
(1998) 09 P&H CK 0133
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12930 of 1998

Dynamic Petro Products Limited	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 21-09-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Citation : (1999) 121 PLR 364 : (1998) 4 RCR(Civil) 333

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Harbhagwan Singh and Ravinder Kumar, for the Appellant; Surinder Bishnoi, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The petitioner is an industrial unit. It is engaged in the manufacture of PVC pipes. In response to a notice issued by the State of Haryana on April 8, 1996, the petitioner submitted a tender for the supply of pipes. The offer made by the petitioner was valid for acceptance till June 30, 1996. This fact was clearly mentioned in Schedule "A", a copy of which is at page 24 of the paper book. In July, 1996, the petitioner received a letter dated July 19, 1996. A copy of this letter has been produced as Annexure P-6 with the writ petition. Vide this letter the petitioner was called upon to depute a representative for discussions in the meeting to be held on July 24, 1996, in the office of the Hon"ble Industries Minister. The petitioner complied with the directions and deputed one of its officers to attend the meeting. The petitioner alleges that during the meeting it was pointed out by its representative that the prices of the raw material having gone up, it would not be possible for it to make any supply at the rates mentioned in the tender form. In paragraph 9 of the writ petition, it has been specifically averred that "it was to inform the respondents that the rates quoted in the expired tender have ceased to be valid in view of the steep increase in the price of the raw material." It has been further averred that

despite this, the High Powered Purchase Committee which had met on July 24, 1996, decided to accept the petitioner's offer. When the petitioner did not respond, the respondents threatened to take action. The communication dated August 13, 1996, was sent by respondent No. 2. This was followed by a letter of September 19, 1996, by which the petitioner was called upon to deposit security. The petitioner did not supply the material or furnish any security.

2. Unhappy with the petitioner's indifference, respondent No. 1 issued a show cause notice, dated March 26, 1997, asking it to explain as to why it should not be debarred from doing any further business with the Government of Haryana for a period of 3 years. The petitioner submitted the reply on April 2, 1997. On November 27, 1997, the decision to debar the petitioner for a period of 5 years was taken. This order was conveyed to the petitioner on January 19, 1998. It represented. The representation was rejected on July 17, 1998. Hence this petition.

3. Mr. Harbhagwan Singh, learned counsel for the petitioner, contends that the petitioner had made an offer by which rates were to be "valid for acceptance up to 30.6.96." The respondents had not accepted the offer by that date. Thereafter, the petitioner was not bound to supply the material at the rates mentioned in the tender form. It had not extended the date of validity at any stage. Despite this, a decision to debar the petitioner from doing business with the State of Haryana for a period of 5 years has been taken. Learned counsel contends that the action is arbitrary. It has also been pointed out that in the show cause notice, the proposal was to debar the petitioner for a period of 3 years. However, by the impugned order, a ban has been placed for 5 years.

4. The claim made on behalf of the petitioner has been controverted by the learned counsel for the respondents. Mr. Bishnoi has produced before us the original file containing the proceedings of the High Powered Purchased Committee. A photo copy of the proceedings of the meeting of the High Powered Purchase Committee is taken on record as Mark "A".

5. Admittedly, the petitioner's representative had attended the meeting of the Committee held on July 24, 1996. On a perusal of the proceedings, we find that there is nothing to indicate that the representative had agreed to extend the date of validity of the offer. The proceedings only record a unilateral decision to place an order for material worth rupees twenty-five lakhs on the petitioner. This could not have bound the petitioner in any way. Since the petitioner's offer was valid up to June 30, 1996, and it had not been extended beyond that date, the respondents had no right to compel the petitioner to make the supply at the rate quoted in the tender. Nobody is obliged to sell at a loss. The State having not accepted the offer prior to June 30, 1997, cannot be permitted to take advantage of its own wrong. Since the State had failed to make an offer immediately on the date of opening the tenders viz. May 1, 1996, or even by the last date of validity, it was not entitled to compel the petitioner to supply the material after June 30, 1996, at the old rates or without giving it an opportunity

to make a fresh offer regarding the price. Apparently, the action was arbitrary and unfair.

6. Still further, it is the admitted position that on March 26, 1997, a show cause notice had been given to the petitioner. A copy of this notice is at Annexure P-10 with the writ petition. By this notice, the petitioner was called upon to show cause as to why it may "not be debarred from doing any further business with the Government of Haryana for a period of 3 years." The petitioner had shown cause. Thereafter, the order dated November 27, 1997, was passed. A copy of this order is at Annexure P-12. A perusal of this order shows that the petitioner was debarred for a period of 5 years from the date of the issue of orders." The result was that the petitioner was debarred from 1997 to November, 2002. This was even beyond the terms of the show cause notice. The petitioner represented. It had no effect. The representation submitted by the petitioner was rejected vide order dated July 17, 1998. A copy of this order has been produced as Annexure P-16. The petitioner was informed that the Government "finds no reason for reviewing the order..." It is clear that no body applied the mind at any level. Otherwise, we can not comprehend as to how a person who was given a notice to show cause as to why it should not be debarred for a period of 3 years could actually be confronted with a ban for 5 years. Surely, if somebody had even cared to read the file, he would not have taken such a decision.

7. The impugned action is symbolic of the "style" of the senior bureaucrats. It leaves us totally unhappy. The mistake was apparent. It was not corrected when the petitioner represented. Even after the filing of the writ petition, the Department had insisted upon defending an indefensible action. No attempt was made to rectify the apparent mistake.

In view of the above, the writ petition is allowed. The impugned orders are set aside. The petitioner shall be entitled to its costs which are assessed at Rs. 10,000/-.