
(1990) 10 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 462 of 1983

M/s. B.G. Ahuja and another

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 29-10-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 299

Citation : AIR 1991 Bom 307 : (1991) 2 BomCR 653 : (1991) 93 BOMLR 562

Hon'ble Judges : Sujata Manohar, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : Bhagatraj G. Ahuja, for the Appellant; D.L. Patil, Asstt. Govt Pleader, for the Respondent

Judgement

Saldanha, J.—The petitioner before us is a partnership firm, which carries on business as Consultants and Contractors in respect of dams, irrigation projects and other constructional activity. The petitioners were registered with the Public Works Department of the State of Maharashtra as approved contractors in Class B, vide Registration Certificate issued to them dated 19th June 1981. It is an admitted position that the registration was valid until 12th April 1984. As per the regulations then in force the petitioners were given eligibility to offer bids or tenders up to a limit of Rs. 60 lacs in respect of constructional work and/ or irrigation projects in the State of Maharashtra.

2. It is the case of the petitioners that the respondents published an advertisement in the Indian Express of Bombay in one of their issues of August 1982 inviting tenders for construction of the lining work in km 73 to 80 of Kukadi Left Bank Canal, Sirur, District Pune on the terms and conditions prescribed and mentioned therein. It has also come on record that this advertisement appeared in the news-paper "Tarun Bharat" dated 1st September 1982. Subsequent to this a corrigendum dated 25th September 1982 came to be published in which the Class of contractors eligible to offer tenders for the work was amended from Class A to Class B +. It is the case of the petitioners that by virtue of their

registration in Class B + they were eligible to offer tender for the construction work in question. It further appears that the State of Maharashtra by a Resolution dated 6th September 1982 revised Rules for Registration of Contractors and provided for a fresh system of categorisation in the manner as set out in the resolution. The material part of the resolution, which deals with categories B and B +, specifies that contractors falling in these categories were reclassified as belonging to Class IV prescribing a limit of Rs. 50 lacs. It appears that the petitioner No. 2 by his letter dated 16th September 1982 applied for certain modifications in respect of Registration Certificate that had earlier been issued to him and it is his case that this modification became necessary because he desired that the Registration Certificate which stood in his individual name should be modified to one in the partnership name. By a letter dated 16th October 1982 addressed to the petitioners the Executive Engineer, Pune Division, accepted the application dated 16th September 1982 from the petitioner No. 2 and informed him that the Registration Certificate is changed from the name of "B. G. Ahuja" to "M/s. B. G. Ahuja". The petitioners were further informed that they are now placed in Class IV with effect from 6th September 1982 to 12th April 1984 and that they are now treated as capable of offering their tender for work of the State of Maharashtra up to the limit of Rs. 50 lacs.

3. The record indicates that the petitioners submitted their tender on 1st November 1982 and that the tenders were opened and scrutinised on 2nd November 1982, It is the case of the petitioners as set out in paragraphs 10 and 11 of the petition that the Superintending Engineer, Kukari Project Circle, Pune opened all the tenders on or about 1st November 1982 and informed the petitioners orally and declared in the presence of all that the tender of the petitioners was the lowest amongst all the tenders received so far and that the entire work as also the sub-works would be awarded to them. The petitioners have further contended in paragraph 11 of the petition that petitioner No. 2 personally went to the Office of respondent No. 2 on or about 24th January 1983 but could not meet him and therefore sent a telegram followed by a confirmation letter dated 29th January 1983 wherein he recorded the fact that theirs was the lowest tender and requested the authority to intimate them about the decision regarding the award of the said contract. It is material to point out that even though the respondents have filed two affidavits in reply to the present petition, these facts have not been controverted.

4. The case made out by the respondents in the affidavits filed before us is to the effect that by virtue of the Government Resolution dated 6th September 1982 the petitioners have been reclassified and had been put into category IV whereafter their limit for constructional work was brought down to Rs. 50 lacs. It is the case of the respondents that this fact had been specifically brought to the notice of the petitioners and that regardless of this fact the petitioners still submitted their tender. The respondents contend that by virtue of the fact that the petitioners were belonging to category IV whereby the prescribed limit was over all Rs. 50 lacs, that they were not eligible for consideration as far as the

present work was concerned since the amount involved in the present tender was slightly in excess of Rs. 58 lacs.

