
(2005) 09 P&H CK 0063
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13344 of 2005

Kaithal

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 15-09-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2005) 141 PLR 839

Hon'ble Judges : D.K. Jain, C.J.; Hemant Gupta, J

Bench : Division Bench

Advocate : S.M. Sharma, for the Appellant; Ritu Bahri, D.A.G., S.V. Rathee and B.R. Gupta, for the Respondent

Final Decision : Allowed

Judgement

D.K. Jain, C.J.—Rule DB.

2. With the consent of learned counsel for the parties, the matter is finally heard at the motion stage itself.

3. By this writ petition, under Article 226 of the Constitution of India, the petitioner, a society registered with the Registrar of Societies, Haryana, questions the legality of the decision taken by Haryana Cooperative Supply and Marketing Federation Limited (for short, HAFED;), respondent No. 2 herein, communicated to it, vide letter dated 25. 7. 2005, informing that the respondent No. 5, a private party, has been allowed to continue with the labour work for loading and unloading of food grains in guarantee godown at Kaitnal up to 31. 3. 2006 and that the two notices inviting tenders (NIT", for short) for the said job have been cancelled. Besides HAFED and respondent No. 5, State of Haryana through Secretary, Cooperative Department, District Manager, HAFED and Managing Director, Haryana State Cooperative Labour and Construction Federation Ltd. have been impleaded as respondents No. 1, 3 and 4 respectively.

4. A brief outline of the factual matrix, which has given rise to the present

petition, are as follows:

In or around March 2005, respondent 3 invited tenders for the purpose of appointment as Labour Contractors for handling various labour operations in the godowns constructed for Food Corporation of India (for short, the FCI) on seven year guarantee basis by HAFED for storage of food grains at Kaithal for the period from 1. 4. 2005 to 31. 3. 2005. In response to the said NIT, 11 companies and individuals submitted their tenders. The said NIT was, however, cancelled and fresh tenders for the same were invited on 5. 4. 2005. In response thereto, 11 tenders were received. It is averred in the petition that by keeping all the tenderers in dark and without disclosing the final decision on the evaluation of the bids, respondent No. 3 got the tender awarded to respondent No. 5 surreptitiously.

5. Being aggrieved, the petitioner and some other tenderers issued legal notice to respondent No. 3. Vide impugned letter, the petitioner has been informed that in the tenders, received pursuant to notices dated 30. 3. 2005 and 5. 4. 2005, the lowest labour rates, which were offered by the contractors on 30. 3. 2005, were below 99. 9% SOR and 110% below SOR on 5. 4. 2005. The bids were reviewed by HAFED as well as the FCI and these were considered to be suspicious offers. Accordingly, it was decided by the authorities that all the tender received be rejected and the out-going labour contractor be asked to continue on the rates prevalent for 2004-2005 for these godowns after increasing the security amount. The arrangement is stated to have been approved by the FCI authorities. It is this decision which is under challenge in this petition.

6. In the affidavit filed in opposition on behalf of respondents No. 2 and 3, it is stated that the Committee, comprising senior officers of HAFED and FCI, opened the tenders on 30. 3. 2005 and it was found by the Committee that the lowest rate of 99. 9% less was offered by one M/s Choudhary Transport Company, which practically meant that the party had offered to work almost free. The matter was discussed by the Committee and it was felt that such a tenderer may abandon the work mid way and jeopardise the entire procurement operations during the peak season. It was, therefore, decided to cancel the tender and to call for fresh tenders on 5. 4. 2005. Further, to ensure that only genuine parties participate in the process the earnest money was increased from Rs. 20,000/- to Rs. 50,000/-. The security amount was increased from Rs. 1,00,000/- to Rs. 2,50,000/- and the cost of tender form was increased from Rs. 100/- to Rs. 500/-. It is also pointed out that since a few parties had offered the rates of 98% less, 99% less and even 110% less, the task of the committee became very difficult to take a decision in the matter. The Committee felt that the offers seemed to be suspicious and the tenderers were likely to indulge in malpractices during the period of their contract. It was under these circumstances that a decision was taken to cancel all the offers received and extend the contract of out-going labour contractor by one year in order to have smooth operation in the godowns. It is thus, denied that the impugned decision is arbitrary or unreasonable.

