(1999) 09 GAU CK 0028

In the Gauhati High Court

Case No : Civil Rule No. 1342 of 1998

M. Sharatchandra Singh and Another APPELLANT

Vs

State of Manipur and Others RESPONDENT

Date of Decision : 14-09-1999

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2004) 1 BC 540 : (2003) 3 GLR 475

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : Ashok Postsangbam, for the Appellant; T. Nandkumar, A.G. and N. Kotiswar Singh, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—This petition has been preferred by two petitioners. Facts leading to the filing of the present petition may be briefly recited.

2. The Government of India, Ministry of Civil supply used to allot essential items like, Wheat, Rice, Sugar and edible oil and fixed quota to the Government of Manipur, and these items are to be collected from the F.C.I. depot at Gauhati/ Dimapur and other places by the Agents/ Stockists and transporters selected by the Food and Civil Supply (FCS) Department, Government of Manipur. The consumer items thereafter are to be distributed under the supervision of FCS department through Fair price shop and other methods evolved by the State Government. For the purpose of transportation of the items and stocking and selling, tenders were floated by the Government by a Notification dated 29.9.1992 inviting application in sealed cover from reputed Firms/ Dealers having licence for wholesale dealership of Wheat/Wheat products under the Manipur Trade Article (Control and Licencing) orders, 1986, for transportation and handling of 3,000/- quintals of PDS wheat per month from FCI depot at Dimapur/Gauhati and other places for selling of wheat and wheat products under the PDS.

3. The tenders were floated for the period from 1.11.1992 to 31.12.1993. The aforesaid notifications stipulate the terms and conditions which were to be satisfied at the time of submission of forms. Pursuant to the notification, petitioner No. 1 having fulfilled the requirements submitted a tender but ultimately withdrawn the application for some reasons beyond his control with a hope that he would be able to submit tender in the next tender call. Petitioner no. 2 is an educated unemployed and holder of trade licence, and possessed required qualification under the notification. He has been waiting for the last 6(six) years for an opportunity to participate in a tender that may be floated by FCS department for transportation and stocking for sale of PDS Wheat/ Wheat products from FCI depot. Thereafter, a screening committee was constituted to examine the validity and suitability of the tenders and the Screening Committee in its meeting held on 1.12.1992 recommended 13(thirteen) Firms for appointment of Stockist for the period from December 1992 to December 1993 and 6(six) other Firms were kept in panel.

4. By an order dated 1.12.1992, the respondent Government appointed 13(thirteen) recommended Firms as Stockist-cum-transporters for the period from 1.12.1992 to 31.12.1993, by another order dated 22.12.1992, the Firm at serial No. 1 of the panel list was also appointed.

5. By an order dated 17.12.1993, the terms of 15(fifteen) Firms which were expired on 13.12.1993 were extended w.e.f. 1.1.1994 to 31.12.1994 without calling fresh tender. It is also stated that, out of 15(fifteen) Firms, 12(twelve) Firms were from amongst the recommended made by the Screening Committee, and 3(three) Firms are from the panel list.

6. By another order dated 5.1.1995, the terms of 5(five) Firms were extended w.e.f. 1.1.1995 to 31.12.1995. Further, by an order dated 15.11.1995, the terms of the aforesaid Firms were extended from 1.1.1996 to 31.12.1996 without calling any fresh tenders.

7. By an order dated 8.11.1996, the terms of 11(Eleven) Firms, 7 (Seven) Firms are from the regular recommends and 4(four) Firms are from the parel list were extended w.e.f. 1.11.1997 to 31.12.1997. By another order dated 10.10.1997, the terms of 12(twelve) Firms were extended w.e.f. 1.1.1998 to 31.12.1998. In the said extension order, the Firm at serial No. 7 namely, M/s K. Shivkaran Keshrimal Jain which was cancelled for default in the year 1994 has also been included. Again by an order dated 7.11.1998, the terms of 12(twelve) Firms were extended w.e.f. 1.1.1999 to 31.12.1999. It is not disputed that, right from 1.1.1994 to 31.12.1999, the terms of the Firms have been extended from time to time without floating any fresh tenders.

8. In the facts and circumstances as stated above, the petitioners inter alia prayed the following reliefs :-

"(ii) to issue a Writ of Certiorari for quashing the order dt. 7.11.1998 (Annexure-A/15) extending the terms of the 12(twelve) Firms for the consecutive 5(five) years without floating any tender ;

(iii) to issue a Writ in the nature of Mandamus directing the Government Respondents to float a fresh tender for selection of Firms for the period beyond 31.12.1998 and to pass any order/ direction which the Hon''ble Court may deem fit and proper in the facts and circumstances of the case."

