

(2002) 01 KAR CK 0080
In the Karnataka High Court
Case No : Writ Petition No. 36940 of 2001

Millipore India Private Ltd.

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 29-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 14, 226, 226 (1)

Citation : AIR 2002 Kar 280 : (2002) 6 KarLJ 372

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : S. Vijaya Shankar and Pramod N. Kathavi, for the Appellant; Arvind Kumar, A.C.G.S.C. (for No. 1), P. Sreenivasaian, (for No. 2), A.C. Balraj, (for No. 3) and Shireen Zafrullah, C.G.S.C. (for No. 1), for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—I.A.-I is allowed. Amendment is permitted.

2. The petitioner in this case is calling in question the order at Annexure "L" dated 15-10-2001 issued by the 2nd respondent. The facts leading to this petition are as under :

The petitioner a Registered Company is carrying on its activities in the manufacture of high quality Water Purification System. It has Head Office at Bangalore. M/s. Millipore SAS BP 307 78054, Saint Quentin Yveliens Cedex, France, are having factories at France and United States of America and they are Joint Venture Partners in the petitioner-Company. The petitioner has filed Annexure "A" series Certificates issued by the Pollution Control Boards. The petitioner has also installed Water Purification Systems in institutions such as Indian Institute of Science, National Institute of Oceanography, Semi Biotech Research Laboratory, National Institute of Ocean Technology, School of Bio-Technology etc. The petitioner has filed Certificates Annexure "B" series in this regard.

3. The respondent No. 2 issued a notification in terms of Annexure "C" calling for International Competitive Bidding for Water Purification System (COT auto, Digestion reactor and Spectrophotometer and Kjeldahl Apparatus). The petitioner submitted his bid in terms of Annexure "D". The petitioner refers to various conditions in this regard. The petitioner's tender was submitted on 17-7-2001 for supply of 27 Units of Water Purification System at a total cost of Rs. 88,52,074/-. The bid form submitted by the petitioner is in items of Annexure "E* . The petitioner has filed a statement evidencing the comparative bid in terms of Annexure "F". The petitioner is the lowest bidder in respect of Schedule I items and he was not intimated of any order in his favour. It was in those circumstances, the petitioner makes representation seeking for an endorsement in this regard. In the absence of any action on the part of the respondents, the petitioner files this petition seeking for a direction with regard to the communication at Annexure "G" and "H". The petitioner also sought for a declaration that the action of respondents 1 and 2 in not accepting the bid/offer/quotation of the petitioner as illegal and arbitrary in character. Subsequently, during the pendency of the petition, the petitioner received Annexure "L", an endorsement and the same is challenged by way of an amendment of the application. The said amendment is allowed in the light of the amendment. Annexure "L" is also challenged in the petition.

4. Notice was issued pursuant to which the respondents have not only entered appearance but are also contesting this case in this Court.

5. The 2nd respondent has stated that this Court has no jurisdiction to entertain the petition. According to the averments, there is no cause of action available in the case on hand. It has also referred to various clause to contend that the endorsement is proper and legal and is based on Tender conditions. They Justify their action. They further say that in such matters, this Court should not interfere taking into consideration, the public interest involved in entertaining this petition. The 3rd respondent has also filed a Statement of objection in which it is stated that the petition is premature. It is also stated that the Contract has been awarded in favour of the 3rd respondent and the 3rd respondent has already deposited Rs. 7 lakhs in the form of E.M.D. It has also filed Annexures in support of its case. Annexure R1-6 are in support of its contention. The Union Government has also filed a short Counter. Reply has been filed by the petitioner.

5. 1 Heard the counsel for the parties.

6. Sri. S. Vijaya Shankar, learned Senior Counsel contends that in terms of Annexure "C", certain equipments are to be Installed in Karnataka as well. Therefore, this Court certainly has jurisdiction in the light of part of cause of action having arisen in the territorial jurisdiction of this Court. He states that the said contention of no cause of action the respondent (sic) requires rejection. On merits, the counsel elaborately argues to contend that Annexure "L" requires my interference. According to the Counsel, the said reasoning is not based on facts. He refers to various terms in support of his contention. His further submission is

that the reason for the rejection is not based on bid document in terms of the Contract. Finally, he concluded by saying that the petitioner deserves consideration and R-3 has been considered in an arbitrary manner.

7. Per contra, the Counsel for the respondents contend that no cause of action either wholly or partly has arisen in the jurisdiction of this Court. Their further case is that in terms of the tender Regulations, the petitioner has suffered a material irregularity and therefore, the endorsement is proper and legal. The contesting respondent also submits that he has already acted upon the terms of the Contract. Records were also made available to this Court.