7. We have heard Mr. S. M. Sharma, learned counsel appearing for the petitioner-society and Mr. S. V. Rathee, learned counsel appearing for respondent No. 2.

8. It is vehemently submitted by learned counsel for the petitioner that the entire process of award of tender to respondent No. 5 is arbitrary and illegal, inasmuch as, HAFED could not cancel the NITs and extend his contract for a further period of one year. It is urged that the impugned action is also violative of the government instructions contained in Gazette Notification, dated 6. 12. 2004, whereby the job in question is reserved for Cooperative Labour and Construction Societies, like the petitioner. Learned counsel has alleged that the impugned action is arbitrary and discriminatory and is deliberately designed to favour respondent No. 5.

9. Per contra, learned counsel for respondent No. 2 submits that the impugned decision, a well considered administrative action, taken in the larger interest of HAFED, is neither arbitrary nor unreasonable, warranting interference by this Court.

10. We have given a thoughtful consideration to the entire matter. True, that despite wide powers of judicial review under Article 226 of the Constitution, the Courts are slow to interfere in matters relating to administrative functions, particularly in contractual matters, unless the decision making process is tainted by illegality, irrationality or lack of fairness in procedure. The Court is more concerned with the decision making process, rather than the merits of the decision itself. It is equally true that certain measure of "free play in joints" is necessary for an administrative body functioning in an administrative sphere but, at the same time, no authority can be permitted to act arbitrarily at its own sweet will. Its actions have necessarily to be in conformity with the standards or norms, which are not arbitrary or irrational. (See: *Tata Cellular v. Union of India*) (1994) 6 S. C. C. 651). It needs little emphasis that while public interest is paramount, there should not be any arbitrariness in the matter of award of contract and all participants in the tender process have to be treated alike. The State or its instrumentality can not arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situated. In *M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others*, and *Union of India and Others Vs. Dinesh Engineering Corporation and Another etc.*, where the Court intervened in exercise of judicial review, their Lordships of the Supreme Court observed that merely because a public authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law, especially Article 14 of the Constitution.

11. Tested on the touch Stone of these broad principles, we are of the view that on the basis of what emerges from the record produced before us, the impugned decision cannot be sustained. The proceedings of the Committee filed with the written statement of respondents No. 2 and 3 reveal that four tenderers had

offered the rates less than the SOR rates, indicating that they were willing to work free of cost. One of the tenderers had offered to do the work at 110% less, meaning thereby that he would pay 10% on SOR from his pocket to HAFED. The Committee, thus, felt that these offers were suspicious. Nevertheless, there were seven more offers, which were above the SOR rates. There were four other tenderers, who had offered the rates above the SOR rates, but the same were less than the rate offered by respondent No. 5. Thus, respondent No. 5 was not the lowest tenderer in the category of those tenderers whose rates were above the SOR rates. It is manifestly clear from the said minutes that these offers were not even noticed by the Committee. Though, there may be some substance in the stand of the Committee that the rates offered below the SOR rates could reasonably lead to a suspicion that the tenderers may indulge in some malpractices during the period of their contract and may be justified in ignoring such tenders but the Committee was obliged to take into consideration all those tender, where the rates offered were more than the SOR rates, which was not done. The Committee, without indicating any reason, merely decided to cancel the NIT and continue with the existing contractor. We are of the considered opinion that the decision of the Committee suffers from the vice of lack of fairness in procedure and arbitrariness. We may, however, clarify that we are not suggesting that tender ought to have been awarded to one of the parties, who had offered the rates above the SOR rates, but all the offers received by HAFED had to be evaluated as per norms.

12. For the foregoing reasons, we are of the view that the impugned decision to award the work of loading and unloading of food grains to respondent No. 5 on the prevailing rates even on increased security amount is invalid as being violative of the equality clause of the Constitution.

13. In the result, the writ petition is allowed, the impugned decision is quashed and the Rule is made absolute with no order as to costs.

14. Since the work involve is of loading and unloading of the food grains, we would direct HAFED to issue fresh NIT and finalise the same as expeditiously as practicable and in any case, not later than 10. 10. 2005. Till then, respondent No. 5 may be allowed to continue with the awarded work.

15. Copies of this order shall be issued dasti.