
(2016) 09 GAU CK 0068
In the Gauhati High Court
Case No : Writ Petition (C) No. 135 of 2016

Laldawngliana

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 16-09-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2016) 5 GauLT 694

Hon'ble Judges : L.S. Jamir, J.

Bench : Single Bench

Advocate : Mr. Samuel Vanlalhriata Chhangte, GA, Mr. N. Sailo, Senior Advocate, Mrs. Dinari T. Azyu, Mr. Victor L. Ralte, Ms. Vanhmingliani and Mr. K. Roland, Advocate, for the Respondents; Mr. L.H. Lianhrima, Senior Advocate and Ms. H. Lalmalsawmi, Advocate, for th

Final Decision : Dismissed

Judgement

L.S. Jamir, J. - The Directorate of Food, Civil Supplies and Consumer Affairs, Government of Mizoram, Aizawl floated notice inviting tender dated 29.04.2016 inviting interested persons/bona fide citizen of India to supply rice I for the State of Mizoram. The 3 (three) petitioners along with 26 others responded to the notice inviting tender. Thereafter, comparative statement of rates for supply of rice amongst the 29 tenderers was prepared. The State Purchase Advisory Board (hereinafter referred to as "SPAB") held its meeting on 25.05.2016 and on consideration of the comparative statement of rates offered by the tenderers with their samples along with due consideration to experience and financial soundness of the tenderers, the SPAB made recommendation which are extracted herein below:-

"(1) Quantity of rice to be supplied will be subject to a limitation of 6500 MT per month, subject to increase and decrease as per demand as mentioned in the terms and conditions of the tender document point No.3

(2) Pi Palzampuii, Aizawl Venglai, Aizawl, Mizoram, the lowest bidder at the rate

of Rs. 2298.00 (Rupees Two Thousand Two Hundred and Ninety-eight) only per quintal, is recommended by the SPAB as supplier on the condition of her supply of Rice as per sample submitted.

(3) The conditions of supply will be as per the provisions laid down in the terms and conditions in the Tender document and as per the provisions laid down in the Contract Agreement between the Government and the Supplier."

Thereafter, the Under Secretary to the Government of Mizoram, Food, Civil Supplies and Consumer Affairs Department by communication dated 06.06.2016 wrote to the Director, Food, Civil Supplies and Consumer Affairs Department, Mizoram, Aizawl conveying approval of the Government to the minutes of the meeting of the SPAB held on 25.05.2016. However, as the selected tenderer, namely, Pi Lalzampuii of Aizawl Venglai could deliver only 10,231 quintals against the target of 65,000 quintals of rice due to damage on rail track and heavy monsoon rain, she wrote a letter dated 8.8.2016 to the respondent No. 1 stating that she was unable to continue supplying the rice anymore and requested for return of her security deposit.

Situated thus, the SPAB held another meeting on 19.07.2016 to take stock of the matter. In its meeting, the SPAB noted that out of 29 quotationers 20 of them quoted rates below Rs. 2500 per quintals and 9 quoted rates above Rs. 2500 per quintal. Considering the rates and the prevailing local rates, the SPAB was of the opinion that Rs. 2500 per quintals would be reasonable and workable rate both from the point of view of the supplier and the Government for the purchase of rice for the Public Distribution System and therefore the SPAB recommended the said rate. The Board also considered that relying on several suppliers or contractors may create its own problems and recommended for procurement of rice centrally. Therefore, the SPAB recommended procurement of rice centrally. Therefore, the SPAB recommended procurement and delivery of rice through the MIZOFED Ltd/respondent No.3 wherein the State Government holds majority share of the society i.e. more than 90%.

In terms of the recommendation of the SPAB in its meeting held on 19.07.2016, supply order dated 05.09.2016 was issued for supply of 30,000 quintals of rice from the respondent No.3. The said quantity was to be delivered on or before 20.08.2016. As the petitioners were not considered for supply of rice by the SPAB in its meeting held on 19.07.2016, they preferred a representation before the Minister, Food, Civil Supplies and Consumer Affairs on 26.07.2016. As there was no response to the said representation, the present writ petition is filed challenging the supply order dated 05.08.2016 with further prayer to direct the respondent Government to reissue fresh notice for invitation of tender in respect of supply of rice for the State of Mizoram.

2. Heard Mr. L.H. Lianhrima. learned senior counsel assisted by Ms. H. Lalmalsawmi, learned counsel for the petitioners. Also heard Mr. Samuel Vanlalhriata Chhange, learned Government Advocate appearing for the State

respondents as well as Mr. N. Sailo, learned senior counsel assisted by Mrs. Dinari T. Azyu, learned counsel appearing for the respondent No. 3.

