
(2012) 08 GAU CK 0040
In the Gauhati High Court
Case No : WP (C) No. 157 (AP) of 2012

M/s Joram MPCs Ltd.

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2012 Guw 172

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : N. Tagia, Mr. N. Ratan, Mr. M. Kato, Mr. D. Padu, Mr. K. Tasso, Mr. G. Ngomdir and Mr. K. Loya, for the Appellant; P. Taffo, Ms. N. Danggen, J. Gyadi, Ms. J. Doji and Mr. T. Topu, Advocates and Ms. G. Dekka, Additional Senior Govt. Advocate, for the State Respondent, for the Respondent

Judgement

I.A. Ansari

1. The tender notice, which was published on 02-03-2012, by the office of the Deputy Commissioner, Lower Subansiri, Zero, lies at the root of controversy in this writ petition, made under Article 226 of the Constitution of India, inasmuch as the tender notice invited sealed tenders from the interested Registered Cooperative Societies of Lower Subansiri district, for appointment as PDS Wholesale Nominee-cum-Carriage Contractor for PDS rice, in respect of Lower Subansiri District, for the year 2012-13. The terms and conditions of the appointment were given, in detail, along with the said tender notice. The relevant partition of the terms and conditions aforementioned are reproduced below:

Clause-4. The tendered rates should be clearly indicated in figures as well as in words. The rates should be quoted for per quintal per km basis, separately for road transport (vehicular) and head load transport. No separate rates should be quoted for summer, winter, plain area and hill area Clause-6 (vi). A duly signed copy of this terms and conditions and the undertaking should be enclosed with the tender, in acceptance of the same.

Clause-6 (ix). Details of vehicles owned by the tenderer along with attested copies of valid Registration certificates and road permits (minimum four trucks) or attested copies of lease agreement executed before a Magistrate (minimum four trucks) with attested copies of registration certificates and road permits.

On the opening date, i.e., 15-03-2012, the sealed tenders were opened, a comparative statement of various factors, governing the selection of the nominee from amongst the tenderers, was prepared. There were, altogether, six co-operative societies, which had participated. The relevant portion of the comparative statements of the writ petitioner and the respondent No. 5 (who is hereinafter referred to as the private respondent), being amongst the said six co-operative societies, is reproduced below:

Sl. No.

Co-Op. Societies

Rate quoted per qtl/per km

remarks

Road carriage

Head load

1.

M/s. Radhpu MPCS Ltd, Radhpu

Rs. 1.30/-

Rs. 75/-

2.

M/s. Supung MPCS Ltd., Hapoli

Rs. 2.37/-

Rs. 111/-

3.

M/s. Modern MPCS Ltd., Yazali

Rs. 1.15/-

Rs. 77/-

4.

M/s. Joram MPCS

Rs. 1.15/-

Rs. 75/-

Ltd., Jo ra m

5.

M/s. Tribal MPCS

Rs. 0.89/

Rs. 75/-

Ltd, Ziro

6.

M/s. Yachuli MPCS

Rs. 1.95/-

Rs.80/-

Ltd., Yachuli

2. On the basis of the findings, reached by it, the Board, which had been constituted for making selection, recommended the name of the writ petitioner for awarding the contract making it, however, clear that the Board was recommending another participant, namely, M/S Radhpu MPCS Ltd, Radhpu, as second option in the event the offer of the present petitioner is turned down. The matter, then, reached the Parliamentary Secretary (Food and Civil Supplies), Government of Arunachal Pradesh, and he, vide his note, dated 09-04-2012, addressed to the Minister concerned informed the latter that except the present petitioner, none other was fully eligible. The note, dated 09-04-2012, aforementioned discloses to the effect that the present petitioner was found to be the fittest tenderer for allotment of the contract and, in this regard, the Parliamentary Secretary (Food and Civil Supplies), Government of Arunachal Pradesh, also observed that the tender document, furnished by the private respondent, was not complete inasmuch as the private respondent had not furnished the lease deed, executed between the private respondent and the owner of the trucks, except giving a declaration of the deeds of lease made before Judicial Magistrate.

3. Notwithstanding, however, what had been pointed out by the Parliamentary Secretary in his note aforementioned, the Minister concerned, without disputing the correctness of the factual aspects referred to by the Parliamentary Secretary took the view that since the Government had banned head load, the Deputy Commissioner, Zero, ought not to have called for and entertained the rates offer in respect of head load and that the present writ petitioner and the private respondent, having quoted the same rate for transportation of goods by land, the selection shall be made by a draw of lottery. Aggrieved by the decision, which was, eventually, so arrived at, by the Government, the petitioner has filed the present writ petition, made under Article 226 of the Constitution of India, seeking issuance of appropriate writ(s).