5. In our judgment, we are unable to accept the contention of the respondents and we are constrained to conclude that the act of rejection of the petitioners' tender was arbitrary and unacceptable. As stated earlier, by their corrigendum of 25th September 1982 the respondents had very clearly specified that the contractors belonging to B + category were eligible for submitting their tenders as far as the present contract is concerned. It may further be noted that the decision to invite tenders, as far as the present contract was concerned, was taken by the respondents in the last week of August 1982 as per their averments in their own affidavits. The resolution of the Government regarding reclassification is dated 6th September 1982, which resolution is of a later date, that is, of date subsequent to the date on which the tenders had been invited from different contractors. The respondents themselves admit in their affidavit in reply that even as late as on 25th September 1982 i.e. long after the publication of Government Resolution of 6th September 1982 they still used the classification of B + because admittedly the majority of the contractors had not yet been reclassified. Under these circumstances, the defence of the respondents that the petitioners' tender came to be rejected on the solitary ground that they had been reclassified in Class IV is unacceptable. It is worthwhile mentioning that the resolution dated 6th September 1982 could only be given prospective effect and could not in any manner affect the rights of the parties in respect of offers that were earlier invited from them. It is worthwhile mentioning that Class B + as it originally stood prescribed a limit of Rs. 60 lacs, in which case the petitioners were clearly eligible. Furthermore, then the tenders came to be opened on 1st November 1982, if the defence of the respondents were to be accepted, the tender submitted by the petitioners would have been rejected on the ground that they were ineligible. Neither in the correspondence nor in the affidavits in reply is this the case set out by the respondents and we are, therefore, constrained to observe that the rejection of the petitioners' tender was arbitrary and unacceptable.

6. Mr. Ahuja, petitioner No. 2, appearing in person before us submitted that the action of the respondents must be categorised as mala fide. He urged that some of the respondents' officers were against his firm and their sole object in rejecting the tender of the petitioners was in order to favour some other person and that it was a hostile and discriminatory act against the petitioners. Unfortunately these statements and averments do not find place in the petition and the respondents have not had an opportunity to controvert these statements and therefore we cannot take cognizance of these statements of the petitioners as far as this aspect of the matter is concerned. At the time when the rule was issued in the present petition, the Division Bench did not deem it fit to grant any interim relief. We are informed that pursuant to the award of the contract to respondent No. 4, the work has already been executed and that therefore, none of the reliefs as prayed for by the petitioners in the present petition are capable

of being granted. Mr. Ahuja, appearing in person, has informed us that he is a professional Engineer of some status which position appears to be true judging from the documents which he has produced, and that the reason for the hostility displayed against him is principally because of his efforts to convey to the Irrigation Department certain superior and more efficient methods of functioning which have met with serious opposition. He has pointed out that the Department, for reasons that are well known, is not only allergic but is downright against any form of improvement or streamlining which may be in the public interest but runs counter to vested interests. He stated that as a result of a combination of factors that the officers concerned at different levels are determined to ensure that he was kept out of the contract at all costs. He has pointed out to us that he has an unblemished record and that consequently, the officers could not have conceived of any legal method of disqualifying him or his firm. It is further his grievance that since he was not willing to indulge in any unfair practices, which are rampant as far as the award of large contracts in this Department are concerned, that a means had to be devised to by-pass him and award the contract to another party whom the officers desired to oblige. We need not examine these submissions as they do not find a place in the petition. From the affidavits filed by the respondents, it is clear that there was no ground on which the petitioner could have been disqualified except the weak defence put up by the respondents, which, for the reasons set out earlier is, wholly unsustainable and thoroughly unacceptable.

7. Mr. D. L. Patil, learned Assistant Government Pleader urged very valiantly and vigorously that the Department's stand was correct, that it was justified and that the officers had acted correctly. We have demonstrated to him that for the reasons set out by us, his submissions are unacceptable. In a further attempt to justify the action of the Department, he advanced the submission that even if the officers had committed a mistake, that the same was a bona fide mistake and that they had nothing against the petitioner. This position, again, is unacceptable and we are, in the facts of this case, not prepared to credit the Department with the level of innocence which Mr. Patil has projected. Though Mr. Patil has done an admirable job for the Department, this Court would be failing in its duty if the powers vested in it are not adequately exercised in doing justice to a seriously aggrieved litigant.

