

(2017) 05 SHI CK 0058
In the High Court Of Himachal Pradesh
Case No : 2530 of 2016

Lalchand

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 11-05-2017

Acts Referred:

Citation : (2017) 05 SHI CK 0058

Hon'ble Judges : Sanjay Karol, Sandeep Sharma

Bench : Division Bench

Advocate : Rajesh Kumar, Shrawan Dogra, Anup Rattan, Romesh Verma, Kush Sharma, Diwakar Dev Sharma

Final Decision : Dismissed

Judgement

1. Petitioner claims following main reliefs by way of instant petition: "(i) That the action of the respondents declaring respondent No.3 to be the successful bidder and awarding the same work for running the mess in the premises of respondent No. 2 may kindly be declared as null and void.

(ii) That the respondent No.2 may kindly be directed to place on record the award dated not known and office order by which the respondent No.3 has been declared to be the successful bidder and the same may be quashed and set aside.

(iii) That the respondent No.2 may kindly be directed to award the work of running the mess in the premises of respondent No.2 in favor of the petitioner being the lowest bidder."

2. Briefly stated the facts of the case, as emerge from the record are that respondent No.2 issued a public notice calling for rates for providing food and refreshment in the canteen and hostel of the aforesaid institute, providing taxi, Mali/Mazdoor for the garden/lawns/poly-house, managing hostel, sweeping and security guard, as per list and conditions shown in tender form, by or before 30.8.2016. In response thereto, bids/rates from five persons were received including petitioner and respondent No.3, which were opened on 30.8.2016, and,

on the basis comparative statement of rates, respondents awarded work to respondent No. 3 on 8.9.2016. Petitioner feeling aggrieved, preferred present petition.

3. Mr. Rajesh Kumar, learned counsel representing the petitioner vehemently argued that the petitioner being lowest bidder, ought to have been awarded work.

4. Mr. Shrawan Dogra, learned Advocate General, duly assisted by Mr. Kush Sharma, learned Deputy Advocate General, while supporting the action of respondent No.2 in awarding work to respondent No. 3, brought to our notice, condition No. 22 of tender form prescribing conditions for the mess, which provides that work will be awarded only to the person, who has experience of performing similar work in a training institute, hotel or restaurant, experience certificate in support of which shall have to be enclosed. As per Mr. Dogra, petitioner was considered for awarding of work in question, since he had not annexed any such experience certificate, rendering him ineligible for the work in question. Further plea taken by learned Advocate General, while defending action of respondent No.2, is that while considering award of work, rates of mandatory items were taken into consideration, for which items, rates of respondent No.3 were found lowest. As per reply of respondents No.1 and 2, rates of other items were negotiated with respondent No.3.

5. Petitioner, in rejoinder filed by the petitioner to the reply of respondents No.1 and 2, put forth argument that once bids were called for all the items shown in the annexure, prices of all the items, on an average, ought to have been considered. Petitioner further stated that even if mandatory items are taken into consideration, petitioner has offered lowest rates for the same also and as such he was the lowest bidder.

6. Mr. Diwakar Dev Sharma, learned counsel representing respondent No.3, stated that his client has sufficient experience in the field and, petitioner being ineligible, did not have any ground to challenge award of work in his favour.

7. We have heard the learned counsel for the parties and gone through the record carefully.

8. In the instant case, respondents invited tenders for one year i.e. from 1.10.2016 to 30.9.2017, to run work of hostel mess. It also emerges from the reply filed by the respondents that five bidders submitted their rates and, accordingly, tenders were opened on 30.8.2016 by the Committee constituted for the purpose, in the presence of bidders. Perusal of comparative statement placed on record by the respondent i.e. Annexure R-III, suggests that the Committee, while finalizing tenders submitted by bidders, calculated rates submitted by bidders qua items, which were to be provided mandatorily i.e. breakfast, lunch, dinner and evening tea with snacks. Further perusal of list of items enclosed with terms and conditions as contained in the tender form clearly suggests that three meals i.e. breakfast, lunch and dinner were required to be served mandatorily as per items prescribed in tender form, Annexure R-III and Annexure R-IV. Perusal

