
(2005) 10 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10677 of 2005

Mukesh Kumar

APPELLANT

Vs

Haryana State Federation of Consumers Co-operative
Wholesale Stores Ltd. and Others

RESPONDENT

Date of Decision : 28-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 142 PLR 464 : (2006) 1 RCR(Civil) 73

Hon'ble Judges : D.K. Jain, C.J.; Hemant Gupta, J

Bench : Division Bench

Advocate : Pritam Saini, for the Appellant; Dheeraj Chawla, for the Respondent

Final Decision : Allowed

Judgement

D.K. Jain, C.J.—Rule D.B.

2. With the consent of learned Counsel for the parties, the case is taken up for final disposal.

3. Challenge in this writ petition, under Article 226 of the Constitution of India, is to the legality and propriety of the decision taken by the Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd. (for short, "Confed"), respondent No. 1 herein, to award the contract of transportation and distribution of food grains from the godowns of the Food Corporation of India in the State of Haryana, to one Sanjay Ku-mar, respondent No. 4 herein. The petitioner seeks quashing of the award of the said work with a direction to respondent No. 1 to award the said work to him. District Office, Confed, Jhajjar, through its District Manager and Sub-Divisional Officer, Confed, Jhajjar have been impleaded as respondent Nos. 2 and 3 respectively.

4. The factual matrix, on which the foundation of this judicial action is laid, is as follows:

On 1st March, 2005, respondent No. 1 issued a notice inviting tenders (for short, "the NIT") for the aforesaid work for the period from 1st April, 2005 to 31st March, 2006. Although, the NIT pertains to the transportation of various items, like food grains, sugar and LPG cylinders etc. under various categories, but in the present petition, we are concerned only with the transportation of food grains under the Mid Day Meal Scheme. Para 16 of the terms and conditions, prescribed in the NIT, reads as under:

The contractor should have sufficient fleet of vehicles with him to provide adequate number of vehicles to the District Manager, Confed District Office concerned on his demand from time to time to ensure a regular supply.

In the tender form supplied with the terms and conditions, against columns No. 5 the "details of the vehicles owned" were required to be furnished. 5. Pursuant to and in furtherance of the NIT, the petitioner submitted his tender, giving the details of the vehicles owned by him. According to the petitioner, when the tenders were opened, he raised an objection that the tender form submitted by respondent No. 4 was incomplete, inasmuch as, neither the details of vehicles owned by him were furnished against column No. 5, nor any affidavit regrading ownership of vehicles or their registration certificates were attached with the tender form and therefore, the tender submitted by the said respondent ought to have been rejected at the threshold. Ignoring the objection, tender has been awarded in favour of respondent No. 4.

6. The petitioner claims to have made a complaint to the Deputy Commissioner, Jhajjar, inter alia, pointing out that the tender has been wrongly awarded in favour of respondent No. 4. A legal notice is also staged to have been issued to respondent No. 1 and the Collector, claiming damages in the event of the tender not being cancelled. There being no response, the present writ petition has been filed.

7. The writ petition is resisted on behalf of respondent Nos. 1 and 2. In the written statement filed on their behalf, it is stated that the ownership of- vehicles is not a prerequisite and essential eligibility condition for being considered in the tender process. Though, it is not controverted that in the tender submitted by respondent No. 4, no information against column No. 5 had been furnished and in act, it was blank but it is pleaded that the tender was awarded in favour of the said respondent because of the lowest rates quoted by him, keeping in view the larger public interest.

8. Despite service, respondent No. 4 remains unrepresented. Accordingly, we have heard learned Counsel for the petitioner and respondent Nos. 1 to 3.

9. Mr. Pritam Saini, learned Counsel appearing for the petitioner has argued that paragraph 16 of the terms and conditions of the NIT clearly stipulates that the contractor should have sufficient fleet of vehicles and information in this behalf was required to be furnished against column No. 5 of the tender form. It is strenuously urged that furnishing of this information being an essential

requirement, failure to do so had rendered the bid of respondent No. 4 as non-responsive and therefore, it should have been rejected at the threshold. It is asserted that inspite of the said serious deficiency in the tender form, submitted by respondent No. 4, he was adjudged as qualified and awarded the work. It is pleaded that respondent No. 1 having failed to adhere to the tender conditions, it has acted arbitrarily, capriciously and in unjust manner and therefore, its decision to award the contract to respondent "No. 4 deserves to be set aside.

