

(1994) 12 AHC CK 0016

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 33988 of 1994

M/s Lalloo Ji and Sons and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 02-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1995 All 142

Hon'ble Judges : U.P. Singh, J;S.K. Phaujdar, J

Bench : Division Bench

Advocate : Mool Behari Saxena, for the Appellant; Standing Counsel and Dinesh Diwedi, for the Respondent

Judgement

U. P. Singh, J.—After hearing both the parties this petition is being disposed of the admission stage itself.

2. The petitioner M/s. Lalloo Ji & Sons, Allahabad and his one of the partners Sri Jagdish Kumar Agarwal have moved this petition for performance of contractual right by way of issuing a writ of mandamus for performance of the contract. Direction is being sought to be issued to respondent No. 5, the Senior Superintendent of Police, Ardh Kumbh Mela, Allahabad 1995 riot to allow respondent No. 6" M/s. Lalloo Ji Shiv Govind Das Brother"s or any other person to undertake to carry on the work for the Police Departments as required for the said Ardh Kumbh Mela and further that he should take such work only from the petitioners. Further direction is sought to be issued to officer-Incharge Ardh Kumbh Mela, Allahabad 1995, respondent No. 3 to ensure that the work for the preparation of township, contract for tentage, barricading, construction of township, pandals, supply of furnitures etc. for the said mela should be taken from the petitioners only.

3. This year there is going to be a Ardh Kumbh Mela in Allahabad starting from 14th January, 1995 and would continue for next two months. Normally, in such Ardh Kumbh Mela crores of People arrive to take Holy dip at "Sangam" on

various bathing days starting from "14th January, 1995" and ending on "Mahashivratri". For the preparation of township, a High Power Advisory committee is constituted, of which, Commissioner of Allahabad is Chairman and the other heads of Various departments of the Government are its members. The officer-in-charge of Ardh Kumbh Mela happens to be its Secretary.

4. For the purposes of erecting a proper township and making an overall arrangements a "tender committee was constituted and it was entrusted with the job of considering the modality of deciding tenders. A tender notice was published as per Annexure-1 giving the details of the work required to be taken out. It was issued under the signature of the officer-in-charge of Mela. The administration is to undertake all preparations for making the mela a success from the Point of view of. Police Administration, transport, accommodation, health, water supply, electricity and above all to maintain law and order.

5. The ultimate object of the administration is to make these great congregations a success and, therefore, no risk could be taken in any of the matter while decision for making arrangements for this great congregations. These arrangements have to be made for crores of people who visit Allahabad and if something goes wrong it would lead to chaotic situation, therefore, the reputation of the contractors have also to be taken into account before permitting them to undertake any work or executing any contract. The respondent No. 5, the Senior Superintendent of Police, Ardh Kumbh Mela, 1995, being Incharge of the entire law and order and traffic arrangements, has to be very cautious for completion of the work for the Ardh Kumbh Mela.

6. From this point of view the tenders were invited from persons who could fulfill the work of supplying the materials and other essential things as notified in the tender. Number of persons submitted their tenders. The petitioner responded to such tender notice regarding item Nos. 1 to 4 and 10 as per the tender notice. Respondent No. 6" Lalloo Ji Shiv Govind Das Brother"s also submitted their tenders but no tender was finalised in all manner. The "tender Committee" finally decided that the work will be given at the rate of Kumbh Mela, 1989, plus 5% over it. After finalising the rate nothing more was to be done by the "tender committee; as stated by the respondent No. 5 in his counter-affidavit, who was also a member of the "tender committee. The tender committee only decided the rates and no offer of any contractor was finalised by the tender committee. It was further decided that notices be issued to the contractors for their acceptance of the rates decided by the tender committee. No offer was. finalised in favour of any particular contractor by the committee.

7. According to the petitioner his offer was accepted and a contract was gone into between the Governor of U.P. and the petitioners as per Annexure-10 to the writ petition. The petitioner further states that the above tender had been noticed not for separate department but on a pool tender basis and the head of Police Department (respondent No. 5) was a party to the proceedings of the acceptance of the tender. The petitioners have alleged that even then the

