(2000) 04 GAU CK 0009

In the Gauhati High Court

Case No : Writ Petition (C) No. 100 of 2000

Kirloskar Brothers Ltd. APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 26-04-2000

Acts Referred:
Constitution of India, 1950 — Article 299

Citation : AIR 2000 Guw 143 : (2000) 2 GLT 476

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : A.K. Saraf, C.S. Kapadia and S. Chandra, for the Appellant; U.B. Saha G.A., M. Raj Sekhar, P. Chakraborty and D.C. Nath, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—Heard Dr. A. K. Saraf, learned senior counsel for the petitioner, Shri U. B. Saha, learned senior counsel for the respondent Nos. 1 to 4. Heard also Mr. M. Raj Sekhar, learned counsel for the respondent No. 5.

2. With the consent of the learned counsel for both the parties, the writ petition is disposed of at the motion stage,

3. The Executive Engineer, Resource Division, Public Works Department, Government of Tripura, Agartala (Respondent No. 4) floated tender on 3rd July, 1999 for supply of 750 Nos. of 20 HP Pump sets. The petitioner M/s. Kirloskar Brothers Limited and respondent No. 5 M/s. Mather and Platt (I) Ltd. Calcutta along with other persons submitted tender. The tenders were opened on 10th August, 1999. The tender of respondent No. 5 being the lowest has been accepted by the respondents No. 1 to 4. One of the eligibility conditions was sales tax certificate (S.T.C.C.) of current validity (Clause 4 of the tender notice). The respondent No. 5 filed the said certificate issued by the Sales Tax Authority, Calcutta. The petitioner''s contention is that since the manufacturing factory of the respondent No. 5 is at Pune, the sales tax certificate (S.T.C.C.) ought to have

been obtained from the Sales Tax Authority, Pune, as such when the tenders were opened, the tender of respondent No. 5 was incomplete for want of requisite eligibility certificate and, therefore, the same is liable to be rejected. That is the bone of contention between the parties in the present writ petition.

4. Undisputedly the said sales tax certificate issued by the Sales Tax Authority Pune required by notice has been filed by the respondent No. 5 on 6th October, 1999. The aforesaid Clause 4 of the tender notice dated 3rd July ''99 provides as follows :

"4. Tender form can be obtained from the office of the Divisional Officer concerned on payment of a sum of Rs. 50/- (Rupees Fifty) in cash (each) on any working day during office hours, up to 2-8-99, ITCC, STCC, PTCC. Manufacturer''s Certificate of current validity is to be submitted along with the application for issue of tender form. PTCC will required only for Tripura based firms failing which Lender form will not be issued."

5. The manufacturing unit of the respondent No. 5 is at Pune and the respondent No. 5 is only a branch unit of the manufacturing unit. It has been laid down by the Hon''ble Supreme Court in Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, that when there is amovementof goods from manufacturing unit to the branch office, the case is of inter state sale, and as such, is covered by Section 3 of the Sales Tax Act. In view of the decision of the Hon''ble Supreme Court the respondent No. 5 ought to have filed the sales tax clearance certificate to be issued by the Pune where Sales Tax Authority and manufacturing unit is situated. But as seen above. Clause 4 of the tender notice dated 3rd July, 1999 did not specifically require that the sales tax certificate should be obtained from the place of the manufacturing unit. However, as laid down by the Hon''ble Supreme Court in M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, the requirements in a tender notice can be classified in two categories -- firstly, which lay down the essential conditions of eligibility, and the others which are merely ancillary or subsidiary with the main object to be achieved by the conditions. In the first case the authority issuing the tender may be required to enforce them rigidly. In the second case, it is open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. See also in M/s. G. J. Fernandez Vs. State of Karnataka and others, As also pointed out by the learned counsel for the respondents No. 1 to 4, Clause 4 of the tender notice which required filing of sales tax clearance certificate was a general condition, it did not provide that on non-filing of the sales tax clearance certificate the tender shall be rejected. Clause 23 of the agreement which lays down "the contractor must submit their sales tax professional tax certificate of current validity along with the tender, is also a general condition, as it also does not provide that non-filing of the sales tax certificate the tender shall be rejected. There are other mandatory conditions in the agreement viz. Clauses 13, 14, 26 which specifically lay down that on non-compliance of the conditions prescribed in those clauses,

there shall be rejection of the tender. In the instant case, the Regional Sales Tax representative of the petitioner brought this infirmity to the notice of the respondent Nos. 1 to 4, they later insisted on filing of sales tax certificate to be issued by the Sales Tax Authority of Pune. It has been laid down by the Hon''ble Supreme Court in G. J. Fernandez v. State of Karnataka (supra) that all tender conditions which required minimum qualifying requirements for intending tenderers and information and documents to be furnished by them prescribed by N.I.T., should be strictly complied with. However, any non-conformity with or relaxation in the prescribed standard allowed incase of any intending tenderer, if not resulting in substantial prejudice or injustice to any of the parties or to public interest in general, would not be bad. In the instant case, the quotation of the petitioner was for supply of Rs. 39515 per pump set, total amount Rs. 2.96,36,250.00 while the tender of the respondent No. 5 was for Rs. 35875.00, per pump set, the total amount of Rs. 2,69.06250.00, thus there was a difference of about Rs. 2730.00 lakhs. The offer of the respondent No. 5 was the lowest one of course the offer of the petitioner was the second lowest. The Tripura Supply Advisory Board (S.A.B.) which consists of the Chief Secretary, Principal Finance Secretary. Secretary P.W.D., Secretary Industry, Secretary Law. Joint Secretary Finance and Chief Engineer P.W.D. authorised to accept the tender of the respondent No. 5 under the rules accepted the tender. Learned counsel for the petitioner relied upon the decision of the Hon''ble Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and of this Court in Anasal Properties and Industries Ltd. v. State of Assam (2000) 1 GauLR 41 and in Dilip Kumar Dutta v. State of Tripura (1986) 1 GauLR 367 and argued that the terms and conditions of the tender have to be followed strictly, the respondents cannot deviate from the terms and conditions thereof, the terms and conditions of the tenders cannot be departed from arbitrarily. As regards the case of Ramana Dayaram Shetty v. International Airport Authority of India (Supra) it may be pointed out that, that case belonged to the first category, namely, essential conditions of eligibility where the strict compliance of the condition can be insisted upon. In the instant case, the respondents authority have not dispensed with the aforesaid conditions of eligibility, but when the fact was brought to the notice of the respondents, the respondents have accepted the satisfaction of the said condition of eligibility at a subsequent stage. The other two decisions, looking to the facts and circumstances of the case, do not help the petitioner.

6. In a very recent case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, the Hon''ble Supreme Court has cautioned thus at page 397 :

"When a writ petition is filed In the High Court challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest Involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the Court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by Court intervening in such a commercial transaction, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the Court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the Court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the Court should not Intervene under Article 226 In disputes between two rival tenderers."

Thus, the S.A.B. of the respondents after having found the tender of the respondent No. 5 lowest have accepted the tender. As seen above the tender of the respondent No. 5 was lower for a sum of Rs. 27.30,000.00 In the present case there is no allegation of any bias or mala fide against the respondents or members constituting the S.A.B. The respondents have acted in public interest. The present is the case of rivalry between the two rival tenderers, namely, the petitioner and the respondent No. 5. Looking to the whole conspectus of the case, it is not a fit case for interference by this Court in the exercise of powers under Article 226 of the Constitution of India.

7. In the result, the writ petition has no merit and is hereby rejected.