8. After hearing the Counsel two issues emerge for my consideration;

(1) Whether the petitioner can maintain a petition in this Court under Article 226 of the Constitution of India.

2) Whether Annexure "L" requires my interference.

9. The respondents seriously have raised a contention with regard to the maintainability of the petition in this Court. They strongly rely on Article 226(2) of the Constitution and also the Judgment of the Supreme Court In Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, . The petitioner strongly relies on the wordings in Article 226 in the light of similar wordings in CPC. They rely on (1965) 1 Mys LJ 201 : (AIR 1965 Mysore 316), A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, , Asia Foundation and Construction Ltd. Vs. Trafalgar House Construction (I) Ltd. and Others, and AIR 2002 SC 2966 (Navinchandra N. Majithia v. State of Maharashtra).

10. To appreciate the rival contentions it is necessary to refer to Article 226 of the Constitution.

11. Article 226(2) would show that the power, conferred under Article 226(1) to issue directions to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Therefore to exercise the power under Article 226(1), what is material is with regard to "arising of a cause of action wholly or in part". CPC in terms of Section 9 also uses the similar terminology.

12. In Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, the Supreme Court noticed the wordings of Article 226(2) and Ruled that a mere fact that the petitioner Company, having its registered office at Calcutta cannot by itself provide a jurisdiction to a petitioner in the Calcutta High Court. The Court ruled that no cause of action either in whole or in part has arisen in Calcutta High Court. While considering the question of territorial Jurisdiction, the Court has ruled in para 5 reading as under :

"Clause (1) of Article 226 begins with a not obstante clause -- notwithstanding anything Article 32 --and provides that every High Court shall have power "throughout the territories in relation to which it exercises jurisdiction", issue to any person or authority, including appropriate cases, any Government, "within the territories" directions, orders or writs, for enforcement of any of the rights conferred by Part III or for any other purpose. Under Clause (2) of Article 226 of the High Court may exercise its power conferred by Clause (1) if the cause of action wholly or in part, had arisen within the territory over which it exercises Jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two Clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, (sic) must show that atleast a part of the cause of action had arisen within the territorial Jurisdiction of that Court. That is at best case in the Writ Petition.

13. Again in para 6, the Court ruled reading as under :

"Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit within embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words, the question whether a High Court has territorial Jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition."

14. What is clear to me from this Judgment is that to determine the issue of territorial jurisdiction, the Court must take all the facts pleaded in support of the cause of action into consideration. The Court also needs to look into the averments in the petition. The word "cause of action" arising in part is considered by this Court in (1965) 1 Mys LJ 201 : (AIR 1965 Mys 316). In the said case, this Court ruled as under :

Thus, it is clear that every suit has to be instituted within the local limits of whose jurisdiction the cause of action wholly or in part arises. It would not be right as has been done by the Court below to proceed to examine the extent of the cause of action or to try to find out the percentage of the cause of action. If a part of the cause action arises within the local limits of the Jurisdiction to entertain and try such a suit, irrespective of the extent of the cause of action. It is in my opinion wholly wrong to state that a very small fraction of the cause of action accrued within the jurisdiction of the Tumkur Court, which would not

entitled the plaintiff to institute a suit in that Court. This process of examining the cause of action would be wholly wrong in view of Section 20 Clause (c), which provides that every suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. The words "in part", have not been defined. Even a fraction of a cause of action is a part of the cause of action and therefore, if a part of the cause of action accrues within the local limits of the jurisdiction of Tumkur Court then it must be held that, that Court has the jurisdiction to entertain the suit. The provisions of Clause (c) of Section 20 of the CPC are based on broad principle to avoid the multiplicity of the proceedings and inconvenience to the parties. If the reasoning adopted by the Courts below is accepted as correct, it would lead to many inconvenient results which the legislature sought to avoid by enacting the provisions of Clause (c) of Section 20 of the CPC."

15. Similarly, in A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, , the Supreme Court ruled that "ordinarily", acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a Court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have been performed or its performance completed. If the contract is to be performed, at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions "the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where the suit would lie. If a a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears."

16. The Supreme Court in Navinchandra N. Majithia Vs. State of Maharashtra and Others, has considered and ruled that a cause of action wholly or in part arises within reference to a situation or state of facts that entitles a party to maintain in action in the Court.

17. In the light of the decisions, what is clear to me is that to understand the cause of action, the Court has to look into the material facts available on record. The material at Annexure "C" would reveal that Ministry of Environment and Forests, Government of India through RITES Ltd. has invited sealed bids from eligible bidders for supply of equipment listed below :

Schedule No.

