
(1992) 01 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 12253 of 1991-H

N. Kunhiraman

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-01-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 299
Kerala Municipalities (Public Works and Supply) Rules, 1962 — Rule 8

Citation : AIR 1992 Ker 265 : (1992) 1 ILR (Ker) 876

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : M.K. Damodaran and P.K. Vijayamohanan, for the Appellant; Jose K. Kochupappu, Govt. Pleader, T.A. Ramadasan and Mathews P. Mathew, for the Respondent

Final Decision : Dismissed

Judgement

Chettur Sankaran Nair, J.—Acceptance of a tender submitted by fifth respondent in preference to the tender submitted by petitioner in OP 12550/ 91, by third respondent-Municipal Council is challenged in these writ petitions. OP 12550/ 91 is filed by the unsuccessful tenderer, while OP 12253/91 is by a Councillor of third respondent-Municipality.

2. Tenders were invited by third respondent for construction of a shopping complex, from "pre-qualified tenderers". Later, open tenders were invited and petitioner, fifth respondent and others submitted tenders. Petitioner in OP 12550/91 was the lowest tenderer, but the tender of fifth respondent was accepted, at an additional cost of Rs. 1.2 lakhs. According to petitioners, though Rule 8 of the Kerala Municipalities (Public Works and Supply) Rules, 1962, called "the Rules" hereinafter, enables acceptance of a higher tender under certain circumstances, the circumstances of the case do not justify such a course, fifth respondent is not a suitable person to be chosen either, according to them.

3. Respondents submit that petitioner will not be in a position to complete the

work satisfactorily, though he is the lowest tenderer, considering his past performance. It is said that petitioner committed default in executing contracts awarded to him in the past, and that awarding a contract, for a major work would be inadvisable in public interest. They would add that delay would lead to the forfeiting a loan offered by the Kerala Urban Development Corporation. Respondents state that the choice was made by the Municipal Council, which is an impersonal body, after deliberation and debate, on the basis of a report by the Municipal Engineer, and other relevant facts. It was in public interest that they decided to accept the tender of fifth respondent. In answer, petitioners say that fifth respondent committed, as many defaults as the petitioner in OP 12550/91.

4. The question to be considered is whether third respondent acted in an arbitrary manner. It is settled law that a public authority cannot act arbitrarily even in the matter of awarding contracts, or distributing largesse. There is a public element in all its activities and it must conform to the mandates of Article 14 and observe tenets of equality and principles of fair action. It has been so held in the *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , *Harinder Singh Arora Vs. Union of India (UOI) and Others*, , *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, and *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, and in a catena of other authorities.

5. Acceptance of a tender for a higher amount, ipso facto, does not make acceptance illegal. Rule 8 of the Rules permits such a course, if there are valid reasons for departing from the normal rule of accepting the lowest tender. It must be considered whether there are such reasons, justifying departure. The Municipal Council consisting of sixteen members, considered Ext. R3(d) Report (OP 12253/91) and felt that petitioner-contractor, could not be entrusted with a work of such dimensions, considering his past performance and experience. It is said that he did not execute in time, a contract involving an amount of Rs. 4.5 lakhs, the biggest undertaken by him. Other instances of default are also pointed out. It is farther said that delay in executing the contract would entail a loss which would exceed the margin of Rupees 1.2 lakhs. Loss on account of interest would be Rs. 90,000/-, and loss, of income would also be considerable, submit respondents.

6. Even if two views are possible, there will be no justification for interference, unless the view adopted by the Authority is so grossly unreasonable or tainted by other vitiating circumstances. The view does not become unreasonable merely because an other view would arise on the facts. The process of judicial review is not in the nature of an appeal against the decision. Only the decision making process is under review. Neither the view of the Municipality on facts, nor its assessment of future events based on past performance can be labeled unreasonable.

7. As observed by Lord Hailsham, two reasonable persons can perfectly come to opposite conclusions OH the same facts, with out forfeiting their title to be

regarded as reasonable man. Unless the decision is so unreasonable that no reasonable person would come to it, it does not merit interference. As observed by the Court of Appeal in the Tamside case 1976 (3) All ER 665:

"No one can be properly labeled as being unreasonable, unless he is not only wrong, but so unreasonably wrong that no reasonable person could sensibly take that view."

It is also useful to refer to the observations of Squarman L. J. in Nottinghamshire County Council v. Secretary of State, 1986 1 All ER 199:

"Unreasonableness must prima facie show that the official behaved absurdly or must have taken leave of his senses."

8. The decision of the Municipal Council must be tested on the touchstone of these principles. The decision is not under appeal and the tenability of another view will be no ground to stamp the decision with vice. As already noticed, the past performance of petitioner-contractor, and the reports made by competent authorities were considered and a decision taken by an elected body of sixteen persons, after, deliberation. The decision is not unreasonable.

9. While guarding against arbitrary exercise of power, one cannot lose sight of the fact that the foremost aspect to be considered is public interest. Proceedings of this nature do not involve a lis between parties. Such proceedings are more in the nature of a public interest litigation, than in the nature of litigation for establishment of private rights or redressal of wrongs. It is only to ensure that public interest is protected, that rival claims are considered, not for their own sake, nor in their own right. The facts reveal that any further delay in the matter would defeat the public purpose, and that the decision itself is not unreasonable. In these circumstances, there is no justification for interfering with the impugned decision.

10. Original petitions are accordingly dismissed.