

(2003) 04 PAT CK 0157
In the Patna High Court
Case No : C.W.J.C. No. 8937 of 2002

Harish Industries Pvt. Ltd. and Another	APPELLANT
Vs	
The Bihar State Road Transport Corporation and Others	RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Citation : (2003) 04 PAT CK 0157

Final Decision : Dismissed

Judgement

Shashank Kr. Singh, J.—The writ Petitioners in C.W.J.C. No. 8937 of 2002 and C.W.J.C. No. 8961 of 2002 are small scale industrial units who are aggrieved by the decision of Respondent Nos. 1 and 2, the Bihar State Road Transport Corporation and its Administrator awarding tender work to M/s Utkal Auto Works Ltd. for fabrication and body building of buses on 55 chassis. The aforesaid Utkal Auto Works Ltd. is Respondent No. 3 in both the writ applications.

2. As both the writ Petitioners in both the writ petitions are aggrieved by the sa(sic) order granting tender works to a different person, as such, with the consent of the parties, both the writ applications have been heard together and are being disposed by a common order.

3. The main contention of learn Counsel for the Petitioners in both the (sic) applications is that Petitioners along with others had applied for grant of works contract pursuant to tender notice being ten(sic) No. 1/2000 and after completing forming by a decision dated 14.3.2002 Respondents had decided that the works cont(sic) would be awarded to these writ petitions However, subsequently a fresh Purcha(sic) Review Committee have been constitu(sic) after the rates had already been negotia(sic) and the tender had been finalised with the Petitioners for 70 chassis. Contention on behalf of the Petitioners is that Respondent Nos. 1 and 2 have acted malafidely (sic) once the contracts have been comp(sic) the only course open to the Respondent was to proceed under arbitration processing if the Petitioners were not dischan(sic) their terms of contract. The Respondent according to learned Counsel, could (sic) have entered

into private negotiations (sic) the Respondent No. 3 without inviting p(sic)tioners of the two writ applications a(sic) taking a decision behind their back (sic) constituting a fresh Review Committee has decided to award the tender to Respondent No. 3. Said action according learned Counsel was arbitrary and not (sic)tained in law.

4. The short facts of the present case that the Respondent No. 1 got a t(sic) notice published in the daily newspaper Indian Express dated 6.7.2001 being (sic) der notice No. 1/2000 inviting offer of (sic) cation of 520 bus body of ordinary (sic) delux and super delux buses for the (sic) tracted year 2001-2002. In total 16 (sic) cants including the writ Petitioners (sic)eir bids for the same. Petitioners have applied in the prescribed manner along (sic)andatory draft of Rs. 50,000/- each (sic)cordance with the requirements of the (sic)er notice. The bids offered were submitted within time. It has further been conded that the Respondent Nos. 1 and 2 (sic) stituted a specialised team for assess(sic)nt of the technical bid and after full satisfaction that the Petitioners fulfilled the (sic)ired stipulations by their letter dated (sic).7.2001 inviting them for consideration (sic)d opening of financial bid which was (sic)r postponed to 1st week of August. It (sic) further been contended that out of 16 (sic)derers who had submitted their bids in (sic)ponse to the tender notice only eight (sic)ding the writ Petitioners of the writ petitions were found fit in the technical bid (sic)d were invited for consideration for their (sic) se final bid. It has further been con(sic)d that the Purchase Committee of the Respondent-Corporation entered into pri(sic) negotiations with the qualified tenderers 6.8.2001 with regard to rates. In the (sic)d negotiations Respondent-Corporation (sic)ed the Petitioners to fabricate bus bod(sic)at the lowest quoted rate as offered by (sic) Jaico Auto Mobiles, Bangalore. Petitioners on 6.8.2001 confirmed in writing (sic) willingness and submitted revised rates (sic)he lowest rate so quoted. As according learned Counsel as the Petitioners had (sic)ed to work on the lowest rate as sug(sic)ed by the Respondents, as such, the (sic)tract between the Petitioners and the Respondents 1 and 2 had attained a final-the tender of the Petitioners therefore, (sic)d accepted and contract concluded, (sic)ever, inspite of the aforesaid fact the (sic)poration did not allot any work for con(sic)ction of bus body to the writ Petitioners (sic)y wrote to the Respondents requesting allotment of chassis so that body can (sic)built over. Reminders were also sent. (sic) Respondent-Corporation who sent letters and intimated to them that the tender has been awarded to them. Petitioners awaiting for supply of chassis for fabrication of bus bodies. Petitioners by their letters dated 17.3.2002 and 15.3.2002 extended the validity period of their offer upto 30.6.2002 though they kept awaiting reply and supply of chassis for fabrication of bus bodies but they were made aware of the decision of the Respondent-Corporation of constitution of a fresh Purchase Review Committee with regard to tender notice No. 1/2000. It has been contended by Petitioners" counsel that such an action of the Respondent-Corporation was mala fide as once the agreement had been concluded behind the back of the Petitioners, such a decision could not have reviewed. Subsequently

