

(2001) 03 DEL CK 0152

In the Delhi High Court

Case No : Civil Writ Petition No. 207 of 2001

Mr. Rakesh Kapoor

APPELLANT

Vs

Oriental Insurance Company Ltd. and Another

RESPONDENT

Date of Decision : 01-03-2001

Acts Referred:

Citation : (2001) 91 DLT 677 : (2001) 58 DRJ 658 : (2002) 1 RAJ 401

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mr. Rajiv Bahl, for the Appellant; Mr. Vishnu Mehra, Mr. Manish Singhvi and Mr. Rakesh Aggarwal, for the Respondent

Judgement

Vijender Jain, J.—Rule

2. Petitioner seeks cancellation of allotment of the counter in favor of respondent no. 2 which have been allotted in pursuance to the tender dated 2.7.2000 by respondent no. 1-Oriental Insurance Company Ltd. for organising and managing the insurance counted for sale of personal accident (Aviation Insurance) at Palam and Indira Gandhi International Airport with the further prayer of quashing the notice dated 2.1.2001 issued by respondent no.1 cancelling the contract of the petitioner who was running the aforesaid counters at the respective Delhi Airports since 1983. It is the case of the petitioner that respondent no. 1 was fully satisfied with the working of the petitioner and accordingly the petitioner has been working for the last more than 18 years at these sites and in the meanwhile he received various appreciation letters from various Secretaries of Government of India and Executives of the subsidiaries as he was also doing for respondent no. 1 the job of Public Relation Officer and for discharging his duties and functions, respondent no. 1 started paying a sum of Rs. 2,000/= per month to the petitioner for meeting his out of pocket expenses at Indira Gandhi International Airport, New Delhi.

3. Mr. Rajiv Bahl, learned counsel appearing for the petitioner, has contended

that on 4.2.2000 respondent no. 1 had issued notice for inviting tenders for running the aforesaid counters for sale of Aviation insurance. The petitioner had participated in the said tender and thereafter pursued the matter. However, the said notice inviting tenders vide advertisement dated 2.7.2000 was cancelled and fresh tenders were invited. Previous tender was cancelled as the same was not in conformity with the procedure adopted by the insurance company in the light of guidelines issued by the Central Vigilance Commission which envisaged two bids i.e. (i) Technical Bid having technical details and (ii) Financial Bid having technical details. It was contended that this was done by respondent no. 1 with the sole object of accommodating respondent no. 2 as respondent no. 2 was the son of Shri O P Malhotra, who was the Public Relation Officer at the head office of Insurance Company at New Delhi. However, respondent no. 1 extended and renewed the service contract of the petitioner in respect of the aforesaid counters at Delhi Airports. To the utter surprise of the petitioner, the petitioner received a notice dated 2.1.2001 from respondent no. 1 that the contract of the petitioner was terminated. It was contended by Mr. Bahl that respondent no. 1 was bound to first open the technical bid and thereafter whosoever qualifies. was entitled to have his financial bid open. He has contended that procedural irregularity was committed by respondent no. 1 as respondent no. 1 did not inform the date and time of opening of the tender as the same was not opened in the presence of petitioner and/or his authorised representative. He has assailed the awarding of work in favor of respondent no. 2 on the ground of arbitrariness and bias and contended that procedure adopted for awarding the contract in favor of respondent no. 2 was wholly arbitrary, unreasonable, unfair and unjust.

4. On the other hand, Mr. Vishnu Mehra, learned counsel appearing for respondent no. 1, has contended that the petitioner has not come to this court with clean hands. He took objection of filing of Annexures "F" and "o" which is at pages 56 and 66, as the same were correspondence inter se the Departments of respondent no. 1. Mr. Mehra further contended that while exercising jurisdiction under Article 226 of the Constitution in the matter of contract the power of judicial review should be exercised in extreme cases where there is a case of irregularity or action is arbitrary or same is based on procedural irregularity. It was contended by learned counsel for respondent no. 1 that respondent no. 1 evaluated tender offer of both the petitioner as well as selected respondent no. 2 and in any event of the matter father of respondent no. 2 was not in a position to influence the decision of respondent no. 1, Therefore, there is no question of bias as alleged by the petitioner and cited in this regard the case of Tata Cellular Vs. Union of India, . On the basis of aforesaid authority, learned counsel for respondent no. 1 has argued that mere allegation of bias is not sufficient as in no way the father of respondent no. 2 was in a position to influence the decision making process. He has further contended that it was not necessary that the petitioner was to be the lowest bidder as the court cannot scrutinise minutely the clauses of the bid document as it would not be in public interest and cited case of Asia Foundation and Construction Ltd. Vs. Trafalgar House Construction (I) Ltd.