9. Both counter on behalf of the official respondents No. 1 and 2 and private respondents No. 3 to 14 have been filed. In fact the contention of the respondents taken in the counter are common, and reference to the counter of the respondents 1 and 2 would suffice. To avoid multiplicity, the reference to the counter of respondents 3 to 14 may not be strictly necessary.

10. The respondents 1 and 2 in their counter makes a general denial to allegations made in the writ petition. However, they did not deny that the terms of the Firms were extended without calling valid tenders. Justifying their action, the official respondents recited circumstances leading to the extention of terms of the Firms in paras 4(a) to 4(g) of the Affidavit in opposition, They are :

"(a) That, the Govt. of India, Ministry of Civil Supply, Consumer Affairs and Public Distribution (Department of Consumers Affairs and Public Distribution) prepared the Scheme "Targetted Public Distribution system (TPDS for short) to ensure availability of food at affordable prices at House hold level for the poor. The State Govt. is given the primary responsibility for the effective implementation of TPDS. The State Govt. executed the works of implementating TPDS through its machinaries i.e., Directorate of Food and Civil Supplies, Office of the District Collector/Deputy Commissioner etc. and its authorised agents/stockist/ transporter by procuring consumer items i.e., rice, wheat salt, sugar, edible oil, Kerosine oil etc. etc. from the Central Government agencies for supplying and distributing those consumer items to the public through the official channel and authorised retails and whole-sale outlets.

(b) That, the terms and conditions of the appointment of the stockist/ transporter of the TPDS wheat quota of the State of Manipur are (i) The stockist appointed by the State Govt. for handling of TPDS wheat shall incure all expenses towards the cost of wheat, (ii) Transportation of wheat from the designated FCI Depot at Dimapur or Guwahati, etc., as the case may be upto Imphal, (iii) Milling charges for conversion of the TPDS wheat into whole-meal atta at Imphal and (iv) other incidental charges for local transportation and handling etc. from their own sources. The quantity of TPDS wheat allocated to the stockist and brought from FCI depots by the stockist shall be converted to wholemeal atta at the mills at Imphal as per instructions of the Govt. issued in this regard from time to time and at the rate fixed by the Govt. of Manipur. It may here also be mentioned the stockist/transporters have to arrange their own means for stocking the TPDS wheat at their Godowns which are to be checked and verified by the State Govt. and also that they should have sufficient members of labourers and staffs for carrying out the said works. The term and conditions attached to the application for appointment of stockist of TPDS wheat are at Annexure -A/5 to the writ petition.

(c) That, since the works of the Stockist/transporters of the TPDS wheat for the State of Manipur require huge capital, the stockist cum-transporters have to deposit security deposit of several lakh of rupees in favour of the Govt. of Manipur. The Govt. of Manipur should collect the information from their own sources about the capability of the stockist cum-transporters of the TPDS wheat for regular supply of the TPDS wheat to the consumers of the State of Manipur.

(d) That, the rate of handling charges of the TPDS wheat is also fixed by the Central Govt. As such the Govt. of Manipur is left only to decide who will be the most capable and financially sound at the time of appointing stockist cum-transporters for the TPDS wheat quota for State of Manipur.

(e) That, the Notification No. 9.2.1992-FCS Imphal dated 29th September, 1992 (atAnnexure-A/1 to the writ petition) and terms & conditions (at Annexure -A/2) are not a tender in real meaning, as the rate for lifting transportation and handling of the TPDS wheat was already fixed by the Central Govt. Rather it is a notice for entrustment said job for TPDS wheat quota to the firms having sound financial position and capabilities. It may here also be mentioned that under the term and conditions attached to the application for appointment of stockist of TPDS wheat, the applicant firms shall furnish a earnest money of Rs. 5,00,000/- (Rupees five lakh) only in the form of pay order from a Scheduled/Bank in the name of Secretary, Food and Civil Supply, Govt. of Manipur. The earnest money will be converted to "Security deposited" for those accepted by the Govt. of Manipur for appointment as stockist cum transporters of TPDS wheat.

(f) That, in the Notification dated 29.9.1992 (at Annexure-A/1 to the writ petition), it is clearly mentioned that "the period may be either shortened or extended" and quantity of TPDS wheat to be handle per month as mentioned above may also be either decreased or increased.

