

(2017) 07 BOM CK 0203
In the Bombay High Court
Case No : 8257 of 2017

M/s Ravindra Narayan Choudhari Through it's Proprietor
Ravindra Narayan Choudhari

APPELLANT

Vs

Rashtriya Chemicals and Fertilizers Ltd., & Anr.

RESPONDENT

Date of Decision : 06-07-2017

Acts Referred:

Constitution of India, Article 14, Article 226, Article 227 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonom

Citation : (2017) 07 BOM CK 0203

Hon'ble Judges : S.C.Dharmadhikari, Mangesh S.Patil

Bench : DIVISON BENCH

Advocate : D.S. Bagul, R.F. Totla

Final Decision : Dismissed

Judgement

1. Rule. Rule is made returnable forthwith. Matter is heard finally with the consent of both the sides.
2. Affidavit-in-reply of the Chief Manager (Marketing), Aurangabad Regional Office of the Rashtriya Chemicals and Fertilizers Ltd. first respondent, is taken on record.
3. Mr. Bagul for want of time states that the petitioner will proceed on the basis of denials. Meaning thereby, the petitioner does not admit any of the statements that are made in this affidavit-in-reply.
4. Statement is accepted.
5. Petitioner is seeking a Writ of Mandamus or any other appropriate Writ under Article 226 of the Constitution of India, as also a Writ under Article 227 of the Constitution of India impugning the order passed by the respondents on 17.06.2017 whereby the tender submitted by him bearing No. E-TENDER-HT-

DONDAICHA-2016-17 has been rejected on technical grounds.

6. Shorn off unnecessary details, petitioner's averments are to the effect that the respondents are the Officers of Rashtriya Chemicals and Fertilizers Ltd (hereinafter referred to as "RCF"), which is a Government of India Undertaking. The RCF floated tenders for handling and transportation of fertilizers at Dondaicha Rake point upto the destinations in Dhule and other Districts. The tender notice (ExhibitA) was published. A prebid meeting was held on 22.11.2016 and tenders were to be submitted on or before 30.11.2016. Accordingly, he submitted the tender (ExhibitB) alongwith all the necessary accompaniments. In response, the respondents informed him to submit few more documents by their letter (ExhibitC) and accordingly he complied the shortcomings with his reply (ExhibitD).

7. According to the petitioner, on 25.03.2017 respondent No.1 sent him an email (ExhibitE) and sought clarification by stating that M/s Hemant Warehousing Corporation of which the petitioner is a partner, was awarded a similar contract by M/s CIL, Secundarabad. However, that Firm indulged in criminal activities and fraud. One of its partners was also prosecuted and F.I.R. was lodged on 19 May 2016. Thus, he was called upon to explain as to why the tender submitted by him may not be rejected. The petitioner, by his reply (ExhibitF), sought personal appointment and hearing. Simultaneously, he also replied with necessary documents that he was inducted into partnership of M/s Hemant Warehousing Corporation only for the purpose of the transaction of handling and transportation contract from Dondaicha Rake Point to M/s Hemant Warehousing Corporation. He was not responsible and liable for the previous transactions and liabilities incurred before he was inducted into the Partnership Firm. A Memorandum of Understanding was also duly executed. All these documents were forwarded by him to the respondents with his mail (ExhibitG). The alleged fraud committed by one of the partners was pertaining to deliveries received by the Firm for transportation between years 2011 to 2015 and he was not responsible for the acts and omissions of the partners before his induction. Subsequently, even he sought to resign from the partnership and it was accordingly informed to the respondents. But still his tender has been rejected. Thus, he has prayed for quashing and setting aside decision of the respondents dated 17.06.2017 rejecting his tender.

