
(1994) 12 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 27088 and 29166 of 1992

Laloo Ji and Sons and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-12-1994

Acts Referred:

Citation : (1994) 12 AHC CK 0048

Hon'ble Judges : P.K. Mukherjee, J and B.M. Lal, J

Final Decision : Dismissed

Judgement

B. M. Lal, J.—By this petition under Article 226 of the Constitution of India petitioners have sought an order, direction or writ in the nature of certiorari quashing the order, if any, under which respondent No. 5 is permitted to undertake election work and further an order, direction or writ in the nature of mandamus directing the respondents Nos. 2 to 4 not to give any work to the respondent No. 5 nor make any payment on the basis of the work done by him. Petitioners have also prayed for directing the respondents to give work to a party strictly in accordance with the rules and judicial pronouncements made by this Court as well as Hon'ble the Supreme Court and to give work to the petitioner for election work of 1993.

2. According to petitioners, petitioner No. 1 Lalooji and Sons through its partner Sri Jagdish Kumar Agarwal is an approved Government Contractor and gets tenders all over the country for Kumth Melas, Exhibitions, Elections and other Government functions and deals for undertaking work for barricading, tinsheds, pandals, furnitures, tin construction work and general order supplier on hire.

3. In short case of the petitioners is that for the elections of U. P, Legislative Assembly in the year 1993, a notice was published in the newspapers inviting tenders for election work and a notice on behalf of District Election Officer, Allahabad was sent to certain contractors including the petitioner asking them to submit their offers for the work on the rates of 1988 byelections for tents, samiyanas etc. (copy of the notice is enclosed as Annexure 6 to the writ

petition). Vide above notice the tenderers were asked to quote rates in the percentage either in excess of 1988 rates or lowest to it in sealed envelop. It was further directed that in another envelopes other informations regarding the past experience, capacity and capability be given, failing which the offer would not be considered. However, pursuant to the notice petitioner submitted its offer on the basis of percentage of 1988 rates and also furnished other informations as sought for. On 25th October, 1993, Up Zila Nirvachan Adhikari, Allahabad sought information from the petitioner whether he had undertaken any work in 1977 and 1991 elections and the petitioner vide letter dated 28/10/1993 furnished the information sought from him. But to the utter surprise of petitioners without taking any formal decision in the matter, respondent No. 5 is permitted to undertake the work. Hence this petition.

4. According to the respondent No. 5, M/s. Laloo Ji and Sons was a renowned firm in the Northern India and late Laloo Ji was its original proprietor due to whose dedicated, honest and sincere services it became a firm of great repute in India. But with the passage of time and increase in the family, number of firms increased but the name of late Laloo Ji is still continuing in all such firms and the goodwill of late Laloo Ji is thus being styled by all branches of the family i. e. the descendants of late Laloo Ji who opted this business.

5. In short the case of respondent No. 5 is that since the petitioners are the collaterals of respondent No. 5 and civil litigation between them is pending hence petitioner has made it a point to always come in the way as and then any contract is given to the respondent No. 5. The controversy arose between the petitioners and the respondent No. 5 for the first time in the year 1988 when tenders were invited by the district administration of Allahabad for providing tents, furnitures, barricades etc. for election work in the bye-election of Allahabad Parliamentary Constituency. Respondent No. 5 along with petitioners and others submitted tender for the said work. Since the tender of respondent No. 5 was the lowest hence the work was allotted to respondent No. 5. The said work was done to the utmost satisfaction of the authorities concerned and performance of the respondent No. 5 was very much satisfactory, therefore, in subsequent elections also the work was given to it by the district administration. For the contract in question lowest rate was not the sole criterion rather experience certificate etc. were also required to be furnished by the parties. On overall assessment, the committee constituted for the purpose by the District Magistrate did not find the tender of the petitioners upto the mark therefore, on the recommendations of the Committee petitioner's tender was rejected and considering experience and past performance of respondent No. 5 the work was allotted to it. The respondent No. 5 has completed the work and the contract has been executed and thus the writ petition has become infructuous, therefore, be dismissed as such.