8. The irresistible conclusion, therefore, is that the petitioner was wrongly deprived of the award of the contract which, under normal circumstances, should have been done since his offer was the lowest and he was otherwise qualified. In these circumstances, the illegal and unfair treatment meted out to a professional is something which was downright improper. Mr. Ahuja has drawn our attention to the judgment of the Supreme Court *Rameshwar and Others Vs. Jot Ram and Another*, in the case of *Rameshwar v. Jot Ram*. On the basis of the observations of the Supreme Court, the relevant portions of which we shall reproduce, Mr. Ahuja has submitted that the contract ought to have been awarded to him under normal circumstances in the year 1982 but for the wrongful act on the part of

the respondents. Consequently, he would have, in the normal circumstances, executed the work and would have been entitled to his normal profits on execution of that contract. Consequently, he submitted that merely because the petition is heard after the lapse of several years, and the contract cannot now be awarded to him that he cannot be deprived of a relief which he would have been entitled to in the year 1983 had the dispute been adjudicated at that point of time. Dealing with this aspect of the case, the Supreme Court in the decision referred to above has observed (at page SC 52; AIR 1976) :

"It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right. The Court's procedural delays cannot deprive him of legal justice or rights crystallised in the initial cause of action."

9. The Supreme Court in this decision enunciated a principle of utmost relevance which has been crystallised over the years viz., that a Court should not be fettered, at the decision making stage, in granting what is fair and equitable having regard to the changed circumstances due to the efflux of time and conversely that a Court will not refuse a relief merely because it is necessary to up-date or mould the type of relief that can be granted. Krishna Iyer, J. (as he then was) had further observed as follows :

"The Philosophy of the approach which commends itself to is that a litigant who seeks justice in a perfect legal system gets it when he asks for it. But because human institutions of legal justice function slowly, and in quest of perfection, appeals and reviews at higher levels as provided for, the end product comes considerably late. But these higher Courts pronounce upon the rights of parties as the facts stood when the first Court was first approached. The delay of years flow from the infirmity of the judicial institution and this protraction of the Court machinery shall prejudice no one. *Actus curiae neminem gravabit*.... The realism of our procession justice bends our jurisprudence to mould, negate or regulate reliefs in the light of exceptional developments having a material and equitable import, occurring during the pendency of the litigation so that the Court may not stultify itself by granting what has become meaningless or does not, by a myopic view, miss decisive alterations in fact-situations or legal positions and drive parties to fresh litigation whereas relief can be given right there. The broad principle so stated, strikes a chord of sympathy in a court of good conscience".

10. In the light of these observations, we are of the view that the petitioner ought not to be deprived of equitable relief as such deprivation would compound the injustice perpetrated by the respondents, and possibly encourage its officers to continue functioning in this highly unsatisfactory manner. It is all the more regrettable that a professional is at the receiving end in this case which casts an even higher duty on the court to ensure that he is not frustrated in his efforts.

Mr. Ahuja has submitted before us that his right to recover damages which he proposes to enforce against the respondents through an appropriate suit should be kept alive. We do not propose to make any observations with regard to any remedies open to the petitioner because the forum before which the petitioner adopts such measures is the right authority to adjudicate the issues before it after hearing the respective parties. At this point of time, it is unfortunate that the petitioner has not placed any adequate material before us on the basis of which, instead of driving the petitioner to a further litigation, this Court would have awarded him adequate compensation at this stage itself. He is directed to put forward his claim to the Department with supporting material on the basis of which the Secretary shall examine and decide the same. We are only directing the Head of the Department to carry out what ought to have been done by him several years earlier.

11. Mr. Ahuja has made a further grievance and requested this Court to take cognizance of the fact that disputes and litigation of this type could have been avoided and the consequent and possible liability of the State to pay heavy damages could have also been eliminated if the higher authorities had acted fairly and judiciously when the grievances" were brought to their notice. It is the grievance of Mr. Ahuja that even though he is a professional, that none of the higher authorities of the Department have paid any heed to the grievances projected by him before them. Government servants invested with supervisory powers will be guilty of gross dereliction of duty in such cases of no faction and should be held as much responsible as the officers of the first instance. There can be no compromise on these principles of which the Heads of Department must take serious note. It is in the light of this position that we direct that a copy of this judgment be forwarded to the Secretary to the Government of Maharashtra, Irrigation Department, Mantralaya, Bombay, with a direction that he should personally apply his mind to the facts of this case and decide as to how and in what manner the petitioner can be adequately compensated for the damage that has been done to him. The Secretary shall examine the record judiciously and if necessary, hear the petitioner and quantify, within a period of three months, what according to equity and accepted legal standards, would be a fair compensation. This, we are doing in the hope that further litigation in respect of this dispute may be avoided and also to bring to the notice of the Department our strong disapproval with regard to the manner in which the department has functioned.

12. For the time being, in our judgment, the petitioner deserves to be compensated by way of costs for the entire litigation which was both unfortunate and avoidable and we direct that the respondents shall pay costs in the sum of Rs.5000/- to the petitioner. With these directions, rule is made absolute accordingly and the petition stands disposed of.

Rule made absolute.