Brief Description

Qty (in Nos.

I

Water Purification System

27

II

COD auto Digestion Reactor and Spectro-Photometer

30

III

Kjeidan Apparatus

31

18. Annexure "L" provides for the details in the matter. It is seen from the schedule of requirements that these equipments are also meant for the State of Karnataka. It is evident from the schedule of requirement at page 95. Moreover, in terms of Section 4 of the Contract Act, the place of contract is also a relevant matter. Part of the Contract is also to be performed in the State of Karnataka. In the light of these bundle of facts and in the light of a clear pronouncement of law, it cannot be said that there is absolutely no cause of action at all that has arisen in this Court. The Supreme Court in the above referred cases has ruled that the averments in the petition and the material facts would determine the nature of cause of action. Therefore, in the light of the performance of the Contract in part in Karnataka and in the light of some equipments being made available to the State of Karnataka, a part of the cause of action has occurred in the territorial jurisdiction of this Court and therefore, the preliminary objection in the light of the material facts requires rejection and I do so in the case on hand. The strong reliance of *Oil and Natural Gas Commission v. Utpal Kumar Basu* (AIR 1994 SCW 3287) is to be understood in the light of the facts emerging from the pleadings of the case. In *Oil and Natural Gas Commission v. Utpal Kumar Basu* case there was no cause of action either in part or in whole that arose in the jurisdiction of the Calcutta High Court. It was in those circumstances, the Court ruled that the Calcutta High Court lacks territorial Jurisdiction. That is not the case in the case on hand. A part of cause of action has occurred in this State and therefore, it cannot be said that this Court lacks absolute jurisdiction warranting rejection on the ground of want of jurisdiction by this Court. On facts, this Court holds that part of cause of action has occurred and that the petition is maintainable in this Court.

19. The petitioner in this case is challenging Annexure "L". The rejection of the petitioners case on the ground that the prices quoted by the petitioner is found non responsive in terms of the tender conditions. The elaborate argument has been advanced by either of the parties. It is relevant to notice a few clauses for appropriate understanding of the case on hand. Clause 5 provides for contents of bidding documents. The bidding documents includes :

(a) Instructions to Bidders

- (b) General conditions of Contract
 - (c) Special Conditions of Contract.
 - (d) Schedule of Requirements
 - (e) Technical Specifications
 - (f) Bid from and Price Schedules
 - (g) Bid Security Form
 - (h) Contract Form.
 - (i) Performance Security Form
 - (j) Performance Statement Form
 - (k) Manufacturers Authorisation Form
- and

(l) Bank Guarantee for Advance Payment
Form

Clause 9 provides for documents comprising the Bid. Bid Prices is mentioned in Clause 11. It states that the prices indicated on the Price Schedule shall be entered separately in the following manner;

- (a) For goods offered from within the Purchasers country; -
 - (i) The price of the goods quoted EXW including all customs, excise and other duties and sales and other taxes already paid or payable

Clause II provides for payment by the purchaser-Country sales and other taxes if the Contract is awarded.

Clause 11.5 provides for rejection in case of non-responsive tender.

Clause 24.4 provides a meaning to the material deviations.

Clause 26.2 provides for exclusion in the case of goods manufactured in the Purchaser's Country, sales and other similar taxes which will be payable on the goods if a contract is awarded to the Bidder.

20. A combined reading of all these Clauses would indicate that substantially responsive bid is one which conforms all the terms and conditions of the bidding document without material deviations. Deviation from bid security, applicable law and taxes and duties will be deemed to be a material deviation. In the case on hand, the material facts reveal that the petitioner did submit a bid document In terms on Annexure "C". The petitioner has enclosed Price Schedule for domestic goods or goods of Foreign origin located within India in terms of the prescribed form found at page 106. The said Price Schedule is without any enclosure, what

so ever. But the petitioner in the case on hand has enclosed Annexure I, in which the petitioner has stated pertaining to other taxes and duties.