10. Mr. Dheeraj Chawla, learned Counsel appearing for respondent Nos. 1 and 3, while asserting that the said respondents have not committed any wrong and have evaluated the bids strictly in terms of the NIT, has contended that the requirement of furnishing of details of vehicles against columns No. 5 was not an essential condition. It is urged that the paramount consideration for award of the contract to respondent No. 4, being the commercial consideration and the public interest, the impugned decision cannot be termed as arbitrary or capricious, warranting interference under Article 226 of the Constitution.

11. In order to appreciate the rival stands, we may notice the broad parameters, which have to be borne in mind while examining an administrative decision in contractual matters in judicial review.

12. True, that the award of contract by a State agency is essentially a commercial transaction and the mode of entering into contract can be chosen by such agency by fixing such terms of invitation to tender as are considered appropriate, but at the same time, having laid down certain norms and conditions, the agency is bound to adhere to these conditions scrupulously. In the absence of any stipulation to that effect, the agency cannot waive or relax the prescribed conditions, for otherwise, as observed by the Apex Court in *W.B. State Electricity Board v. Patel Engineering Co. Ltd. and Ors.* (2001)2 S.C.C. 451 any relaxation or waiver of a tender condition, unless so provided in the NIT would encourage and provide scope for discrimination, arbitrariness and favouritism, which are totally opposed to rule of law and constitutional values.

13. Very recently in *Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another*, their Lordships of the Supreme Court have been pleased to observe that the State can choose its own methods to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation.

14. Thus, even in contractual matters, the public authority does not have an unfettered discretion to ignore the norms recognised by the Courts even though in such like matters, a certain measure of freedom of "play in the joints" is granted to the executive. (See: *Union of India and Others Vs. Dinesh Engineering Corporation and Another etc.*, . Therefore, in judicial review, the Court can interdict the action of the State agency, if it is convinced that the decision making process, culminating in the award of contract, is vitiated by arbitrariness or unreasonableness. It is the duty of the Court to ensure that in the matters of

award of contract there is no element of arbitrariness and all participants in the tendering process are treated alike. While the public interest is paramount, yet the State or its instrumentalities cannot be permitted to arbitrarily choose any person it likes for entering into such a relationship by ignoring the prescribed conditions.

15. In the present case, we are not concerned with the question whether the ownership of the vehicles was essential or not, as is sought to be projected in the rival stands. The short question for consideration is whether in the light of the stipulation in paragraph 16 of the terms and conditions of the NIT, furnishing of information against column No. 5 of the tender document and mandatory or not. It is manifestly clear from a conjoint reading of said paragraph and column No. 5 of the tender form that furnishing of information against column No. 5 was an essential requirement to enable the authorities to assess the capacity of the tenderer to provide adequate number of vehicles on demand.

16. It is evident from the proceedings of the meeting of the Selection Committee that the Committee simply glossed over the aspect of the non-furnishing of complete information in the tender form submitted by respondent No. 4. It is also pertinent to note that there was no recommendation by the Selection Committee for relaxation of the condition of furnishing of information against column No. 5 of the tender form. It appears that the Committee only took into consideration the rates offered by the bidders. The recommendation of the Committee was accepted by the Deputy Commissioner as it is.

17. It is thus, clear from the factual scenario, as emerging from the record, that incomplete tender form submitted by respondent No. 4 was entertained and accepted by respondent No. 1 in utter violation of the tender conditions. Respondent No. 1 was bound to enforce punctiliously and rigidly all the conditions laid down by it in the NIT and failure to do so renders its entire decision-making process as arbitrary and unreasonable. Therefore, bearing in mind the afore-noted broad principles, governing an administrative action, we have no hesitation in holding that the decision of respondent No. 1 to award the tender to respondent No. 4, being violative of the equality clause of the Constitution, suffers from the vice of arbitrariness, and therefore, cannot be sustained.

18. Resultantly, the writ petition is allowed; the award of contract of transportation and distribution of food grains to respondent No. 4 is quashed and the rule is made absolute.

19. However, bearing in mind the fact that respondent No. 4 is stated to have commenced the transportation of food grains, we permit him to continue to do the work assigned under the contract till respondent No. 1 reconsiders the bid submitted by the petitioner. It will be open to the said respondent to negotiate with the petitioner the bid price and if they are satisfied with petitioner's offer, the contract shall be awarded to him, failing which fresh tenders may be invited.

The entire exercise in this behalf shall be completed as expeditiously as practicable and in any case, not later than two months from the date of this judgment.

20. In the circumstances, there will be no order as to costs.