
(2001) 07 OHC CK 0022
In the Orissa High Court
Case No : C.J.C. No. 5121 of 2001

Morning Flight

APPELLANT

Vs

Steel Authority of India and Others

RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2002 Ori 95

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The petitioner, a private courier service Firm, has filed this writ application, inter alia, praying to quash the "courier service contract" given to opposite party No.3 by opposite parties 1 and 2 i.e. the Steel Authority of India Limited, for the period 2001-2002.

2. It is averred that opposite parties 1 and 2, which is a public sector undertaking, issued a notice on February 10, 2001, inviting tenders for carrying mail and materials to and from Bolani Ore Mines to R.N.D., Calcutta and to any other consignee and addressee which may be intimated from time to time (vide Annexure-1). The period of contract was for one year. The instructions to the tenders annexed to the Tender Notice stipulated the terms and conditions and other parafernalias to be complied by the tender. A copy of the instructions to the tenderers is enclosed as Annexure-2 to the writ application. On the same day, the special conditions of the contract was also published and supplied to the intending tenderers. The petitioner, as well as many others, submitted their tenders after fulfilling all the parafernalias. The petitioner submitted his tender on February 28, 2001, vide Annexure-5. It is averred that the petitioner satisfied all the conditions stipulated in the tender papers and also duly complied the stipulations embodied in the Tender Notice as well as other documents referred to (supra). When the tender papers were opened, it was found that for the work

stipulated at serial 1; the petitioner quoted Rs. 8000/-, for serial 2 Rs.2000/- and for serial 3 Rs. 3000/-. At the other hand, opposite party No.3 quoted Rs. 10,650/- for the work at serial 1, Rs. 1,050/- and Rs.300/-for serials 2 and 3 respectively, the petitioner submits that if the pros and cons of all the serial Nos. are added, it would appear that both the parties quoted equal amounts and thus, it was incumbent upon the opposite parties 1 and 2 to call both the parties for negotiations. Instead of following the rules, it is alleged that the opposite parties 1 and 2 are proposing to enter into a contract with opposite party No.3. It is further averred that, though a final decision has already been taken, the contract has not yet been signed. The petitioner further alleges that the performance of opposite party No.3 was not found satisfactory in the year 1995-96 for which it was blacklisted, at the other hand, the performance of the petitioner-firm was always quite satisfactory and the decision of the opposite parties 1 and 2 is liable to be quashed.

3. After receiving the rule, a formal counter affidavit was filed by the opposite parties. At the outset it was submitted that the "lis" flows from a contractual obligation and as such cannot be effectually adjudicated under the writ jurisdiction. It is further submitted that the petitioner was not the tenderer nor Shri Jyoti Mohan Mohanty is the proprietor of M/s Morning flight - petitioner. It is averred that the tender was submitted by one Jyoti Mohan Mohanty asserting that he is the Proprietor of M/s Morning flight and as such, the writ application filed by Shri Jyotimohan Mohanty is not maintainable. It is further alleged that from the documents submitted at Calcutta, it appears that the real proprietor of the firm M/s Morning Flight is one Shri Tapan Kumar Mukerjee, who has been granted Registered Certificate dated 19-3-1998 bearing Registration No. Courier/CA/1/356 issued by the Assistant Commissioner, Central Excise, Service Tax Cell, Calcutta u/s 69 of the finance Act, 1994. the Municipal Corporation of Calcutta also issued licence in the afresaid address. Thus, the petitioner has no manner or legal right to represent M/s Morning Flight and file this writ application.

4. So far as the merits of the case is concerned, it is submitted in the counter-affidavit that Clause (7) of the Tender Notice clearly stipulates that the Company reserves the right to accept/reject any or all tenders or to split up the job to more than one party without assigning any reason therefor. The petitioner having agreed to the said terms and conditions, has no locus standi to file the present writ application. It is further submitted that the Tender Scrutinee Committee consisting of very senior officers of the Company after considering the pros and cons and examining the tenders received, decided to accept the tender of opposite party No. 3 and Issued work order on 23-4-2001. The decision of the Tender Committee does not suffer from any irregularity or Illegality which can be interfered. It is further asserted that the work order has already been issued to opposite party No.3 and agreement was signed on 25-4-2001. Opposite party No.3 has also commenced the work with effect from 28-4-2001. thus, the writ application which was filed 24-4-2001 has become infructuous and is also not maintainable.

5. The allegation that, undue and illegal advantage is extended to opposite party No.3 is stoutly repudiated and it is emphatically stated that the total amount of the tender quoted by the petitioner-Firm was Rs. 29,800/- compared to the price bid of Rs. 14,970/- quoted by opp. party No.3 which is almost 1/3rd less than the bid of the petitioner-Firm. The other allegations made in the writ application are also stoutly denied.

6. A rejoinder-affidavit was filed by the petitioner reiterating the stand taken in the writ application. It is further clarified that the Proprietor's name is. In fact, Shri Jyoti Mohan Mohanty. However, Inadvertently it has been typed as Jyoti Madhab Mohanty.

7. I have heard Mr. Mohanty, learned counsel for the petitioner, Mr. Jagannath Das, learned counsel for opposite parties 1 and 2 and Mr. U.C. Behuria, learned counsel for opp. party No.3.

8. From the averments made in different paragraphs of the writ application as well as the arguments of the learned counsel for the parties in Court, it appears that a contract has been executed inter se between opposite parties 1 and 2 and opp. party No. 3 on April 25, 2001. The petitioner has not challenged the final agreement. Further, the petitioner-Firm has totally failed to convince me regarding any illegality and /or irregularity said to have been committed by opposite parties 1 and 2. It also appears that the action of opposite parties 1 and 2 in awarding the contract of courier service to opposite party No. 3 is tainted with any unfair consideration or arbitrariness nor the same is unjust so as to bring the action within the compass of judicial review. The Apex Court in *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*, . has expressed that a mere difference in the price offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. Often when a Committee of Experts having extensive knowledge evaluates the offer, the same should not be lightly interfered by the court. At times a higher price for a much better quality of work, can be legitimately accepted in order to secure proper performance of contract, the Court should not substitute its own decision for the decision of the Expert Committee. In that view of the matter, I am not inclined to interfere with the decision of opposite parties 1 and 2 in exercising the extra-ordinary jurisdiction conferred under Article 226 of the Constitution of India. The writ application fails and the same is dismissed.

No costs.