and Others, in which the Supreme Court has held:-

"This being the position, in our considered opinion, the High Court was not justified in interfering with the award by going into different clauses of the bid document and then coming to the conclusion that the terms provided for modifications or corrections even after a specified date and further coming to the conclusion that Respondent 1 being the lowest bidder there was no reason for the Port Trust to award the contract in favor of the appellant. We cannot lose sight of the fact of escalation of cost in such project on account of delay and time involved and further in a coordinated project like this, if one component is not worked out the entire project gets delayed and enormous cost on that score if rebinding is done. The High Court has totally lost sight of this fact while directing the rebinding. In our considered opinion, the direction of rebinding in facts and circumstances of the present case instead of being in the public interest would be grossly detrimental to the public interest."

5. Mr. Mehra further contended that even if the petitioner had more experience, however, for any bona fide reasons if any relaxation is granted by respondent no. 1 and decision which is arrived at is legitimate one by taking into consideration the totality of the bids of the petitioner and respondent no. 2, the court should not intervene in this matter as the evaluation of respondent no. 1 is based on special knowledge and court should not substitute its own decision over the decision of Expert Evaluation of respondent no. 1 and has relied upon the case of Raunaq International Ltd. Vs. I.V.R. Construction Ltd. & ors. >(1991) 1 SCC 492 in which it is held:-

"It is also to remember that price may not always be the sole criterion for awarding a contract. Often when an evaluation committee of experts is appointed to evaluate offers, the expert committee's special knowledge plays a decisive role in deciding which is the best offer. Price offer is only one of the criteria. The past record of the tenderers, the quality of goods or services which are offered, assessing such quality on the basis of the past performance of the tenderer, its market reputation and so on, all play an important role in deciding to whom the contract should be awarded. At times, higher price for a much better quality of work can be legitimately paid in order to secure proper performance of the contract and good quality of work -- which is as much in public interest as a low price. The court should not substitute its own decision for the decision of an expert evaluation committee."

6. Mr. Mehra further contended that until and unless the allegation of unreasonableness, mala fide and collateral considerations are unassailable court would not hold that the contract was vitiated while exercising its power under Article 226 of the Constitution of India. In support of his contentions, Mr. Mehra has relied upon Center For Public Interest Litigation and Another Vs. Union of India and Others, in which the Supreme Court has held:-

"The price fixation in a contract of the nature with which we are concerned, is a

highly technical and complex procedure. It will be extremely difficult for a court to decide whether a particular price agreed to be paid under the contract is fair and reasonable or not in a contract of this nature. More so, because the fixation of price for crude to be purchased by GOI depends upon various variable factors. We are not satisfied with the argument of the appellants that the nation has suffered a huge financial loss by virtue of his arbitrary fixation of crude price. As a matter of fact, the figure mentioned by the appellants of Rs. 3000 crores as a loss under this head of pricing is based on incorrect fact that the consortium is charging \$4 per barrel as premium. It is because of this factual error that the appellants came to the conclusion that under the contract GOI had agreed to purchase the crude from the consortium at an inflated price. We also take note of the fact that under the agreement the respondents are bound to give a discount of \$0.10 per barrel on the price of the crude fixed on the basis of the international market rate which, prima facie shows that the fixation of price is reasonable since under all given circumstances the said will be less than the international market price for Bent crude."

7. Counsel for respondent no. 2 also defended the award of work by respondent no. 1 in his favor.

8. I have given my careful consideration to the arguments advanced by all the parties. From the perusal of the original record and chart, which was prepared by counsel for petitioner and submitted in the court, under the heading "our requirement" Serial no. 3 against previous experience in handling operations at Airport, the experience of respondent no. 2 is shown as nil, whereas the experience of petitioner is shown as existing contractor working at insurance counter since 1983. Similarly, in Column 5 expected premium generation no figure has been given by respondent no. 2, whereas petitioner has given Rs. 6.10 lakhs per annum. Against column No. 6 manpower required nil is stated by respondent no. 2, whereas 8 is the figure given by the petitioner. Against column no. 7 previous experience as an insurance agent, respondent no. 2 has submitted that he has been working as insurance agent with companies like New India Insurance and LIC for the last eight years, whereas experience on that score is nil by petitioner. Against column no. 8 knowledge of covers to be sold, respondent no. 2 has stated that he had the knowledge of almost every type of insurance cover available in India whereas against that column in respect of petitioner it has been mentioned flight coupons for particular requisite period, Overseas Mediclaim policy for requisite period. The court also directed respondent no. 2 to file affidavit as to whether he is an income tax assessed or not and if yes income tax returns for the last eight years be brought on record. Court further directed respondent no. 2 to file the photocopy of bank account of respondent no. 2 from 1990 till date. For the reasons best known to the respondent no. 2, respondent no. 2 did not file any tax return. It can be safely presumed that he was not an assessed as far as income tax is concerned.

