
(1990) 12 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.P. No. 2670 of 1990 (G)

M/s. Bansal and Co.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-12-1990

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1991) MPJR 68

Hon'ble Judges : Shacheendra Dwivedi, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : D.K. Katare, for the Appellant; N. P. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Lahoti, J.

The petitioner, an approved contractor, registered with the respondents has come up to this Court aggrieved by the action of the respondents in denying the petitioner the right to submit tenders in connection with certain proposed work of theirs.

The case of the petitioner is that since 1974 he has been dealing with the respondents and he has satisfactorily performed all the contracts so far undertaken by him and hence, the action of the respondents in denying the right to submit tenders by him is arbitrary and unconstitutional, liable to be struck down.

The respondents have disputed the petitioner's right to seek relief on very many grounds. It is submitted that the standard guidelines laid down by the Government provide that more registration as M.E.S. contractor does not carry with it the right to tender for M. E. S. works and that the respondents have therein reserved rights to deny tenders to any one though entered in the M. E. S. list of contractors (vide Annexure R/1) and hence the petitioner cannot come up to this Court though he has been denied the right to submit tenders. The

respondents further rely on para 419 of M. E. S. Regulations, 1968 which provides (Annexure R/3) :-

"tenders will normally be issued to those contractors who are borne on the M. E. S. approved list of contractors and within whose financial limit the amount of the proposed work lies. The Accepting Officer has the discretion not to issue tenders to a contractor in a particular case such as -

- (a) the contractor is already overloaded;
- (b) the performance of the contractor had not been satisfactory in the past;
- (c) serious irregularities were committed by the contractor in the past;
- (d) his financial position is found to be unsatisfactory.

2 The Accepting Officer shall record his decision in writing giving brief reasons for non-issue of the tender at the time of issue of tender. These may be made available if the CDA wants to know these in any particular case ""

(CD A= Controller of Defence Accounts)

The facts stated in the return led to the filing of a rejoinder by the petitioner and an additional return by the respondents. The stand now taken is that M/s. Bansal and Co.. a partnership firm of which Premnarin Bansal, the petitioner is a partner, is a sister concern of M/s. Banco-Construction having common partners and/or partners closely related with each other. M/s. Banco Construction had undertaken as a contractor, some other work of the respondents. The failure of the work resulted into holding of an enquiry by Staff Court of Enquiry, classified as Secret, which arrived at a finding that the collapse of Aircraft Hanger at Gwalior was because of the defective performance amounting to resort to certain unsound engineering practices. It is further stated that action consequent to the findings of the Committee report are in contemplation and in the meantime, it has been decided to not to issue tenders in respect of the works of the respondents to the petitioner and sister concerns, four in all.

The relevant documents called Secret, though not annexed with the return nor reproduced in the return, have still been made available for the perusal of the Court.

At the very outset, we notice a preliminary objection raised by Shri Mittal, the learned counsel for the respondents that the petition does not lie as the relief prayed for by the petitioner lies within the domain of Law of Contracts, seeking enforcement of contractual obligation merely. However, the objection has been noticed and stated only to be rejected. The dealing between the parties is only at the stage of invitation to tenders and right to submit the tenders. No contract has been entered into between the parties. The stage for doing that is yet to arrive. The (sic) has originated at a precontract stage. The petition does not allege of breach of contract merely nor seeks enforcement of a contractual obligation merely. The challenge to the action of the respondents, undoubtedly

"state" within the meaning of Art. 12 of the Constitution is on the ground of arbitrariness and unreasonableness in State action. As held in *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*,

"Being a public body even in respect of its dealing with its tenant, it must act in public interest, and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction."

(para 21)

(para 25)

If a government policy or action even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional." Objection to the maintainability of a call to the exercise of our writ jurisdiction is, therefore, overruled.

On merits, of course, we are of opinion that the petitioner must give way to the respondents.

The ratio which follows from the leading authority of the Apex Court in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, . *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *M/s. Kasturi Lal v. State of J. & K.* AIR 1979 SC 1992 is that every action of public authority must satisfy the test of reasonableness and public interest, an imperative mandate of doctrine of equality flowing from Art. 14 of the Constitution. The State action must not be arbitrary nor violative of the equality clause.

In *Sachidanand Pandey (supra)*, their Lordship, observed : - "There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should-not be suggestive of discrimination."

In *M/s. Dwarkadas Marfatia & Sons (supra)* their Lordships observed : -

"Every action of the Executive authority must be subject to rule of law and must be informed by reason."

In *M/s. Kasturilal (supra)*, their Lordships upheld the consideration of the interest of the State as paramount one and observed :-

"The impugned order was, therefore, unquestionable and without doubt in the interest of the State and there was nothing in it which could possibly incur the reproach of being condemned as arbitrary or irrational."

On a review of the law laid down by the Apex Court in the several authorities referred to hereinabove, we are of the opinion that the State and its authorities cannot be permitted to act discriminately or arbitrarily or unreasonably, Nevertheless, the considerations of public good and public interest cannot be given a complete good by They being the paramount considerations. The action

which may outwardly appear to be discriminatory may turn out to be founded on logic and reasoning guided by the considerations of the State interest and the public good which would be enough to disentitle the petitioner's private interest being protected in our writ jurisdiction.

The present one is not a case where the complaint may be against the acceptance of tenders arbitrarily or by adopting a policy of pick and choose. In fact, the tenders are yet to be opened. The petitioner has been denied issuance of tender from consistently with para 419 of M. E. S. Regulations 1968 (Annexure R/3). No malice, either in fact or in law has been alleged. It seems that the time for issuance of the tender forms in connection with the contract in question has just followed the conclusion of the enquiry by the staff Court of Enquiry. As stated by the learned counsel for the respondents during the course of the hearing that disciplinary action against the erring contractors is in contemplation and there was not time enough within which the formalities of serving a notice to show cause and giving hearing to the contractor could have been completed. The respondents were in possession of material to hold that the performance of the contractor had not been satisfactory in the past. The petitioner has been blacklisted. All that has been done is denial of issuance of tender form for a single work which is imminent and whether or not the petitioner should thereafter be continued on the list of M. E. S. Contractors and in what capacity is yet to be decided. We cannot overlook the fact that the proposed work is of importance to the defence, where the State interest and the larger interest of public good do have paramount importance. The learned counsel for the respondents has justifiably posed a question : What would happen if the petitioner was issued with tender form, his tender was accepted and then it was found that he should not have been given the work? That would necessarily result in creating several complications, all at the cost of serious delay in work of defence. In the opinion of this Court, the action of the respondents cannot be called arbitrary and based on no reason. We should not deny the discretion to the Government, just as we would not to a private party, to choose a person of their liking to fulfil the contracts which they wish to be performed so long as their action is not hit by Art. 14 of the Constitution, which it does not, in our opinion, in the facts and circumstances of the present, case.

For the foregoing reasons, we are unhesitatingly of the opinion that the petitioner is not entitled to any relief in the present petition. The petition is dismissed. No order as to the costs.

Before parting, we make it clear that whatever observations touching the petitioner which we have made hereinabove are solely for disposing of the present controversy and they shall not prejudice the rights and liabilities of either party in the matter of dealing with each other except in the matter of the work in question in this petition.