
(2015) 07 JH CK 0023
In the Jharkhand High Court
Case No : W.P. (C) No. 1712 of 2013

Lalit Kumar Agarwal

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 3 JLJR 618

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Sudarshan Shrivastava, for the Appellant; Priya Shreshtha, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Chandrashekhar, J.—Aggrieved by reduction in rates of commodities with retrospective effect communicated to the petitioner vide Memo dated 29.10.2012 and 23.12.2012, the present writ petition has been filed. Pursuant to Notice Inviting Tender for supply of foodgrains, green vegetables, potatoes etc. in Giridih Jail for the period between 1.7.2012 to 30.9.2012, the petitioner submitted his bid and his bid was found the lowest. Accordingly, for supply of the aforesaid food articles to the Giridih Jail for the 3rd quarter of the year i.e. from 1.7.2012 to 30.9.2012, the petitioner was awarded work order on the basis of the rate fixed by the Purchase Committee. Similarly, for supply of food-grains, fresh vegetables, potatoes etc. for the Giridih Jail, the petitioner was awarded work orders for the period between 1.10.2012 to 31.12.2012 also. The petitioner executed the work orders without any complain however, subsequently vide letters dated 29.10.2012 and 23.12.2012 the Jail Superintendent, Giridih Prison communicated to the petitioner the rate of foodgrains approved by the I.G. (Prison), Jharkhand whereunder, the rates for few items have been approved at reduced rates. Aggrieved, the petitioner submitted representation and under protest, he received the payment at reduced rates.

2. Mr. Sudarshan Shrivastava, the learned counsel for the petitioner submits that Clause 5 in Notice Inviting Tender which provides that the rates fixed by the Purchase Committee can be modified by the I.G. (Prison) is arbitrary. The respondents after the work order was successfully executed, cannot revise/modify the rate of foodgrains, vegetables etc. with retrospective effect, to the detriment to the petitioner. It is further submitted that in any case power under Clause 5 must be exercised by the I.G. (Prison) within a reasonable time and in no case, the rates approved by the Purchase Committee can be reduced by I.G. (Prison) after the supplies have been made.

3. The learned counsel for the respondents submits that after the petitioner accepted the work order, he cannot challenge the conditions of contract. Under Clause 5 the bidders were duly informed that the rates approved by the Purchase Committee are subject to approval of I.G. (Prison) who can modify/revise the rates recommended by the Purchase Committee and therefore, the petitioner cannot raise a grievance with respect to revision of rates for few food articles by I.G. (Prison).

4. I have carefully considered the rival contentions raised on behalf of the parties and perused the documents on record.

5. The grievance of the petitioner raised in the writ petition relates to the period between 1.7.2012 to 30.9.2012 and from 1.10.2012 to 31.12.2012. In my opinion, the grievance raised by the petitioner has to be considered in two parts separately, considering the effect of Clause 5 of NIT and response of the petitioner in both the stages. Clause 5 of NIT provides that the successful bidder is required to furnish security deposit amounting to 10% of the "approximate value". It further provides that the rates recommended by the Purchase Committee would be forwarded to I.G. (Prison) who may revise the rates or may amend or cancel the Tender itself. In the Notice Inviting Tender, rates of different food articles have been mentioned. It is not in dispute that about one month after the petitioner executed the work order for the 3rd quarter of the year, vide letter dated 29.10.2012 he was informed the reduced rate for few food articles as approved by I.G. (Prison), Jharkhand. The respondents have relied on Clause 5 of NIT to resist the claim of the petitioner. It is contended that the rate recommended by the Purchase Committee would be valid only after its approval by I.G. (Prison), Jharkhand. The rates approved by the Purchase Committee were not final and in terms of Rule No. 1051 Clause-IX of Jail Manual, the rates are required to be approved by I.G. (Prison).

6. It is well settled that in contractual matters also action of the State authority can be challenged on the ground of violation of Article 14 of the Constitution of India. Even after the agreement is signed, if the Court finds one of the conditions arbitrary, the same can be quashed. In the present case various clauses of NIT made it abundantly clear to the bidders that the rate approved by the Purchase Committee was not final. Under Clause 5 itself, bidders were required to furnish security deposit amounting to 10% of "approximate value". This itself clearly

indicates that the rate recommended by the Purchase Committee was not final. It has further been indicated that the rate recommended by the Purchase Committee is subject to approval of I.G. (Prison). Thus, Clause 5 of NIT cannot be said to be arbitrary. However, there cannot be a dispute to the proposition that exercise of power by I.G. (Prison) in terms of Clause 5 of NIT must be at the earliest or at least within a reasonable time. After the petitioner successfully executed the work order, the rate indicated in NIT which was recommended by the Purchase Committee cannot be reduced, subsequently. The period of supply of food articles for 3rd quarter of the year is from 1.7.2012 to 30.9.2012 however, the petitioner was intimated vide, letter dated 29.10.2012 that I.G. (Prison) has reduced the rate for food articles. It has not been brought on record that prior to 3rd quarter of 2012 also, the petitioner has made supplies on similar terms and conditions and rate for food articles were reduced subsequently and payment was made at reduced rates. In these facts, I am of the opinion that after the work order was successfully executed and thus, the contract was satisfied, the rates indicate in NIT cannot be reduced to the detriment to the petitioner. The petitioner is thus, held entitled for payment in terms of the rates indicated in NIT for the 3rd quarter of the year. Accordingly, letter dated 29.10.2012 is hereby quashed.

7. In so far as, grievance of the petitioner for reduction of rates for food articles for supply in the subsequent period i.e. between 1.10.2012 to 31.12.2012 is concerned, different considerations would arise. Besides the express terms in NIT, the petitioner was aware that the rates were reduced by I.G. (Prison) for the previous period. In the subsequent period, the petitioner has not lodged his protest promptly, expressing his unwillingness to continue supply of food articles unless, the rates are approved by I.G. (Prison), though, there is a clause in NIT prohibiting the tenderer from discontinue of supply of food articles even if there was delay in approval of I.G. (Prison), a prompt protest by the petitioner would have lend support to the claim raised by the petitioner. The petitioner who took calculated risk must accept the consequences. The Notice Inviting Tender provides imposition of penalty only in cases where supply has been delayed or irregularity has been found in supplies. As noticed above, Clause 5 of NIT has made abundantly clear to the bidders that the rate approved by the Purchase Committee is subject to final approval of I.G. (Prison). For supply of food articles for subsequent period, the expectations of the petitioner that the rates indicated in the NIT would be approved by the I.G. (Prison) stands excluded. Now, it was made known to the petitioner that payment for supply of the food articles would be made only in tune with the rates approved by I.G. (Prison). The petitioner thus, cannot contend that the rates have been reduced/modified with retrospective effect to his detriment. The reliance on order passed in C.W.J.C. No. 2204 of 1996(R) does not lend support to the case of the petitioner. The facts in the present case are entirely different from the facts in C.W.J.C. No. 2204 of 1996(R). In the said case, there was only one period for which the rate of potatoes was reduced by I.G. (Prison) and that too after a long delay. In the

said case validity of a Clause similar to Clause 5 in NIT as in the present case was not debated. Moreover, in the present proceeding there is no express challenge to Clause 5 of NIT. In the result, challenge to communication dated 23.12.2012 must fail. The writ petition is partly allowed, in the above terms.