respondent No. 6 succeeded in influencing the Police Department and got orders placed for certain jobs on behalf of the Police Department in utter disregard of the norms and terms of the agreement. It has been alleged that the officer-in-charge of the Mela had written letters to the respondent No. 5, the Senior Superintendent of Police, Ardh Kumbha Mela, not to give work to respondent No. 6 but this was ignored. According to the petitioners, the tenders were opened in the presence of the tenderers and the tender committee which included representatives of each department, the officer-in-charge of Ardh Kumbha Mela and the Additional Officer-in-Charge of Ardh Kumbha Mela and it was found that the petitioners tender on the whole were lowest in each items and, therefore, normally the petitioner tenders would have been accepted by the tenders committee. But the tender committee arrive at the conclusion that even the lowest rate quoted by the petitioners were above their estimated budget and therefore, they decided to start negotiation and as the rates from the parties on the basis of the rates of Kumbha Meia, 1989. Since in the negatiation the petitioners offer of 5% above the rates of 1989 Kumbha Mela were found to be the lowest, the petitioners tenders were accepted by the tender committee. The finalisation of the offer of the petitioner was accepted by the tender committee and each number of the said committee signed the decision and became its party including respondent No. 5 who was representing the Police Department. After acceptance of the petitioners tenders, on the basis of its minimum rates, information was sent to the petitioner by the Mela Officer, Ardh Kumbha Mela, 1995 on 14th September and 15th September, 1994. The petitioner was asked to submit stamp papers for execution of the agreement and on 17th September, 1994 the Officer-in-charge Ardh Kumbha Mela, Allahabad 1995 entered into an agreement with the partner of petitioner No. 1 on behalf of the Governor of Uttar Pradesh. According to the petitioner it was mentioned in the agreement that the same was for supply and fraction of tents, furniture, the tin construction, barricaing and miscellaneous articles on hire during the Ardh Kumbha Mela, 1995 for use by the various departments. It was also mentioned that on completion of the work, the department, whose work were undertaken, would pay to the contractors at the rates given in the schedule and this included the Police Derpartment also. It is further alleged the after the agreement was executed, the officer-in-charge of the mela sent information to all the departments whose requirements were included in tender including the Police Department vide its letter dated 18th September, 1994 informing that the petitioners have been given the work for Ardh Kumbh Mela, 1995 regarding tent, furnitures, tin barricading and miscellaneous articles which have been approved and accepted, hence, the department should send their requirements to the petitioners and ensure its completion.

8. It was contended on behalf of the petitioners that when the tenders were finalised and the offer of the petitioner was accepted on the basis of its being the lowest, the representative of the Police Department (respondent No. 5), being one of the signatory recommending for the grant of tenders to the petitioner,

could not resile back and assign the work order to respondent No. 6 to undertake the work of the Police Department. In support of the contention reliance was placed on a Full Bench decision of Patna High Court rendered in the case of Pancham Singh Vs. The State of Bihar and Others .

9. On behalf of respondents Nos. 4 and 5, the Senior Superintendent of Police, Ardh Kumbha Mela, 1995 has very categorically denied all these allegations in the counter-affidavit and has stated that being Incharge of the entire law and order and traffic arrangements all precautions are to be taken for completing the work of Ardh Kumbha Mela. According to him, no tender was finalised in all manner and the tender committee constituted for deciding the same proceeded with negotiation since it was finally decided that the work will be given on the rate of Kumbha Mela, 1989, plus 5% over it, Being a member of the tender committee, he has stated that after finalisation of the rate nothing done by the tender committee. The tender committee decided the rates and no offer of any contractor was finalised by the tender committee. It was decided that notices be issued to the contractors for their acceptance of the rate decided by the tender committee. No offer was finalised in favour of any particular contractor by the said committee. Refuting further allegations it was stated that initially it was decided to have a tender committee comprising of all the departmental heads. The tender committee was entrusted with the job of laying down general policy with regard to infirmity in rates and other details. It was also decided that whenever individual tenders will be considered they shall be considered on other individuals merit. At no point of time it was decided by the tender committee that the petitioners will be awarded the contract for doing the work of the entire Ardh Kumbh Mela concerning all the departments. In fact the respondent No. 5, the Senior Superintendent of Police Ardh Kumbha Mela, was at no point of time informed about the fact that an agreement has already been executed on 17th September, 1994 by the Officer Incharge (Mela) to this effect. In any case, there was no resolution of the tender committee to this effect. He has further stated in categorical terms, that, in this regard even on 22nd September, 1994, when a letter was received by him from the officer-in-charge Mela, there was no mention about such an agreement. In the said letter, it was also mentioned that the Officer-In-Charge has also conveyed the matter which is still to be considered in view of the quotations received from various parties and it was nowhere mentioned that any agreement has been executed by the petitioner and the officer-in-charge (mela). A copy of the said letter dated 22nd September, 1994 has been enclosed marked Annexure CA. 1.