3. Mr. L.H. Lianhrima, learned senior counsel for the petitioners submits that after the supply order dated 05.08.2016 was issued in favour of the respondent No. 3, an agreement deed was signed on 05.08.2016 between the respondent No.3. He submits that the respondent No.3 did not bid for supply of rice in response to the NIT dated 29.4.2016. Further, the terms and conditions of the NIT more importantly condition No. 3 provides that no appointment of supplier will be made unless he/she is a valid tenderer. In that view of the matter, it is submitted that when the respondent No.3 was not a valid tenderer in response to the NIT dated 29.04.2016, the respondent Government could not have settled for supply of rice to the State of Mizoram with the respondent No. 3. It is also submitted that in the SPAB meeting held on 19.07.2016, when the said board was of the view that Rs. 2500 per quintal would be reasonable and workable rate both from the point of view of the supplier and the Government for the purchase of rice for the Public Distribution System, the petitioners were not afforded reasonable opportunity of being heard before selection of the respondent No.3 for supply of rice. Further, from amongst the 29 quotationers who had responded to the NIT dated 29.04.2016, there were as many as 20 tenderers who have quoted rates below Rs. 2500 per quintal while 9 of them quoted rate above Rs. 2500 per quintal. However, the State respondents have decided to select respondent No. 3 and that too without ascertaining as to whether the respondent No.3 has fulfilled the terms and conditions laid down in the NIT. The same would reflect that the actions of the respondents are bias thereby prejudicing the case of the petitioners.

4. Learned senior counsel for the petitioners submits that the petitioners have submitted their representation stating that they should have been offered the work order in view of the fact that they have quoted rate below Rs. 2500 per quintal which is lower than the rate fixed by the respondent Government for the respondent No. 3. In the said representation, the petitioners had also expressed their desire to supply the required rice to the Government. However, such representation has also not been considered by the State respondents. As the supply order was placed with the respondent No. 3 who had not even participated in the bid in response to the NIT dated 19.04.2016, the action of the respondents is not reasonable and the same should be interfered with by this Court by giving a direction for reissuing of tender notice and also to quash the supply order dated 05.08.2016 which was placed in favour of the respondent No. 3.

5. Mr. Samuel Vanlalhriata Chhangte, learned Government Advocate appearing for the State respondents on the other hand submits that there were two reasons for selecting the respondent No.3 for supply of rice. The first reason being relying on several suppliers or contractors may create its own problems. The second reason is that the SPAB considered that the previous supplier could not deliver

the desired quantum of rice in time. The Department had only two suppliers in the recent past, both of whom have failed to supply the said rice which was not in the interest of public. Learned Government Advocate relying on Clause 2.3 of the Food, Civil Supplies & Consumer Manual (Revised Edition), 2008 (hereinafter the Manual of 2008) of the Government of Mizoram submits that keeping the public interest in view, purchase of food stuffs and other essential commodities are to be normally made from Government Agencies at prices fixed by the Government. In the event, there is problems in such purchase and/or for any other reasons, the Department may also make purchase from other agencies by inviting competitive tenderers and after taking prior approval of the Government. He, therefore, submits that as provided by Clause 2.3 of the Manual of 2008 of the Government of Mizoram, the respondent No. 3 which is a Government owned society was chosen keeping the public interest in mind. Learned Government Advocate also submits that Clause 23 of the terms and conditions of the NIT dated 29.04.2016 stipulates that the Government of Mizoram reserves the right to execute the work through any other agencies, if the appointed supplier fails to execute the work in whole or part for any reason at his risk and cost. He also submits that Clause 23 provides that if necessary, the Government may appoint more than two suppliers to supply any quantity of rice. Therefore, the State respondents considering that there has been failure on the part of the supplier in the recent past had taken a conscious decision and had chosen the respondent No. 3 in exercise of the Clause 23 of the terms and conditions of the NIT dated 29.04.2016. He submits that after the respondent No. 3 was selected, there has been no difficulty for procurement office for the people till date inasmuch as, sufficient quantity of rice is being supplied by the respondent No. 3. In that view of the matter, he submits that the writ petition be dismissed.

