
(2004) 04 AP CK 0044
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5760 of 2004

G. Raja Rao

APPELLANT

Vs

Divisional Railway Manager, South Central Railway

RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Citation : AIR 2004 AP 410 : (2004) 3 ALD 616 : (2004) 3 ALT 657 : (2004) 4 BC 297

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; T.S.V. Ramana, Addl. SC, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—Assailing the action of the respondent in not considering the tender of the petitioner submitted by him in pursuance of the Tender Notice No. 8/C/14/ STD Phones-ISD-PCO/Local Calls/Fax/ Internet Booths/BZA/1, dated 30-8-2003, as illegal and arbitrary, he filed the present writ petition.

2. In pursuance of the Tender Notice issued by the respondent for allotment of Telephone Booths in Vijayawada Railway Station, the petitioner who claims to belong to Scheduled Caste, submitted his tender for the Telephone Booth reserved for Scheduled Castes. The petitioner states that he had earlier filed writ petition challenging the Tender Notification on the ground of vagueness, in that it had not disclosed the place where the proposed Telephone Booths are to be located, but the same was dismissed. According to the petitioner, the respondent followed Two Packet Tender System - Packet "A" and Packet "B" - Packet "A" contains the technical offer and Packet "B" contains the financial offer, and that he had submitted his tender in accordance therewith. It is the case of the petitioner that the respondent without notifying the date on which Packet "A" of the Tender would be opened, appears to have opened Packet "A" of the Tender and displayed the list of names of the Tenderers who qualified in Packet "A" of

the Tender and would be eligible for participating in Packet "B" of the Tender. The petitioner states that his name did not find place in the list of those qualified in Packet "A" of the Tender and would be eligible for participating in Packet "B" of the Tender. As the respondent had not opened the Tender of the petitioner, he filed the present writ petition.

3. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

4. The learned Counsel for the petitioner submits that the Tender Notice is very vague, it neither prescribes the qualifications nor lays down the eligibility criteria for qualifying in Packet "A", and in the absence of any such qualifications or eligibility having been prescribed or laid down in the Tender Notification, the respondent could not have rejected the Tender of the petitioner and ought to have opened it. He thus prayed that the action of respondent in not opening his Tender be declared as illegal and arbitrary and consequently a direction be issued to the respondent to open the Tender.

5. The respondent filed a detailed counter. The learned Standing Counsel for the respondent reiterating the averments made in the counter submitted that the Ministry of Railways vide their letter No. 2001/ TG.IV/10/PCO/Policy, dated 22-4-2002 framed policy decision with respect to allotment of STD/PCO Booths by way of Two Packet Tendering System. He denied the contention of the petitioner that the Tender Notice is vague and does not prescribe the qualification and eligibility criteria, and submitted that the policy decision inter alia prescribes the essential eligibility criteria and provides for Two Packet Tender System. Packet "A" of the Tender contains the technical offer and Packet "B" contains the financial offer. First Packet "B" of the Tender will be opened, and those in qualify in Packet "A" of the Tender will be eligible to participate in Packet "B" of the Tender. The Tender Schedules for Packet "A" and Packet "B" were sold separately. The Tender Notice stipulates the date of opening of Tenders as 1-10-2003 and as such, no notice is required to be issued to the Tenderers.

6. He submitted that the Committee of Officers, who opened the Tender Box on 1-10-2003, found 77 Tenders. Out of the 77 Tenders recorded, 22 Tenders, including that of the petitioner was not opened as they did not deposit the Tenders mentioning Packet "A" and Packet "B" containing technical offer and financial offer separately. As the Tender submitted by the petitioner was not in accordance with the eligibility criteria, his Tender was not opened, and no exception can be taken thereto. He submitted that unless and until a Tenderer qualifies in technical offer, he would not be eligible to participate in the financial offer. In the absence of the petitioner mentioning Packet "A" and Packet "B" on the covers in the Tender submitted by him, his tender was not opened, for if perchance the respondent were to open one of the two Packets, containing the financial offer, namely Packet "B" of the Tender, which otherwise was to be opened after the Tenderer qualifies in the technical offer, namely Packet "A" of the Tender, the very secrecy of the financial offer, would be defeated and the

entire tender process would get vitiated.

