
(1982) 06 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 7 of 1982

M.L. Mahajan

APPELLANT

Vs

Chief Engineer, Ravi Tawi Irrigation Complex and Others

RESPONDENT

Date of Decision : 01-06-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Jammu and Kashmir Registration of Contractors Act, 1956 — Section 3, 4

Citation : AIR 1983 J&K 14

Hon'ble Judges : I.K. Kotwal, J

Bench : Single Bench

Advocate : P.L. Handoo, for the Appellant; T.S. Thakur, R.N. Bhalgotra and Madan M. Baru, for the Respondent

Final Decision : Dismissed

Judgement

I.K. Kotwal, J.—Controversy in this writ petition lies in a narrow compass.

2. The firm Messrs Mahajan and Co. of which the petitioner is a partner, is an A Class Contractor, duly registered u/s 4 of the Jammu & Kashmir

Registration of Contractors Act, 1956, hereinafter to be referred to as the Act. Tenders for construction of 4 Kms. of Ravi Canal from RD-11,

418 to RD-15, 436 having been floated by the Executive Engineer, Ravi Canal Upper Division No. 1, Kathua, on 11-7-1981, he also applied for

issuance of tender documents against cash payment on 15-12-1981, but no such documents were issued to him nor was any reason assigned for it

On the contrary, out of the A Class Contractors who under the Act and the Rules made thereunder had a right to compete, tender documents

were Issued in favour of four only, who figure as respondents 4 to 7 in the writ petition. He has challenged the aforesaid refusal of respondents 1 to

3 as being violative of Articles 14 and 19 of the Constitution as well as of Section 3 of the Act which, according to him, created an indefeasible

right in him to make an offer for execution of the work.

3. The petition has been vehemently resisted by the respondents. Their case, however, is that as per the practice in the State and elsewhere in the

country, of which they have also quoted specific instances, pre-qualification tenders for the present work, the estimated cost whereof was more

than Rs. 150/- lacs and which had to be completed in just two years, were invited from all A Class Contractors in the State, besides other firms of

repute in the rest of the country, who intended to compete for the work. The tenders had to reach the office of the Chief Engineer, Ravi Tawi

Complex, Jammu, respondent No. 1 herein, by or on 7-9-1981. Only seven persona or firms, including respondents 4 to 7, offered the pre-

qualification tenders. Tender documents were not supplied to the petitioner, because he did not expose himself to the pre-qualification test which

was a sine qua non for issuance of such documents. Out of the "seven tenders who had subjected themselves to pre-qualification test, only four,

namely, respondents 4 to 7 were found eligible to compete. The petitioner not having a right to get the work allotted in his favour, but having

merely a right to be considered for the allotment of the work, could make no grievance either on account of any violation of Article 14 or 19 of the

Constitution, or on account of any infraction of Section 3 or 4 of the Act read with Rules 3 and 4 made under it. The respondents had offered to

consider him also, but he himself declined to be considered by not subjecting himself to pre-qualification test, even though he fully well knew that

pre-qualification tender was a condition precedent for, his being considered.

4. The law is well settled that the petitioner had merely a right to be considered for allotment of the work, but surely he had no right to have the

work allotted in his favour in any case. Neither Articles 14 and 19(1)(g) of the Constitution, nor Sections 3 and 4 of the Act conferred on him an

indefeasible right to have the work allotted in his favour. To obey the command of these provisions, what the respondents were at the most

required to do was to afford a reasonable opportunity to him of making an offer to execute the work. There is no manner of doubt that the

respondents could have either accepted his offer or rejected it for plausible

reasons; the only consideration being the best interests of the State.

The mere fact, therefore, that the petitioner's firm was also an A Class Contractor eligible to have the work of any value allotted in its favour, did

not by itself entitle it to have the work allotted in its favour to the exclusion of even those who were more suitable, more competent and more

dependable.

5. Section 3 merely says that a person who is not registered as a contractor under the Act cannot either undertake, or even offer to undertake, to

carry out a work on behalf of a civil department of the Government. Section 4 provides for the procedure to be followed in registering a contractor

and lays emphasis on the financial position and capacity to work of the contractor seeking registration under the Act. Under Rule 3 work of any

limit can be allotted in favour of an A Class Contractor. Rule 4 says that no person shall be eligible to be registered as A Class Contractor, unless

he has an experience of five years in the Public Works Department of the State of Jammu and Kashmir or of any other State, and possesses such

constructional equipment as may be certified, suitable and sufficient for the work by the head of the department concerned, besides being

possessed of immovable property the value whereof is not less than Rs. 150 lacs. The only question upon which the fate of this writ petition,

therefore, turns, is: was the petitioner afforded a reasonable opportunity of making an offer to execute the work and whether that offer was validly

rejected by the respondents?