6. Mr. N. Soilo, learned senior counsel appearing for the respondent No. 3 while endorsing the submissions made by the learned Government Advocate submits that the minutes of the SPAB meeting held on 19.07.2016 is not under challenge before this Court. He also submits that the supply order dated 05.08.2016 is for a period of only one month which has already expired. It is submitted that the Manual of 2008 was notified on 21.10.08 and Clause 2.3 of the said Manual under Chapter 2 for procurement of food stuffs provides that keeping the public interest in view, purchase of food stuffs and other essential commodities shall normally be made from Government Agencies at prices fixed by the Government. In the present case, he submits that the State respondents had in fact violated the Clause 2.3 of the Manual inasmuch as, they had proceeded to invite tender through the NIT dated 29.04.2016. In fact, the State respondents ought to have made such procurement from Government Agencies first and only thereafter, if there were any problems, the Department ought to have proceeded to make purchase from other agencies by inviting competitive tenderers.

It is also submitted that this being a contractual matter, the decision making process will have to be only considered by this Court and not the correctness of the decision. He submits that a reading of the minutes of the SPAB meeting

dated 19.07.2016 would indicate that the same is not arbitrary and therefore no interference is required in the decision making process of the official respondents. In his support, learned senior counsel has placed reliance in the case of (i) Tata Cellular v. Union of India reported in (1994) 6 SCC 651, (ii) Krishnan Kakkanth v. Government of Kerala & Ors. reported in (1997) 9 SCC 495, (iii) Netai Bag & Ors. v. State of W.B & Ors. reported in (2000) 8 SCC 262 and in the case of (iv) Computer Associated Industries of Mizoram v. The Secretary to the Government of Mizoram & Ors. reported in 2004 (1) GLT 721.

7. I have considered the submissions forwarded by the learned counsel for the parties.

8. This Court has considered the Manual of 2008. Clause 2.3 of the said Manual reads as under :-

"2.3 Purchase of Foodstuff from Agencies other than Government Agency: Keeping the public interest in view, purchase of foodstuffs and other essential commodities shall normally be made from Government Agencies at prices fixed by the Government. In the event there is problem in such purchase and/or for any other reasons, the Department may also make purchase from other agencies by inviting competitive tenderers and after taking prior approval of the Government."

A reading of the Clause 2.3 would clearly indicate that keeping the public interest in view, purchase of foodstuffs and other essential commodities shall normally be made from Government Agencies at prices fixed by the Government. It is only thereafter if any problems arose for such purchase, then the Department may proceed to make purchase from other agencies by inviting competitive tenderers. Therefore, this Court is in agreement with the learned senior counsel appearing for the respondent No. 3 that the Department instead of following Clause 2.3 had proceeded to issue NIT dated 19.07.2016 calling for tenderers without first making an attempt to purchase the essential commodities from the Government Agencies.

9. The minutes of the SPAB meeting held on 19.07.2016 has also been considered by this Court. Therein, the Board had taken stock of the matter after the selected tenderer expressed her inability to supply the rice to the Government. It was thereafter that the Board had come to a decision that the amount of Rs. 2500 per quintal would be reasonable and workable rate both from the point of view of the suppliers and the Government for the purchase of rice for the Public Distribution System. Thereafter, on consideration of all the pros and cons, the Board had recommended procurement and delivery of rice from the respondent No.3. This Court is unable to find any fault in the decision taken by the SPAB in its meeting held on 19.07.2016. In fact, the decision of the SPAB to procure rice from the respondent No. 3 is in terms with Clause 2.3 of the Manual of 2008.

10. This Court is also conscious of the fact that there can be no question of

infringement of Article 14 if the respondent tries to get the best person or the best quotation in the interest of public. It is also to be kept in mind that judicial review is concerned with reviewing not the merit of the decision but the decision making process itself. In the present case, this Court is unable to find that the SPAB had exceeded its power or committed an error of law. Further, for selecting respondent No.3 for supply of rice, this Court does not see any abuse of power or committing breach of the principles of natural justice.

11. The supply order dated 5th August, 2016 has also been considered. The said supply order is for supply of 30,000 quintals of rice by the respondent No. 3 on or before 20th August, 2016. The said supply order has expired as on today and therefore there is nothing more to adjudicate on the matter any further. In any case, this Court has already observed that there is no infirmity in selecting the respondent No. 3 for supply of rice for the Public Distribution System by the SPAB.

12. The Hon''ble Supreme Court in the case of Krishnan Kakkanth (supra) has held as under:-

" 36. To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Courts should avoid "embarking on uncharted ocean of public policy"

37.

The law is well settled that even in the matter of grant of largesse, award of job contracts etc., the Government is permitted to depart from the general norms set down by it, in favour of a particular group of persons by subjecting such persons with different standard or norm, if such departure is not arbitrary but based on some valid principle which in itself is not irrational, unreasonable or discriminatory."

13. In the facts and circumstances of the case as discussed herein above, there is no merit in the writ petition and the same is accordingly dismissed.

14. No costs.