(g) That, the writ petitioner No. 1 who know his capability and financial position had withdrawn his application (at Annexure-A/3 to the writ petition) for appointment of Stockist cum-transporters of TPDS wheat before the Screening Committee examined the applications for appointment of the wheat on 1.12.1992. The Screening Committee consisting of (1) Secretary (PCS) (2) Director (FCS) and C.S.O. had considered all the applications for appointment of stockist cum-transporters in its meeting held on 1.12.1992 and recommended for appointment of 13(thirteen) Firms and 6(six) Firms to be kept in the panel for appointment of the stockists cum-transporters of the TPDS wheat quota for the State of Manipur. The Government of Manipur on the recommendation of said screening Committee, issued orders being No. 9/2/92-FCS, Imphal the 1.12.1992 and orders being No. 9/2-92-FCS Imphal the 22.12.1992 (at Annexure-A/6 and A/7 to the writ petition respectively) for appointing the private respondent No. 3 to 14 as stockist cum-transporters."

11. A reading of para 4(a) to 4(g) as quoted above, it is surprising how the circumstances narrated therein would justify the extention of terms without calling fresh tender inasmuch as transportation and stoking of consumer goods are essentially having commercial element.

12. The official respondents have also taken a plea in para 9 of its counter that the Government of Manipur under the circumstances took the policy decision in larger public interest extending the terms of appointment or private respondents. It is also stated that for the appointment of stockist it is not necessary that it should be advertised and notified offers, almost suggesting that this Court should not interfere in the policy decision of the Government. Such stand taken by the Government is not at all acceptable, because by now it is well established principle of law that even in administrative action, which generally accepted as policy decision of the Government, the authority must act fairly which would meant in accordance with the principle of natural justice and fair play in action.

13. Respondents 3 to 4 have taken the plea in the same line as that of Govt. respondents. Private respondents further averred in paras 13 and 14 of their counter that the terms were extended basing on the performing of their business smoothly and without any complaint. It is further averred that there is no element competitiveness in the business under taken by the private respondents and there is no necessity of calling tender and therefore the Govt. are justified extending the terms of the private respondents without floating any fresh tender. These contentions of the private respondents are similar to the contention of the official respondents and they are met with the same fate with that of official respondents.

14. Having said so, I shall now deal with the contention of the petitioners. Following contentions have been raised by Mr. Asokpotsangbam, learned counsel for the petitioners.

"(a) That lifting and transportation of wheat from FCI depot at Dimapur/ Gauhati and other places to Manipur essentially involves profit and this transaction of the State largesse should not be confined to few firms depriving the other firms similarly situated from applying the same if tender is called.

(b) That extending the terms of the Firm from 1994 onwards without floating fresh tender has resulted into denial of participation and competition to the petitioners and other intending firms in the business of lifting and transportation of wheat.

(c) That there must be transparent just, fair and non-arbitrary and in accordance with the set norms, criteria, guidelines in distributing the State largess. Otherwise, the State Government will be vested with unbridled and unfettered power promoting nepotism favouratism and arbitrariness."

15. As against this, it is contended by Mr. T. Nandakumar learned Advocate General and Mr. Kotiswar, learned counsel for the respondents 3 to 14 that

alloting of works of transportation and stockist does not involve elements of competitiveness and it does not involve the revenue of the State and therefore, floating of the tender is not called for.

16. Before I proceed further, I may at this stage dispose of the argument advanced by the Respondents. This argument is belied by the Annexure-1 of the writ petition. Annexure-1 in the writ petition is a Notification dated 29.9.1992 inviting applications in a prescribed form for lifting and transportation of consumer goods from FCI depot at Dimapur/Gauhati and other places for stocking and selling of wheat and wheat products for the period effective from 1.11.1992 to 31.12.1993.

17. In this connection, learned Advocate General also raised a preliminary objection with regard to the maintainability on the ground that the petitioner No. 1 had earlier applied for the tender and withdrawn. Reliance has been place in Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, Where the Apex Court had held that Courts should not interfere when the award of contract is challenged by unsuccessful tenderers unless public interest is involved or the ground is mala fide. This ruling is not applicable in the facts of the case at hand inasmuch as the petitioners does not compete with the tenderers at all.

18. Next, Mr. Nandakumar referred to the decision of the Supreme Court in State of M.P. and Ors. appellants, v. Nandlal Jaiswal and Ors., respondents AIR 4 SC 566, that was a case of dispute for granting of licence to existing contractors for construction of Distilleries for Manufacture and supply of Country liquor. That was a case where the rules were framed in M.P. Excise Act, 1915, and the State Government has granted licence for construction of distilleries for manufacture and supply of country liquor. The facts of this case is not applicable in the facts of the case at hand.