9. One important point, which was raised during the arguments, was that a form

containing terms and conditions for tender was to be filled at the time of submission of the tender document in which there was a stipulated term and condition apart from the liability of the respondent no. 1 to pay to the contractor monthly expenses to run the office at the Palam and Indira Gandhi International Airports which was left blank and was to be filled by every bidder/tenderer. I have perused the original records, all the other tenderers have filled the said portion except respondent no. 2. No such document has been filled pertaining to the terms and conditions for tender by respondent no. 2. It is no doubt correct that in the matter of contract this court will not substitute its own judgment if the decision has been arrived at by respondent in just and fair manner or the decision making process is not vitiated from irregularities or procedural irregularities. There cannot be two opinions with regard to authorities cited by the learned counsel for respondent no. 1 but whether in the present case how those authorities help the case of the respondent no. 1.

10. The tender in question was for manning the Aviation policy counters at Palam and Indira Gandhi International Airports. From the discussion of the comparative bids furnished by the petitioner and respondent no. 2 in totality when petitioner had an experience of 17 years in dealing with such kind of counters and respondent no. 2 has none, in the query in the tender form against column how much premium could be generated - respondent no. 2 has not given any figure whereas petitioner has quoted Rs. 6.10 lacs, under query whether any manpower is required for handling round the clock counter - no figure has been given by respondent no. 2 whereas the petitioner has given eight persons to be required, previous experience and knowledge regarding covers to be sold is none in the case of respondent no. 2 whereas petitioner has been doing the job for 17 years taking into consideration all the above-mentioned factors, the decision to allot the tender in favor of respondent no. 2 cannot be said to have been made in a fair and just manner. A person who does not know as to how many person he was requiring to man the counter for 24 hours, a person who does not know as to what would be the expected generation of income by selling of said Aviation insurance covers and who don not have any experience of dealing in Aviation policies, has been preferred than the petitioner, makes out a case of not only of procedural irregularity but also taking into consideration irrelevant consideration while leaving relevant consideration for arriving at a just and fair decision, allotment of tender in favor of respondent no. 2 is based on total irregularity. For the sake of arguments if it is assumed that on comparative merits respondent no. 1 has decided the matter for award of work in favor of respondent no. 2 as it was in the domain of respondent no. 1, it could not be explained as to why the terms and conditions for tender which was to be filled by giving the figure of monthly expenses by each tenderers was not filled by respondent no. 2. As a matter of fact, the format regarding terms and conditions was not filled and delivered by the respondent no. 2 as the same was not found from the perusal of the original record. The only Explanation which came forth by respondent no. 1 was that figure of monthly expenses was mentioned in the financial bid. Why the

amount was not filled by respondent no. 2 on the said format, could not be explained by the counsel for respondent no. 1 or by respondent no. 2. The non-filling of the figure by respondent no. 2 for monthly expenses in the document titled as terms and conditions also result in procedural irregularity which vitiates the award of work in favor of the respondent no. 2.

11. Court directed respondent no. 2 to file tax returns for the last eight years as well as bank pass books. Tax returns have not been filed, may be respondent no. 2 is not paying income tax. From the perusal of bank pass books except for stray entries here and there, no substantial entry has been found for any commission which the respondent no. 2 has received on account of holding insurance agency. In any event of the matter, Aviation counter to be manned by a tendered, respondent no. 2 had no experience.

12. For the reasons stated and observed above, the award of work/contract in favor of respondent no. 2 in furtherance of notice inviting tender dated 2.7.2000 is based on arbitrariness and the decision making process suffers from procedural irregularity as well as irrationality and the same is hereby quashed.

13. However, it will be for the respondent no. 1 to decide as to continue the counter with the petitioner till the fresh tender is invited and decision taken or to manage the counter for providing service to the customers in relation to Aviation policies and to man the same by respondent no. 1 itself till the decision for allotment pursuant to fresh tender is taken by the respondent.

14. With these observations, the writ petition stands disposed of.