10, The Senior Superintendent of Police has further stated that in the last Kumbh Mela, 1989 in the Administrative report submitted to the Government, it was recommended at page No: 56 of the said report that the petitioners firm should not be given any contract in future. An extract of the Administrative report has been annexed marked Annexure CA. 2. An offer was also received in the office of the respondent No. 5, the Senior Superintendent of Police, Kumbh Mela from respondent No. 6 to the effect that he is willing to execute the work on the rate

of 1989, which was the rate of Kumbh Mela and then it was decided to entrust the work of the police department alone to respondent No. 6 with the view that the tender committee had approved the rate of 5% higher than the Kumbh Mela of 1989. Thus, it was found that a substantial money shall be saved by accepting the offer of respondent No. 6. The petitioner had never been given any right by the tender committee to have monopoly over the entire "Ardh Kumbha Mela". In case, if, such monopoly is permitted in favour of the petitioners over the entire affairs then, in accordance with the report submitted by the officer-in-charge, Ardh Kumbha Mela, 1989 and as suggested in the report, the entire arrangements to be given to the petitioners may paralyse the whole situation. Having considered these situations and considering the convenience of general public, it was in the interest of the public at large that the offer of respondent No. 6 was accepted considering the matter as of great public importance. The assertion of the petitioners are not correct that the tender committee had rejected the tender of respondent No. 6 at any point of time and, therefore, when the offer was received from the respondent No. 6 expressing his willingness to execute the work on the rates of Kumbh Mela, 1989 on the approved rates of 5% higher than that of Kumbh Mela, 1989, the police entrusted the work to respondent No. 6. Therefore, no further negotiation with respondent No. 6 was to be made. The petitioner could not have the inherent right for creating monopoly over the entire Ardh Kumbha Mela in having the execution of the work for all the departments. Considering the convenience, it is always better that one private individual should not be given a position where he could dictate the terms and thereby causing serious inconvenience to the cause of public importance. In fact the petitioners have not been deprived and is working for other departments but he has filed this writ petition to have the monopoly over the entire affairs.

11. On behalf of the respondents, it was contended that since the writ petition is for performance of a contractual right no mandamus can be issued for performance of a contract and the petitioner, if aggrieved, can file a civil suit. It was also pointed out that in the condition of contract for supply of tender paragraph 14 therein clearly specifies for arbitration before the Commissioner, who is the Chairman of High Level Committee. It is relevant to quote paragraph 14 of the condition of the contract:

"14. Any dispute or difference arising between the respective departmental heads and the contractor as to the rights or liabilities of the parties here to or as to any matter whatsoever arising under this contract shall be referred to the Arbitrator who will be Commissioner, Allahabad division, Allaha-bad. The decision of the Arbitrator shall be final and binding on both the parties and upon any such reference the cost of reference and Arbitration shall be at the decision of the Arbitrator who shall determine the amount thereof and shall direct by whom and to whom and in what manner the same shall be borne out and paid. No party to the contract shall have right to seek remedy from a Court of law in respect of matter stated above."

12. Considering the above facts and circumstances of this case, we have no hesitation in holding that the present writ petition is for performance of contract and if there is any breach of the terms of the contract for supply of tender then in terms of paragraph 14 such dispute or difference arising between the respective departmental heads and the contractor as to the rights and liabilities of the parties or as to any matter whatsoever arising under the said contract it shall be referred to the arbitrator and his decision shall be final and binding on both the parties in terms of paragraph 14 thereof, and no party to the contract shall have right to seek remedy from the Court of law in respect of the matter stated above. Thus, in terms of the said clause such dispute or difference is to be referred to the arbitration and this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution shall not entertain such petition and grant such reliefs for performance of a contract. The reliance placed on Full Bench decision of Patna High Court in the case of Pancham Singh Vs. The State of Bihar and Others is wholly misconceived. That was a case where the contract between the State and the petitioner had been cancelled, although, there was a definite stipulation as to how the contract would be cancelled. It was debtors the terms of the contract. The present case is totally distinct on facts and on the pleadings of the present case, the relief sought is for specific performance of the contract and, therefore, a proper remedy would be for the petitioners to refer this dispute to the arbitrator.

13. In this view, we dismiss this petition but without any order as to costs.

14. Petition dismissed.