of Annexure R-III i.e. list of items further suggest that apart from aforesaid mandatory items, bidders were also to offer rates for special items. Comparative statement as referred to above, clearly suggests that rates quoted by respondent No.3, Manoj Kumar, which were Rs.548/- in total, qua all mandatory items were found lowest because, admittedly, petitioner had offered rates, which in total came to Rs.690/-, qua all mandatory items. It also emerges from the reply filed by respondents that rates offered by bidders qua special food were not taken into consideration, while preparing aforesaid comparative statement because, special food is only provided on demand basis or occasionally. Authority concerned, while finalizing tender, only took into consideration, rates offered by parties for mandatory items, whereas, admittedly, respondent No. 3 was found to be lowest bidder. It also emerges from the reply of respondents that rate offered by petitioner for special items, which were not taken into consideration, while finalizing tender, were lowest, but replying respondent negotiated rate of special items with respondent No.3, who agreed to provide same on minimum rates and accordingly, tender was awarded in his favour. It further emerges from the note appended to the comparative statement that respondent No.3 Manoj Kumar had been providing mess service to the Department and during that period, his services as well as quality of food served by him were found to be satisfactory and as such, authority decided to award tender in his favour. Petitioner, by way of rejoinder, refuted aforesaid claim having been put forth by the respondents, in their reply and made an attempt to demonstrate that even as per calculations made on the basis of rate offered by petitioner, same were lowest as such, authority ought to have awarded tender in his favour. But, this Court, after having carefully examined details given in the rejoinder by the petitioner, sees no force in the aforesaid contentions of the petitioner because, admittedly, perusal of comparative statement made prepared by the Committee, clearly suggests that rates offered by respondent No.3 qua mandatory items were far less than rates offered by petitioner.

9. After bestowing thoughtful consideration to the material adduced on record by respective parties as well as documents available on record, this Court sees force in the arguments having been made by learned counsel representing the petitioner that there is nothing as such in the tender document, from where, it can be inferred that while finalizing tender, rates quoted against mandatory items only were to be considered. Admittedly, perusal of annexure R-IV, list annexed with the tender form, nowhere provides that while finalizing tender, rates quoted against mandatory items would only be considered. However, in the instant case, as emerges from the record, respondents, while awarding tender in favour of respondent No.3, made him to negotiate rates offered by him, qua special items, who revised the same accordingly.

10. It is well settled by now that the Courts would normally not interfere in the tender/contractual matters while exercising powers of judicial review. Power of judicial review can only be exercised by constitutional courts if it is proved on record that process adopted or decision so made by the authorities is intended to

favour someone or the authority has acted with malafide or decision made is so arbitrary and irrational that no responsible authority acting reasonably could have reached. Needless to say that Court can also exercise power of judicial review in case it is shown that public interest is affected. In this regard, reliance is placed upon judgment rendered by Hon''ble Apex Court in Tata Cellular versus Union of India, reported in (1994) 6 SCC 651.

11. Though, this Court has no hesitation to conclude that authorities concerned, while finalizing tender have not adopted fair approach and injustice has been caused to the petitioner, who was lowest bidder, but this Court does not deem it fit at this stage to cancel tender awarded in favour of respondent No.3, especially when the contract in question shall be expiring on 30.9.2017 i.e. after five months. This Court also can not lose sight of the fact that tender in question is for providing breakfast, lunch, dinner and evening tea with snacks to the hostel mess attached to the office of the respondent No.2, wherein admittedly, number of officers come for training regularly. Cancelling of tender awarded in favour of respondent No. 3 at this stage, would cause undue hardship to the concerned department, which is supposed to provide mess service to the visitors throughout the year.

12. Otherwise also, considerable time would be consumed in finalizing of fresh tender, if any, ordered to be invited. Apart from above, it also emerges from the record that petitioner was not eligible to be considered as he was not having requisite experience in the field as provided in the terms and conditions. True it is, rates offered by petitioner were considered by the department but that would not make him eligible, if he was not eligible in terms of terms and conditions contained in tender form.

13. However, this is a case, where petitioner has made out a case for himself by pointing out material illegalities and irregularities committed by the respondent-authorities while awarding work to respondent No.3 and this is a fit case, where this Court would have recommended action against erring officials but, in this case, we deem it fit to warn authorities to be more cautious and fair in their approach while deciding such matters.

14. With the aforesaid findings, the petition is dismissed. Pending applications, if any are also disposed of. Interim directions, if any, are also vacated.