
(2006) 01 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5276 of 2005

Highway Advertising	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 4 BC 492 : (2007) 1 CTLJ 251 : (2006) 142 PLR 537 : (2006) 2 RCR(Civil) 191

Hon'ble Judges : D.K. Jain, C.J.;Surya Kant, J

Bench : Division Bench

Advocate : J.S. Bhatia, for the Appellant; Jagdish Marwaha, for Respondent Nos. 1 to 5 and Jai Shree Thakur, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, C.J.—By this writ petition, under Articles 226 and 227 of the Constitution of India, the petitioner questions the legality and validity of the decision taken by the officials of the Northern Railway, respondents No. 2 to 5 herein, to award limited advertising rights in three parks, in the circulating area of Chandigarh Railway Station, in favour of respondent No. 6.

2. Briefly stated, the background facts are as follows:

The petitioner, a sole proprietary concern, is engaged in the business of outdoor advertising in and around the city of Chandigarh. The Senior Divisional Commercial Manager, Northern Railway, Ambala Cantt., respondent No. 3 herein, had awarded to the petitioner the work of development and maintenance of three parks of Chandigarh Railway Station and in consideration therefor, it was entitled to display 14 Glow Sign Boards of different sizes for a period of 3 years. On the expiry of the said period, respondent No. 3 issued a fresh notice inviting tenders (for short, "the NIT") from "registered advertising agencies" for awarding limited advertising contract for the said three parks for a period of 3

years. The tenders were to be opened on 29.10.2004.

Pursuant to the said NIT, the petitioner submitted its tender. Since the tenders could not be opened on the due date, on the request of respondent No. 3, the petitioner and respondent No. 6 extended the validity of their tenders. The petitioner continued with the old work awarded to him on payment of monthly rental charges. Since the tender was not being finalised, apprehending something fishy, on 29.3.2005, the petitioner made a representation to respondent No. 3, inter-alia, praying for early finalisation of the tender and issue of allotment letter in his favour. But there was no response. It is averred that it has now come to the notice of the petitioner that the subject-tender has been awarded in favour of respondent No. 6, despite the fact that the rate quoted by the said respondent was much lower than the rate quoted by the petitioner. It is, thus, pleaded that the said action on the part of the official respondents is illegal and arbitrary and therefore, deserves to be quashed.

3. In the written statement, filed on behalf of respondents No. 1 to 5, it is stated that petitioner's bid was not considered for want of the requisite "registration certificate" with the tender document. It is also pointed out that registration letter, dated 9.3.2005, was received by the respondents only on 14.3.2005. It is also stated that the said respondents have already entered into a contract with respondent No. 6 on 23.3.2005 and therefore, the present petition has been rendered infructuous.

4. We have heard learned Counsel for the parties.

5. Mr. Bhatia, learned Counsel for the petitioner has assailed the decision of the official respondents on the sole ground that having issued the tender document to the petitioner, despite the aforementioned condition of being a registered advertising agency, and having asked the petitioner to extend the validity of its tender, the condition of furnishing registration certificate stood waived and therefore, the said respondents were not justified in ignoring the tender submitted by the petitioner. It is also urged that the registration certificate, obtained by the petitioner from the competent authority and submitting the same to the authorities concerned, his bid could not be ignored, particularly when the rate quoted by the petitioner was much higher than the rate offered by respondent No. 6.

6. We are unable to persuade ourselves to agree with learned Counsel for the petitioner. There is no gain saying that award of contract by a State agency is essentially a commercial transaction and the mode of entering into contract can be chosen by such State agency by fixing such terms of invitation to tender, as are appropriate. It is only the decision-making process, culminating in the award of contract, which is subject to the judicial scrutiny. It is well-settled that the tender conditions have to be adhered to scrupulously by the bidders as well as the authorities. Any relaxation or waiver of an essential condition, unless so provided in the NIT, encourages and provides scope for discrimination,

arbitrariness and favouritism, which is totally opposed to the rule of law.

7. In the instant case, as noted above, the tenders were invited only from the "registered advertising agencies". Admittedly, on the date of submission of the tender, the petitioner was not registered with the Railways and was therefore, not eligible to bid. Merely because tender document was issued to him by the official respondents, he cannot claim that the said mandatory condition stood waived in his case. No such relaxation is envisaged in the NIT. Even furnishing of registration certificate after the submission of the tender does not meet the essential condition and therefore, is of no consequence.

8. Having perused the original file, we are of the considered view that the decision of the official respondents to scrupulously adhere to the tender condition and to ignore the tender of the petitioner for want of registration certificate cannot be characterised as arbitrary, irrational or irrelevant, warranting interference in judicial review.

9. Consequently, the writ petition, being bereft of any merit, is dismissed accordingly.