8. Respondents have contested the Writ Petition by filing an Affidavit-in-reply of respondent No. 1. He has admitted about the petitioner having applied for the tender and has also admitted about the offer of the petitioner having been rejected as alleged in the petition. In addition, he has stated that offer of the petitioner has been rejected for following reasons :

(a) As per the information received from the Maharashtra State Warehousing Corporation, it had imposed penalty of Rs. 25,000/on petitioner for a short delivery of 302 bags and further an amount of Rs. 3,43,000/was recovered from him for such short delivery. This fact was not disclosed by the petitioner in

prequalification application.

(b) Affiant has further stated that the petitioner has submitted experience Certificate issued by Maharashtra State Warehousing Corporation dated 27 Ma, 2011 which was cancelled by that Corporation by letter dated 01.02.2012 as per ExhibitR2.

(c) The petitioner has stated to have come in association with M/s Hemant Warehousing Corporation only for the limited purpose of tender awarded to that Firm on 26 February 2015 by RCF. However, he suppressed the fact that he was very much associated with M/s Hemant Warehousing Corporation since 2011 and also in respect of similar tender for Food Corporation of India, which is very much clear from the letters dated 20 October 2011 and 24 October 2011 (ExhibitR3).

(d) The petitioner submitted notice of withdrawal from the Partnership Firm dated 1 May 2017. However, the other partners, by their letter dated 23 May 2017, informed the respondents that the petitioner was still a partner in the Firm and would continue to be so till final decision was taken by all the partners.

Thus, according to the respondents, for suppression of such material information and incorrect declaration, the petitioner's bid has been rejected.

9. In addition, the respondents have informed that considering the nature and urgency of the work, the impugned contract has already been awarded to one S.P. Jaisingani, Bidder No. 466876 and Work Order has also been issued on 24 June 2017 which has been accepted by the Bidder, and therefore, on this count also the petition has become infructuous. The learned Advocate for the petitioner submitted that the decision of the respondents of rejecting the tender is arbitrary and unreasonable.

10. Learned Advocate also referred to the oft quoted judgments in the cases of Tata Cellular Vs. Union of India, AIR 1996 Supreme Court 11 and Reliance Energy Limited and Anr. Vs Maharashtra State Road Development Corporation Ltd. & Ors., 2007 (8) SCC 1 and submitted that even in the contractual matters, like in administrative decisions of the Executive, the Courts have power to judicially review the decisions/contracts on the touchstone of the settled principles like illegality, irrationality and impropriety and the decisions must conform to Article 14 of the Constitution of India.

11. Suffice for the purpose to observe that by now the law vizaviz judicial review of administrative decisions and contracts of the Government has been well settled. One can simply refer to the principles summarised by the Supreme Court in the case of Tata Cellular (Supra) in paragraph No. 113, which reads thus :

" The principles deducible from the above are : (1) The modern trend points to judicial restraint in administrative action. (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. (3) The court does not have the expertise to correct the administrative decision. If a

review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible. (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides. (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. Based on these principles we will examine the facts of this case since they commend to us as the correct principles".

In view of such settled position of law one will have to examine facts in the matter before hand.

12. Going by the pleadings referred to herein above, the petitioner has not attributed bias or mala fides on the part of respondents while arriving at the decision to reject his bid. It is not his version that the respondents had some ulterior motive in finding fault with his bid. As a corollary to this, even the petitioner has not alleged about any role having been played by the other bidders and particularly the person to whom ultimately the contract has been awarded in such rejection. Needless to mention that in the affidavit of respondent No.1, it has been specifically mentioned that the offer of one Mr. S.P. Jaisinghani, Bidder No. 466876 has been accepted and he has been awarded the contract in dispute.

13. Thus, the present enquiry is limited to the allegations levelled in the petition and the stand of the respondents as demonstrated in the affidavit-in-reply of respondent No.1 making out the grounds for rejection of the bid.

