with the selection of respondent No. 4. Thus, there is no merit in the writ petition and it is, accordingly, dismissed in limine.