newly constituted Purchase Review Committee called only four out of eight tenderers who were earlier qualified and as out of these four tenderers only Respondent No. 3 attended the meeting and after private negotiations allotment of 55 number of chassis were granted to M/s Utkal Auto Works Ltd., Respondent No. 3 in both the writ applications.

5. Petitioners are aggrieved by the aforesaid order and pray for quashing of the same along with reconstitution of the Review Committee and have further prayed that the Respondents authorities of the Corporation be directed to award construction of bus bodies to the writ Petitioners pursuant to earlier agreement.

6. In support of his contention, Petitioners had relied on the judgment of *Tata Cellular Vs. Union of India*, Relying on paragraphs-24 and 145 of the aforesaid judgment, it has been contended by learned counsel for the Petitioners that once the process of selection was complete, the process was over and it could not have been reviewed. In the aforesaid judgment, it has been held by the Supreme Court that while the Court cannot interfere with the Government's freedom of contract, invitation of tender and refusal of any tender which pertain to policy matter, but where the decision/action is vitiated by arbitrariness, unfairness, illegality, irrationality, or "Wednesbury unreasonableness" i.e. when decision is of such as no reasonable person on proper application of mind could take or procedural impropriety, can be looked into by the Court. No doubt the learned Counsel has very fairly agreed that in this judgment as regarding allotment of tender is concerned, it has been accepted that Government's action cannot be such to judicial review but relying on the aforesaid decision it has been argued that as the decision is arbitrary, unreasonable and has been made only to help Respondent No. 3, as such, the same can be looked into and as such, the order allotting work to Respondent No. 3 be quashed.

7. In support of his another contention that once stage of selection was over, Respondent cannot turn back. Reliance has been placed on a judgment of the Supreme Court in the case of *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*, wherein it was held that in appropriate cases High Court was justified in granting interim issued in favour of the parties as the Court was required to weigh the competing public interest to find if there is overwhelming public interest as against public detriment in granting the stay. The Court was free to examine whether tender conditions have been considered and if any relaxation has been granted, the same were bona fide and the decisions were taken in a fair manner after considering all the offers. Relying on the aforesaid decision it has also been argued that earlier decision of the Review Committee has been done taking into consideration the offer of all the eight tenderers but subsequently by the Review Committee calling only four tenderers ignoring the Petitioners was an arbitrary act not taken in public interest and as such this Court should interfere with the same.

8. By filing a counter affidavit it ha(sic) been argued on behalf of Respondent-Corporation that though there has been a tender notice but there has been no

concluded tender contract nor any agreement has been reached nor allotment of work; has been given to the writ Petitioners of two writ petitions and as such, the stand of the Petitioners that agreement has already concluded and contract entered into was far from truth.

