(2011) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6697 of 2010

M/s. Balaji Services APPELLANT

Vs

Airport Authority of India and Others RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2011) 4 MPHT 116

Hon'ble Judges : Shantanu Kemkar, J;Abhay M. Naik, J

Bench : Division Bench

Advocate : A.K. Sethi and Mr. R. Vijayvargiya, for the Appellant; A.S. Garg and Mr. N. Wishard, Advocate with him for the Respondent Nos. 1 and 2 and Mr. Chetan Nigam, Advocate for the Respondent No. 3, for the Respondent

Judgement

Abhay M. Naik, J.—This writ petition under Article 226 of the Constitution of India has been submitted for quashment of tender allotted to respondent No. 3 vide Annexure P-12 and for further direction to consider the tender of the petitioner. Quashment of the demand raised against the petitioner vide Annexure P-13 has also been prayed for. Briefly stated the relevant facts are that the petitioner was holding the contract for car parking in Devi Ahilyabai Holkar Airport, Indore. On 22-5-2009, the petitioner surrendered the car parking contract with six months'' notice under protest. At the relevant point of time, licence fee of the contract was Rs. 8,47,000/- plus service tax per month. Copy of the surrender letter dated 22-5-2009 is on record as Annexure P-2, Notice period was coming to an end on 21-11-2009, therefore, the Air Port Authority of India (respondent No. 1) entered into negotiations with the petitioner and it was decided that Rs. 4,41,000/- plus service tax will be paid by the petitioner and also that when the regular tender would be invited, whatever amount will be quoted, the petitioner will deposit the difference amount. In this background, the Air Port Authority reduced the price from Rs. 8,47,000/- plus service tax per month to Rs. 4,60,000/- plus service tax per month.

2. On 22-1-2010, fresh tender for car parking was opened. According to the petitioner, respondent Nos. 3 and 4 did not fulfill the eligibility criteria which was objected to vide Annexure P-5, dated 16-3-2010. Despite such complaints, vide Annexures P-6 to P-11, tender was awarded to respondent No. 3 vide Annexure P-12, dated 11-5-2010. It is stated in the petition that tender was allotted to respondent No. 3 in an illegal manner, despite absence of eligibility. Ignoring its ineligibility, difference amount payable by the petitioner has been calculated at Rs. 7,77,786/- per month plus service tax, on the basis of tender awarded to respondent No. 3 in illegal manner. Respondent No. 1 thereafter, issued letter dated 19-5-2010 (Annexure P-13) demanding thereby recovery of difference amount of Rs. 19,92,226/- from the petitioner. Thereafter, respondent No. 2 again issued letter dated 1-6-2010 (Annexure P-14), demanding thereby Rs. 19,92,226/- against the bill dated 19-5-2010 and Rs. 2,18,473/- against the bill dated 3-5-2010. The petitioner was requested to make the payment upto 8-6-2010, failing which it was informed that money payable to the petitioner would be adjusted/appropriated against the money payable to the petitioner by respondent No. 1.

It is further stated in the petition that since respondent No. 3 was ineligible, the tender allotted to him is equally illegal. Accordingly, the petitioner is not liable to pay difference amount on the basis of tender illegally awarded to respondent No. 3. According to the petitioner, the ineligibility of respondent No. 3 was on account of non-compliance of sub-clauses (c) and (m) of Clause 5 of the General Information/Guidelines. In the light of the aforesaid, the petitioner has claimed the following main reliefs:--

A. The impugned letter dated 11-5-2010 (Annexure P-12) may kindly be quashed and the tender allotted to the respondent No. 3 may kindly be cancelled.

B. The impugned letter dated 1-6-2010 (Annexure P-13) may kindly be quashed and the demand raised by the respondents vide this letter may kindly be quashed.

C. The respondent Nos. 1 and 2 be directed to consider the tender of the petitioner.

D. Appropriate order may kindly be passed that the respondent Nos. 3 and 4 did not qualify in the technical bid.

3. A joint reply has been submitted by respondent Nos. 1 and 2, where as a separate reply has been submitted by respondent No. 3.

It has been stated in the reply that tender to respondent No. 3 was duly allotted by respondent Nos. 1 and 2, for a period of one year, vide Annexure P-12, dated 11-5-2010 in due manner, after considering all the relevant terms and conditions. As regards the difference amount recoverable from the petitioner, it is stated that petitioner having himself surrendered, is liable to pay the difference amount as per the terms and conditions of the contract. It has been further stated that the petitioner having himself surrendered earlier, he has been disqualified, and has no valid right to submit the tender or to challenge the ineligibility of respondent No. 3.

4. Arguments have been advanced by the learned Counsel appearing for the parties, which have been duly considered in the light of the material on record.

5. Admittedly, the tender in question was allotted to respondent No. 3 by respondent No. 1 vide Annexure P-12, dated 11-5-2010 for a period of one year, which stood expired on 11-5-2011. This being so, the relief pertaining to quashment of Annexure P-12 has been rendered infructuous.

6. Attention of this Court has been drawn to Clause 15 of Notice Inviting Tender which reads as under:--

15. The successful tenders must necessarily operate the contract for minimum 50% of the total period of the contract failing which the licensee may be debarred from participating in any tender in AAI for a minimum period of three years.