14. The petitioner, even according to his own version, was inducted in the partnership of M/s Hemant Warehousing Corporation albeit according to him, he was simply engaged and was concerned with the tender of handling and transportation of fertilizers of RCF for the year 2015-2016. However, as is demonstrated by the respondents, petitioner has been associated with that Firm in that capacity even prior thereto. In the letter dated 24.10.2011 addressed by the Area Manager of Food Corporation of India, District Office, Manmad to Depot Incharge of that Corporation at Dhule, it has been mentioned that the Authority Letter No. S&C/13(256)/DHULE-PLINTH/ 24/2011 was issued by Mr. Anil Ratanlal Kotecha, Partner/Attorney of M/s Hemant Warehousing Corporation to the present petitioner as Attorney of M/s Hemant Warehousing Corporation for signing the entire correspondence pertaining to Tender No. S&C/13(256)/DHULE-PLINTH/ 24/2011 which was opened on 17.03.2011. A letter to that effect

addressed by Partner and Attorney of M/s Hemant Warehousing Corporation Mr. Anil Ratanlal Kotecha and addressed to the Area Manager of Food Corporation of India, Manmad also bears the signature of the petitioner. Meaning thereby, that he was to act for and on behalf of M/s Hemant Warehousing Corporation. This circumstance clearly belies the petitioner's version that he was not associated with the Partnership Firm M/s Hemant Warehousing Corporation except for handling and transportation of RCF goods in the year 2015-2016.

15. As regards the stand of the petitioner about having withdrawn himself from the Partnership Firm, no such withdrawal is contemplated in law and there is no such provision in the Indian Partnership Act recognising any such unilateral withdrawal. It is to be noted that the respondents have specifically contended that the explanation of the petitioner about having withdrawn from the partnership can be squarely met by the correspondence whereby the partners of the Firm have addressed a letter to respondent No. 1 on 23.05.2017 specifically informing that the petitioner continued to be a partner in the Firm inspite of his notice to them regarding retirement/withdrawal. Suffice for the purpose to note that whether the petitioner stood retired from the Partnership Firm or otherwise now gathers a shape of a pure disputed question of fact which indeed cannot be gone into the present enquiry. Consequently, the apprehension expressed by the respondents about the conduct of the petitioner in not making full disclosure about his association with M/s Hemant Warehousing Corporation, a partner of which has been prosecuted for alleged criminal breach of trust, cannot be said to be baseless.

16. As regards other two grounds disqualifying the petitioner's bid are concerned, the letter ExhibitR1 apparently shows that Maharashtra State Warehousing Corporation had imposed a penalty of Rs. 25,000/on the petitioner and also recovered an amount of Rs. 3,43,000/from him for short delivery in respect of a similar contract for handling and transportation. Similarly, their letter dated 01.02.2012 (ExhibitR2) also substantiates the respondents' version that the experience certificate earlier granted by Maharashtra State Warehousing Corporation to the petitioner was cancelled. Both these facts should have been disclosed, but were suppressed by the petitioner while filling "IIITechnical Expertise" in Column Nos. 1 and 3. Thus, apparently the respondents had even these two additional grounds while assessing technical bid of the petitioner.

17. It is to be borne in mind that the respondents are representing Government of India Undertaking and are responsible for distribution and delivery of fertilizers to the end customers through its duly appointed dealers. Therefore, one cannot expect them not to be vigilant in discharging their duties. It is just and reasonable that the officers could have been easily swayed by these grounds while assessing the bid of the petitioner. In other words, these grounds can certainly be said to be of such a nature and consequence that a man of ordinary prudence in their position could have easily arrived at a similar decision to reject his bid.

18. To sum up, the decision arrived at by the respondents cannot be said to arbitrary and unreasonable even applying all the principles laid down in the cases of Tata Cellular and Reliance Energy Limited (supra) to the matter before hand. We have no slightest of hesitation in concluding that the petitioner has miserably failed to establish that the decision by the respondents was vitiated on any of the grounds and calls for any interference by us under Article 226 of the Constitution of India.

19. In the result, the petition fails and is accordingly dismissed, in the circumstances without cost.

20. The Rule is discharged.