9. It has further been contended that in pursuance of the revival package adopted by the orders of Hon'ble Supreme Court regarding Bihar Road Transport Corporation in C.A. No. 7290 of 1994 and specific order passed therein the purchase of five hundred buses were envisaged. A tender notice for purchase of chassis was floated over which M/s Leyland and Telco had applied. A separate tender for bus body fabrication was also floated by tender notice No. 1/2000 against 16 parties including the Petitioner applied. Out of which only 11 were qualified for the financial bid. On the basis of the financial bid a comparative statement was prepared with regard to 11 tenderers which goes to show that M/s Jaico Automobiles, Bangalore, M/s Tramco Coaches Pvt. Ltd. Jamshedpur and M/s Bhalotia Enaj Engineering Works Ltd., Jamshedpur were the lowest tenderers in the District type, semi deluxe and deluxe on both Tata and Leyland Chassis, super deluxe on chassis of Leyland and super deluxe on Tata chassis respectively. It has further been contended that a Purchase Committee consisting of 15 members had been constituted. This Committee included both the officials of the Corporation as well as that of the State Government including that of the Finance Department, Vigilance Department, Transport Department and others. In order to consider the process of purchase and opening the financial bids a meeting of Purchase Committee was held on 27.7.2001, 28.7.2001 dated 30.7.2001 and intimation was sent to the tenderers vide letter dated 27.7.2001 and again vide letter dated 25.7.2001 intiating rescheduling of the meeting to 4th, (sic) and 6th August. Such letters were sent not only to the writ Petitioners but all the tenderers who were found qualified. Out of (sic) body builders the lowest rate quoted by (sic) the lowest tenderers was accepted. Only (sic) of 11 tenderers 8 were ready to construct bus bodies on that rate. Three showed (sic) their inability. As such, from the aforesaid (sic) it would be clear that the writ petition-(sic)s of the two writ petitions were not the (sic) best tenderers nor any separate or private negotiations has been done with them (sic) as different firms have agreed to construct different type of the bodies no final (sic) decision has been taken. It has further (sic) been contended that in view of difference (sic) views among members of the Purchase committee with regard to purchase of chassis itself hence as uptill now even a decision has not been taken for purchase of (sic) chassis as such, there was no question (sic) regarding taking any decision for construction of bodies thereon. The whole question according to learned Counsel for the respondents, it hypothetical.

10. As far as the writ Petitioners are concerned, it has been contended by (sic) learned counsel for the Respondents by (sic) bringing a chart on record that their track (sic) record has not been good. Earlier they have been allotted work for construction of (sic) bridges which were far from satisfactory. Even time schedule was not kept for which they had to pay damages and the Corporation has to

suffer loss as the bus was not available when it was required to be delivered and due to non-running of the buses on the routes on which it was meant to be run the Corporation had suffered loss due to aches on the part of the writ Petitioners. This was also relevant facts which were required to be considered while allotting fresh tenders for construction of new bodies. As far as judgment relied upon by the Petitioners are concerned, the contention on behalf of the Respondent-Corporation is that these judgments rather go to support their case but it has been contended that there has been no arbitrariness and if the Corporation in the interest of the Corporation and public interest decides to allot the tender to a different person the Court ordinarily should not interfere in the same until the Court is satisfied that such an action is not in public interest or it has been taken arbitrarily with an intention to help Respondent No. 3. This not being the case in the present case rather any decision which has been taken or is likely to be taken is being taken in the interest of Respondent-Corporation which has been taken in view of rehabilitation policy pursuant to direction of the Supreme Court, as such, Petitioners' contention that the aforesaid two judgments are in no way relevant, in the facts of the case, present case be not accepted. This Court in view of rival contentions is also of the view that as work allotment has not been given till date only in view of negotiations being done with the Petitioners along with others also the negotiations with the Petitioners cannot be said to have attained a finality. The whole negotiation is still in a fluid stage. Past conduct of a tenderer may weigh with the Respondent if there are other tenderers who are also ready to discharge the work on the lowest rate. Such an action does not require interference by this Court.

11. In the facts of the present case, in view of discussion as made above, no relief can be granted to the writ Petitioners as no vested right thereof has been affected or taken away.

12. Both the writ applications stand dismissed.