It has been contended in the light of the said clause that the petitioner having surrendered his contract as admitted in Paras 2 and 4 of the writ petition, became ineligible and was debarred from participating in the tender in question, therefore, no relief for consideration of his tender can be legally issued.

Without entering into this controversy, it is hereby observed that since the period of contract awarded to respondent No. 3 is already over, the relief seeking direction for consideration of tender of the petitioner has also been rendered infructuous.

7. It has bean further argued on behalf of the petitioner that respondent No. 3 did not fulfill the eligibility criteria, since envelope "A" submitted by it did not comply with clauses (c) and (m) of condition No. 5 contained in General Information/Guidelines. The relevant conditions are as follows:--

(a) ***

(b) ***

(c) In order to assess the turnover for meeting the eligibility criteria, the profit and loss account along with schedule duly certified by the Chartered Accountant indicating the breaking up of revenue from various sources separately is required to be submitted. In the absence of details in profit and loss account separate schedule showing bifurcation of revenue needs to be submitted duly certified by a Chartered Accountant.

(d) ***

(e) ***

(f) ***

(g) ***

(h) ***

(i) ***

(j) ***

(K) ***

(l) ***

(m) Attested copies of Permanent Account No. (PAN) issued by IT authorities and Service Tax Registration No. wherever applicable.

Contention of the learned Senior Counsel for the petitioner in the light of the aforesaid is that the tender could not have been awarded to respondent No. 3, in legal manner. Since it has been illegally awarded to respondent No. 3, H1 bid quoted by respondent No. 1 cannot be legally taken into consideration to arrive at the amount of difference. Accordingly, the demand raised vide Annexure P-13, dated 1-6-2010 is illegal and arbitrary and is liable to be quashed.

8. Shri A.S. Garg, learned Senior Counsel appearing for Airport Authority of India submitted that there is no averment with regard to non-compliance of clauses (c) and (m) in Paragraph 5 of the writ petition, which provides factual foundation to the matter under controversy. Since the petitioner did not make any allegation about non-compliance of the aforesaid clauses in the factual narration of the case, the respondents were not strictly obliged to meet out unpleaded facts in the return/reply.

On perusal, we find that format of the writ petition has been provided under M.P. High Court Rules, 2008. Paragraph 5 of the prescribed format obliges the writ petitioner to provide all the relevant facts, which according to him, give rise to the legal grounds in his support. Paragraph 6 of the prescribed writ petition format expects the writ petitioner to raise the legal grounds arising from the facts described in the preceding Paragraph 5. Legal grounds without factual foundation need not be necessarily considered. On perusal, we find that there is absolutely no iota in Paragraph 5 that respondent No. 3 was ineligible on account of non-compliance of clauses (c) and (m) (supra). Petitioner despite such deficiency in pleadings did not choose to plead the requisite fact by way of amendment.

Attention of this Court has also been drawn to the following specific pleadings:--

2......The present controversy arose as on 22-5-2009. The present petitioner surrendered car parking contract with six month notice under protest and at the relevant point of time, the license fee of the contract was Rs. 8,47,000/- + service tax per month. A copy of the letter dated 22-5-2009 is filed and marked as Annexure P-2.

4. That, the notice period of the petitioner was coming to an end on 21-11-2009,

therefore, the Airport Authority, i.e., the respondent entered into a negotiations with the petitioner and it was decided that Rs. 4,41,000/- + Service Tax will be paid per month and also when the regular tender will be invited, whatever amount would be quoted as H1, the petitioner will deposit the difference amount. In this background, the Airport Authority has reduced the reserved price from Rs. 8,47,000/- + Service Tax per month to Rs. 4,60,000/- + S.T. per month....

In the light of the aforesaid, it has been contended by the learned Senior Counsel for the respondent that the Airport Authority of India has acted upon the promise made by the petitioner, who is now estopped from disputing his liability to pay the amount of difference quoted as HI. Plea of promissory estoppel is to be examined in the light of necessary pleadings and evidence about negotiations as to what was the actual terms of negotiations, what was the promise made by the petitioner, which has been accepted and acted upon by the Airport Authority of India, by reducing the reserved price from Rs. 8,47,000/- to Rs. 4,60,000/-. Though it has been argued on behalf of the respondents that clauses (c) and (m) has no material bearing, in view of all the documents submitted by respondent No. 3 and that service tax was not applicable at the relevant time. We leave it open to be considered in the civil suit, if instituted to challenge Annexure P-13. This cannot be decided in the present writ petition without appropriate and complete pleadings and evidence pertaining to them. None of the parties has placed before the Court or has taken steps to make the record pertaining to negotiations available. In our considered opinion, this issue may require extrinsic evidence and may be gone into in the civil suit. Accordingly, we grant liberty to the petitioner to seek relief pertaining to the demand raised against him vide Annexure P-13, dated 1-6-2010 in accordance with law. This order will not come in the way of the petitioner, if a civil suit is filed in due manner in a Court having competent jurisdiction with appropriate relief.

Accordingly, the writ petition is disposed of with the aforesaid liberty. No order as to costs.

C.c. as per rules.