4. Heard Mr. N Tagia, learned counsel for the petitioner, and Ms. G Deka, learned Additional Senior Government Advocate, for the respondent Nos. 1 to 4, who are State respondents. Heard also Mr. P Taffo, learned counsel for the respondent No. 5, who is the private respondent.

5. While considering the present writ petition, what needs to be pointed out, at the very outset, is that it was contended, on behalf of the private respondent, that the private respondent had requisite deeds of lease and, in support of this contention, copies of documents, referred to as the lease deeds, have been submitted along with an affidavit by the private respondent in the form of MC (WP) No. 107 of 2012. Thus, the documents, which have been referred to as the deeds of lease, have come on record, though the documents were, it is conceded, had not been filed along with the tenders.

6. From the terms and conditions embodied in the tender notice, it becomes abundantly clear that a tenderer was required to be either owner of four trucks or he ought to have taken, before submitting his tender, four trucks on lease and ought to have filed, in this regard, copies of valid registration certificates and road permits of such trucks and, in the case of lease, the documents evidentiary lease. The private respondent does not, admittedly, own any truck and, hence, the private respondent was required to have lease agreement in terms of the tender notice and ought to have filed the same. Since the same had not been filed, as indicated in the note of the Parliamentary Secretary, it logically follows that the private respondent was not eligible to be considered at all for allotment of contract, the only eligible tenderer being the present writ petitioner.

7. Coupled with the above, the documents, which have been filed as deeds of lease or agreement of lease, clearly show that these lease deed do not contain any sum or sums of money to be paid as rent or consideration for lease. Strictly speaking, therefore, the documents, in question, could not have been regarded either as lease deeds or agreements for lease deed inasmuch as a transfer of interest without any consideration cannot be regarded, in law, as lease.

8. The role of the High Court in the matters of allotment of contract, is largely settled. The judicial review, u/s 226 of the Constitution of India, is not directed against the decision to allot a contract; but it is directed towards the decision-making process, which the administrator adopts, to reach his decision. In this process of decision-making, the administrator must keep excluded all such factors, which may be irrelevant, but must take into account all such factors, which are relevant for the purpose of reaching decision. If an administrator ignores a relevant factor or takes into account an irrelevant factor, in the making of his decision, the decision, either way, would be bad in law.

9. In the case at hand, the fact, that the private respondent was ineligible was a relevant factor. This factor could not have been ignored; but, as discussed above, this factor has been wholly ignored by putting the private respondent at par with the writ petitioner. While, thus, the administrative decision, in the present case,

suffers from consideration of irrelevant factor, it ignores the relevant factor that the writ petitioner is the only candidate, who is eligible, and he could not have, therefore, been made to compete with the private respondent, who might have quoted the same rate for transportation of PDS rice from one place to another by road, but was nevertheless ineligible for consideration. The mere fact that the private respondent had quoted same rate, as did the writ petitioner, could not have been a ground to make the writ petitioner compete with private respondent.

10. Viewed from any angle, the decision, in the present case, was nothing, but arbitrary, unfair and suffered from consideration of wholly irrelevant factors. Such a decision shall, if allowed to survive, cause serious miscarriage of justice and, in a case, such as, the present one, the High Court is duty bound to invoke its extra-ordinary jurisdiction, under Article 226 of the Constitution of India, to interfere and set aside the decision, which stands impugned in the writ petition.

11. What emerges from the above discussion is that in the competitive bidding, which had been taken recourse to, in the present case, it is the petitioner alone, who was found, and is hereby held to be, eligible and qualified to receive the allotment of contract. The decision, therefore, to hold a draw of lottery and thereby make the private respondent, though ineligible, to compete with the petitioner, who was, otherwise, the lone eligible tenderer, is nothing, but arbitrary, unfair and wholly against the law. Such a decision cannot be allowed to stand good on record.

12. In the result and for the reasons discussed above, this writ petition succeeds and the impugned decision, conveyed by the order, dated 18-04-2012 (Annexure-5 to the writ petition), is hereby set aside and quashed. The State respondents shall do the needful in accordance with law and in the light of the discussion held above, and the decision arrived at by this Court.

13. With the above observations and directions, this writ petition shall stand disposed of. No order as to costs.