6. The respondent's case, as already noticed, is that keeping in view the estimated cost of the work amounting to Rs. 184 lacs, and its time bound

schedule of twenty four months, pre-qualification tenders to weed out contractors or insufficient financial capacity and possessing inadequate

resources and experience were invited from all A Class Contractors. Due publicity was given to the tender notice to make it known to all and

sundry. These tenders had to reach the office of respondent No. 1 by OF on 7-9-1981, which, in order to determine the capability of the

contractor, were required to furnish the following information: (i) general experience, reputation and competence in civil engineering works of

comparable nature and magnitude; (ii) special experience in the construction of medium and large span RCC structures; (iii) position of suitable and

adequate earth-moving machinery like excavators, dumpers, dozers, rollers and machinery required for concrete work; (iv) financial status; and (v)

technical personnel with qualification employed by the firm and its organizational set-up. The petitioner was also aware of it but he failed to submit

such pre-qualification tender. This averment made on oath has neither been controverted by the petitioner in his rejoinder-affidavit, nor did Mr.

Handoo learned counsel for the petitioner, challenge it during the course of his arguments. It has, therefore, to be taken as established that the

petitioner knew that pre-qualification tender was to be submitted to respondent No. 1 by or on 7-9-1981. Admittedly, no such tender was

submitted by him. Such tenders were offered by only seven contractors, out of whom four, namely, respondents 4 to 7 were considered fit to

compete for the work and tender documents were consequently issued in their favour alone. In these circumstances, therefore, it cannot be

gainsaid that the petitioner too was given an opportunity of being considered for the allotment of the work by initially proving his worth to compete

for it.

He failed to prove it by offering the pre-qualification tender and in the result himself refused to compete for the work. No fault can be found with

the course adopted by the respondents. Refusal to provide him tender documents, in these circumstances, was as good as rejecting his tender to

execute the work for a valid reason after due consideration. Whereas any person who possessed immovable property worth Rupees 1.50 lacs

could under Rule 4 become an A Class Contractor, the amount of earnest money alone which was required to be deposited by the successful

bidder in the instant case was Rs. 3.68 lacs. The Government could not have risked the execution of the gigantic work of construction of the canal

and that too according to the time bound schedule of two years, by allotting it to a person who, in its opinion was not possessed of enough finances

and expertise. To ensure that the work was allotted to a person suitable in all respects, it could have either called tenders from all A Class

Contractors at one and the same time and rejected the tenders of all those who it considered were unfit or unsuitable for the job, or it could have

achieved this very object by a phased consideration of the merits of all such contractors by first of all calling for pre-qualification tenders from them

with a view to judging their respective capability and reliability for execution of the work. Obviously, therefore, the petitioner cannot be heard to

say that right to compete for the work has been denied to him by the infraction of either Article 14 or Article 19(1)(g) of the Constitution or of S. 3

of the Act read with Rules 3 and 4.

7. Reliance on behalf of the petitioner was, however, placed upon a Supreme Court decision viz. *Rashbihari Panda etc. Vs. State of Orissa*, . In

this case the petitioner was never allowed to compete for the purchase of Kendu leaves and the sale had been clinched in favour of the existing

contractors by private negotiations. Their Lordships had, in these circumstances, held (at p. 1087):

..... The right to make offers being open to a limited class of persons it effectively shut out all other persons carrying on trade in Kendu leaves

and also new entrants into that business. It was ex facie discriminatory and imposed unreasonable restrictions upon the right of persons other than

existing contractors to carry on business. In our view, both the schemes evolved by the Government were violative of the fundamental right of the

petitioners under Article 19(1)(g) and Article 14 because the schemes gave rise to a monopoly in the trade in Kendu leaves to certain traders, and

singled out other traders for discriminatory treatment.

The case being distinguishable on facts, reliance upon it on behalf of the petitioner is, therefore, clearly, misplaced.

8. In the result, the petition fails, which is dismissed accordingly. The stay order issued on 12-1-1982 is vacated. No costs.