21. According to the petitioner, any new Taxes/levies/duties added by the Government after the date of tender opening will be charged extra accordingly. This condition is verbatim quoted in Annexure "L" for rejection on the ground that the bid is found non responsive. I have already referred to the other Clause and the non responsive Clauses in Clause 24.4 referred to the bidding document. The Bid Document, as mentioned earlier, refers to Clause 5. It also refers to a Bid Form and Price Schedule. Bid Form and Price Schedule is also mentioned in Annexure "D" itself. Though the petitioner has submitted Bid Form, he, for the reason best known to him, has enclosed Annexure, which is not a Bid Form and Price Schedule in terms of Clause 5 of the Bid Documents. Once this conclusion is irresistible, the rejection under 24.4 by the respondents, on the basis of Annexure I is factually not in accordance with the bid document. In the matter of Contracts, one has to place reliance on the document for the purpose of a decision with regard to rejection. If a rejection is made on irrelevant material, the rejection is nothing but an arbitrary rejection. Therefore, on facts, I find that the rejection based on Annexure is outside the scope of Annexure "D". The Counsel for the respondents is unable to convince that Annexure I forms part of bid documents.

22. It is a well settled principle of law that the Judicial review is very limited. The famous case of Tata Cellular Vs. Union of India, categorically rules that the duty of the Court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision making authority exceeded its powers ?
2. Committed an error of law
3. Committed a breach of the rules of natural justice.
4. Reached a decision which no reasonable Tribunal would have reached ; or
5. Abuse its powers.

The Court further notices that it is not for the Court to determine whether particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under

(1) Illegality : This means the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.

2) Irrationality, namely, Wednesbury unreasonableness.

3) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further

grounds in course of time.

23. Wednesbury Principle is noticed in the very same Judgment in paras 93, 94, and 95.

24. The Supreme Court in the case of Om Kumar v. Union of India JT 2000 3 (SC) 92 : (AIR 2000 SC 3689) noticed in para 66 reading as under :

"But where, an administrative action is challenged as "arbitrary" under Article 14 on the basis of Rayappa (as in case where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The Courts would then be confined only to a secondary roll and will only have to see whether the administrator has done well in his primary roll, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as "arbitrary". While judging whether the administrative action is "arbitrary" under Article 14 (that is otherwise than being discriminatory), this Court has confined itself to a Wednesbury review always."

25. In the very same Judgment, in para 70, the Supreme Court relied is under :

"It is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases, can the Court substitute its own view as to the quantum of punishment."

26. The Supreme Court ruled that the Court has to look into whether the administrator has done well in primary roll, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration.

27. In the case on hand, the relevant facts in the prescribed Price Schedule in terms of the prescribed form have not been taken into consideration. On the other hand, Annexure I a document, which is not forming part of the bidding document, has been relied upon as a material deviation for rejecting the case of the petitioner. This in my view is nothing but an arbitrary decision in terms of the Apex Court Judgment. Therefore, Annexure "L" requires to be set aside on the peculiar facts of this case and in the light of the discussion on the subject in this order. It is unnecessary for me to go into as to whether there is material deviation at all in the light of the various terms read with Annexure 1 to the Price Schedule. That question is left open.

28. Having come to this conclusion that Annexure "L" suffers from arbitrariness it is further to be seen as to what relief is to be granted to the petitioner in this case. The present case involves all the financial assistance sanctioned by the

World Bank. It is a time bound Project. The entire tender work is to be completed by March. 2002. The material fact also reveal that respondent No. 2 has accepted the tender of respondent No. 3. Respondent No. 3, in the objection statement states that the petition is premature. The objection statement is also silent with regard to the subsequent action on the part of the 3rd respondent, pursuant to the award of the Contract. Though some submissions are made with regard to the arrival of equipments, the same is not proved to my satisfaction as per the objection statement. There is also no specific prayer with regard to the cancellation of the Contract in favour of the 3rd respondent. Though this Court can mould the relief in a given situation, in the light of the assistance of the World Bank and in the light of the time bound Project all that I would do is to set aside Annexure "L" and issue a direction to the respondents to consider the case of the petitioner afresh strictly in accordance with the Contract terms and strictly in accordance with the bid documents. In the event of the petitioner satisfying with regard to the requirement of the tender conditions, the respondents have to take further proceedings by cancelling the award granted to the 3rd respondent. This specific direction is made to avoid unnecessary delay in the matter. In the event of the respondents being not satisfied about the bid of the petitioner in terms of the contract, then there is no need for any cancellation of the award in favour of the 3rd respondent. However, it is necessary for this Court to direct the parties to maintain status-quo for a period of 15 days for a decision in the matter.

29. In the result, this petition is allowed. Annexure "L" is set aside. Matter is remitted back to the 2nd respondent for reconsideration within 15 days. A direction is issued to the 2nd respondent to take a decision within fifteen days from today with regard to the cancellation of the award in favour of the respondents only after reconsidering the petitioner's bid in terms of the bidding conditions and In terms of the observations made in the course of the order. Parties to bear their respective costs.