
(2012) 10 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : CWP No. 5589 of 2012-I

M/s Roshan Lal

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2012) 10 SHI CK 0018

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : D.N. Sharma, for the Appellant; Vikas Rathore, Dy. A.G. for respondent No. 1 and Mr. Ajeet Saklani, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, Judge

1. Respondent-State invited proposals from private investors for setting up Small Hydro Electric Projects upto 5 MW capacity for 35 identified sites. The last date of receipt of proposals was 31.12.2010. However, the same was extended upto 20.1.2011. Petitioner submitted proposal on 20.1.2011 for Machhad-II (2 MW) project. Respondent No. 2 issued notice to the petitioner on 5.5.2012 for removing deficiencies, more particularly, with regard to computation of net worth. The last date for removal of deficiency was 26.5.2012. However, the same was extended upto 22.6.2012. Petitioner claimed that he removed the deficiencies and submitted the proposal alongwith Annexure P-5 on 22.6.2012. Case of the petitioner, in a nutshell, is that though he has supplied the documents on 22.6.2012, but his proposal has been rejected on 25.6.2012. Mr. D.N. Sharma has vehemently argued that the action of the respondents of rejecting the proposal of the petitioner on 25.6.2012 is illegal, arbitrary and thus Violative of Articles 14 and 226 of the Constitution of India.

2. Mr. Vikas Rathore, learned Deputy Advocate General and Mr. Ajeet Saklani

have vehemently argued that the petitioner has not complied with the mandatory condition No. 14 of Annexure P-2 and has submitted the documents on 25.6.2012 and not on 22.6.2012, as claimed by the petitioner.

3. I have heard the learned counsel for the parties and have perused the pleadings carefully.

4. Petitioner was permitted to remove the deficiencies vide Annexure P-4 dated 5.5.2012. Last date of removing the deficiencies was 26.5.2012. It was extended upto 22.6.2012. According to the respondents, petitioner has submitted documents on 25.6.2012, i.e. after the last date was over. Petitioner though has claimed that he has re-submitted the documents on 22.6.2012 but has not led any tangible evidence to prove this fact. In case he has submitted the documents on 22.6.2012, he must have obtained the receipt or diary number from the department concerned.

5. It would be apt at this stage to take into consideration condition No. 14 of Annexure P-2, which reads as under:

14. Net Worth should be got calculated from the competent authority/CA. Self evaluated property shall not be considered. The authenticated documents on the basis of which net worth has been calculated should also be attached with the proposal.

6. Net worth was to be got calculated from the competent authority/C.A. and the same was required to be attached with the proposal. Petitioner was given ample opportunity on 5.5.2012 to remove the deficiencies. He submitted the documents on 25.6.2012 and not on 22.6.2012.

7. Mr. Vikas Rathore has drawn the attention of the Court to noting portion of Annexure R-2/1. It is evident from the noting that 260 applications were received by last date, i.e. 23.6.2012. However, two applications were received by post on 25.6.2012 in addition to seven other (by hand). Parties were adamant and bent upon submitting applications even after repeatedly told that last date was over. Respondent No. 2 sent the matter to the State Government and the State Government decided that no action was required on the papers which were received after the prescribed date, i.e. 23.6.2012.

8. Their Lordships of the Hon^{ble} Supreme Court in *Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Others*, have held that scope of court's interference in Government tender or contractual matters is very restricted and limited. Their Lordships have further held that interference by court is not warranted unless action of tendering authority is mala fide and is misuse of statutory powers. Their Lordships have further held that Government and their undertakings must have a free hand in setting terms of the tender and only if they are arbitrary, discriminatory, mala fide or actuated by bias, the courts may interfere. Their Lordships have held as under:

23. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

24) Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"; and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226.

35. As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand

in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts would interfere. The Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, the CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding prequalification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide.

Accordingly, in view of the observations and analysis made hereinabove, there is no merit in the petition and the same is dismissed. Pending application(s), if any, also stands disposed of. No costs.