6. Learned counsel for the petitioners contended that although petitioner is also well experienced in the election and other works, yet without adhering to the

terms and conditions of tender notice, contract was given to the respondent No. 5 and thereby undue advantage is extended to the respondent No. 3 causing wrongful loss to the public exchequer.

7. Learned counsel for the respondent No. 5 contended that pending civil litigations references of which were also given, are the actual reasons for filing this petition. Petitioner's tender was not found up to the mark therefore, it was rejected. The lowest tender was not the sole criterion for giving contract. For the 1988 election work petitioner competed with respondent No. 5 but failed and the work was allotted to the respondent No. 5 and considering its experience and past performance, contract in question was given to the respondent No. 5 which has been executed and work has been completed as no desired interim relief was granted to the petitioner.

8. So far as pendency of civil litigation between the parties is concerned it shows that though the parties are branches of the same family tree yet their family as well as business relations are not cordial. However, that is not the point in issue. As far as disputed questions of fact raised by the respective parties in support of their cases, are concerned, the same cannot be gone into by this Court in writ proceedings. For that, remedy to the party aggrieved is available in civil suit proceedings.

9. A perusal of the record shows that no interim relief was granted in favour of petitioners in the instant case. The contract in question appears to have been given to the respondent No. 5 by the order dated 2111993. The contract has been executed and the work has given completed by the respondent No. 5. Record further shows that a Division Bench of this Court comprising Hon"ble B.L. Yadav, J. and Hon"ble N. L. Ganguly J., vide its order dated 11111993, considering importance of election work and under the circumstances of the case directed respondent No. 5 to complete the work on the basis of the order dated 2111993. Thus, since the contract has been executed, the writ petition virtually has become infructuous. But all the same this court feels that in the matters of granting contracts, the Government action should always satisfy 3 tests i.e. (a) nonarbitrariness, (b) action with reasons, and (c) action in public interest. Therefore, in such matters, if action of State or its instrumentality is found to be arbitrary, unreasonable or not in public interest, the contract or agreement as the case may be, deserves to be quashed. For this proposition see *Ram and Shy am Company v. State of Haryana and others*, AIR 1985 SC 1147, *Sri Harminder Singh Arora v. Union of India and others*, AIR 1986 SC 1527, *Sri Sachidanand Pandey and another v. State of West Bengal and others*, AIR 1987 SC 1109 ; *Haji T. M. Hassan Rawther v. Kerala Financial Corporation*, AIR 1988 SC 157, *Mahabir Auto Stores and others v. Indian Oil Corporation and others*, AIR 1990 SC 1031, *Ramana Dayaram Shetty v. The International Airport Authority of India and others*, AIR 1979 SC 1628, *M/s. Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir and another*, AIR 1980 SC 1993. There are catena of other cases too on the point.

10, Therefore, it is expected of the State and its instrumentalities to act in accordance with the test referred to above. Thus while granting public largesse, authorities must act with all fairness following the principle of equality considering the advertised requirements to their full satisfaction. At this juncture, it cannot be lost sight of that the tender being lowest or highest as the case may be, is not the only criterion for awarding contracts. (See *State of U.P. v. Vijay Bahadur*, AIR 1982 SC 1234 Para 3). The authority has to see whether all the terms and conditions advertised for the tender are fulfilled but the fact remains that the action of the authority should satisfy the tests referred to above, failing which it will entail appropriate action including damages against the authority concerned.

11. Learned counsel for the respondent No. 5 contended for issuing directions to the authorities for enhancement of the rates for various reasons but we may observe that enhancement or reduction of the rates depends upon the terms and conditions of the contract and to the satisfaction of the authorities concerned, therefore, it is for the authorities to pass appropriate orders and this Court refrains from making any comment in this regard.

12. With above observations this petition is dismissed as having become infructuous.