7. The respondent admittedly followed the Two Packet Tendering System, which is in accordance with the policy decision taken by the Ministry of Railways vide their letter No. 200IaRG.IV/IO/PCO/Policy, dated 22-4-2002. According to the said Tendering System and the Essential Eligibility Criteria, the Tenderer is required to submit his Tender in two packets, mentioning Packet "A" and Packet "B", the former containing the technical offer and the latter containing the financial offer. If the intending tenderer qualified in Packet "A", he would be invited to participate in the opening of Packet "B". The petitioner though submitted his Tender in two Packets, he admittedly failed to mention Packet "A" and Packet "B" on the Packets. It is the specific case of the respondent that the Tender of the petitioner was not opened because he failed to mention Packet "A" and Packet "B" on the Packets, and in the absence of mentioning Packet "A" and Packet "B" on the Packets, and if perchance instead of opening Packet "A", Packet "B", containing the financial offer, was opened, which otherwise was to be opened after the tenderer qualifies in Packet "A", containing technical offer, the very purpose of maintaining the secrecy with respect to the financial offer would have been defeated, and in order to maintain the secrecy and in the absence of there be no indication which of the two Packets submitted by the petitioner was Packet "A" and Packet "B", the Tender of the petitioner was not opened.

8. The contention of the petitioner that the Tender Notice is very vague cannot be accepted, and more so when the writ petition filed by him on earlier occasion questioning its vagueness stood dismissed. Be that as it may, it is the specific case of the respondent that they sold the Tender Schedules were sold separately as Packet "A" and Packet "B" to the intending Tenderers. Along with the Tender Schedules, the terms and conditions for allotment, were issued to the tenderers. A look at the terms and conditions for allotment, which prescribes essential eligibility criteria to participate in the Tender, requires submission of Tender in two Packets, mentioning Packet "A" and "B". Packet "A", which is to be opened first, is to contain the technical offer, which inter alia, provides for furnishing of educational qualifications, production of Income Tax Clearance, financial source of the tenderer, EMD, and while Packet "B" which is to be opened after short-listing the names of those tenderers who qualified in Packet "A", contains the financial offer, which inter alia requires giving an undertaking to pay the land licence fee from time to time as may be notified by the administration and offer in terms of percentage as commission payable to him by the Telephone Service Provider. When the terms and conditions of the Tender required the intending Tenderers to submit the Tenders in two Packets mentioning Packet "A" and Packet "B", containing technical offer and financial offer separately, the petitioner ought to have mentioned Packet "A" and Packet "B" on the Packets, and he cannot be- allowed to contend that the Tender Notice is vague. It is settled law that terms and conditions of an invitation of tender are not open to judicial scrutiny for they are matters in the realm of contract. The Apex Court in its recent judgment in Directorate of Education v. Educomp Datamatics Ltd. 2004

(3) ALD 7 (SC) : 2004 AIR SCW 1505, held thus:

The terms of the invitation to tender are not open to judicial scrutiny the same being in the realm of contract. The Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The Courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The Courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser, or logical. The Courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.

9. Inasmuch as in the instant case the terms and conditions for allotment, which admittedly lay down essential eligibility criteria, require submission of Tender in Two Packets, mentioning Packet "A" and Packet "B", no exception can be taken to the action of the respondent in not opening the Tender of the petitioner, who though submitted his Tender in two packets, but failed to mention Packet "A" and Packet "B" on the Packets.

10. There is no merit in the contention of the petitioner that the respondent without issuing notice to him had opened Packet "A" of the Tender. The Tender Notice had clearly mentioned that the tenders would be opened on 1-10-2003 at 16-00 hours. When the petitioner had submitted his Tender, it is for him to be present at the opening of the Tenders and he cannot expect a notice to be given by the respondent to participate in the opening of the Tender, and more so when the date on which the Tender would be opened is mentioned in the Tender Notice. It is not as if the Tender of the petitioner alone was not opened. It is the specific case of the respondent that when the Committee of Officers opened the Tender Box on 1-10-2003, they received 77 Tenders, of which 22 Tenders, including that of the petitioner, were found to be not in accordance with the terms and conditions of the Tender, in that the said 22 Tenders did not mention Packet "A" and Packet "B" on the Packets. Had the respondent rejected only the Tender of the petitioner for non-mentioning of Packet "A" and Packet "B" on the Packets, he would have been in justified in seeking a direction to open his Tender also, but that is not the case. Along with the Tender of the petitioner, Tenders of others were also rejected. Therefore, the petitioner cannot complain any grievance, and more so when the Tender submitted by him is not in accordance with the terms and conditions of the Tender.

11. For the foregoing reasons, the writ petition is devoid of merit, and the same is accordingly dismissed. No costs.