19. Learned Advocate General also referred to the decision of the Apex Court rendered in M.P. Oil Extraction and Anr., appellants v. State of Madhya Pradesh and Ors., respondents AIR 1998 SC 145. In that case, Industrial units set up in backward area at the instance of Government and special treatment were given to them, assuring supply of sal seeds at concessional rates for oil extraction. In this view, it was held by the Supreme Court that the distinction between such industries and Oil industries based on objective criteria and policy decision of the Government based on objective criteria are not illegal and arbitrary and renewal of agreement with usual fees are not arbitrary. The facts of this case is also not distinguishable in the facts of the case at hand, because in the instant case, there is no such assurance of giving special treatment to the private respondents

20. There is no doubt awarding of contract of transportation and lifting of consumer goods from FCI depot at Dimapur/Gauhati and other places to Imphal is a contract having commercial elements, and therefore, it is the State largesse. The only recognised method for distribution of State largesse is by way of invitation of tender to secure public interest. The object of inviting tenders for

distribution of State largesse is to procure the best public interest while giving equal opportunity to all the intending bidders to compete. Under the contractual transaction by the State or its instrumentalities non-arbitrariness, fairness in action and due consideration of legitimate expectation are all affected party and are essential requisites for a valid state action. Firmness in state action and non-arbitrariness is requisite of Article 14 of the Constitution.

21. Avoid multiplicity in Ramana Dayaram Shetty, Appellant v. International Airport Authority of India and Ors., Respondents AIR 1979 SC 489, Justice P.N. Bbagwati (as his Lordship then was) speaking for the Court observed after discussing various Supreme Court Judgments in para 12 as under :-

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc., must be confined and structured by rational, relevant and non-discriminatory standard or norms and if the Government departs from such standard or norm in any particulars case or eases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was nor irrational, unreasonable or discriminatory."

22. Mr. Kotiswar, counsel for the private respondents has stressed on the last sentence of the observation and argued that in the instant case, the departure from the usual practice of inviting tender was not arbitrary and it was based on valid principle. The whole case of the respondents as was discussed earlier is that, the respondents are financially sound and they are functioning smoothly without any complaint. This is no ground much less reasonable ground from departing of the usual practice of inviting tender. Once tender is called and application is invited from intending tenderers, who knows state may still procure better service than the private respondents both from the point of financial soundness and integrity of the Firms. In the instant case, extending of terms on the same terms and conditions as stipulated in 1992 tender of the private respondents from 1994 onward without floating fresh tender is an arbitrary exercise of power without any valid or cogent reasons, it is clearly unreasonable, arbitary, capricious and abuse of the process of power and has to be quashed.

23. In the facts and circumstances as discussed above, the impugned order dated 7.11.1998 extending the terms of the respondents for another year w.e.f. 1.1.1999 to 31.12.1999 is hereby quashed and set aside. This petition is allowed. In the facts and circumstances of the case, parties are asked to bear their own costs.

24. Despite of the quashing of the impugned order, extending the terms of the respondents for the period upto 31.12.1999, there is one consideration namely ; public interest is still nagging my mind. It is debated at the bar that for the purpose of carriage, lifting, stocking and distribution thereof, there is not only huge financial involvement but also lot of manpowers including engaging of labourers and arranging godowns for stockist etc. are required. If the respondents are dislodged at this stage and a fresh tender is ordered to be called before the expiry of the extended terms, it may cause hardships to the consumers because in such a situation the distribution system would be adversely affected not only the respondents but also the consumers at large. Keeping this view in mind despite of the quashing of the impugned order the respondents No. 3 to 14 shall continue with the existing terms and conditions till 31.12.1999. It is however, made clear that before the extended terms expired, the respondents No. 1 and 2 shall float tenders calling applications from all intending and genuine tenderers to compete in lifting, stocking and distribution of consumer goods as may be stipulated in the tenders. It is further made clear that w. e. f. 1.1.2000, the aforesaid work shall be allotted to the firms selected by the Committee pursuant to the floating of tenders. No Firms shall be recommended without competing in the tender. Needless to say that the selection shall be made purely on merit and suitability.

With the aforesaid directions, this petition is allowed.

There has been some delay in disposing of this writ petition, because this bench was not available here for a long time. The delay is however, regretted.

