

(1997) 08 KL CK 0050
In the High Court Of Kerala
Case No : O.P. No. 10027 of 1997

N. Rajan

APPELLANT

Vs

Kerala Minerals and Metals Ltd. and Others

RESPONDENT

Date of Decision : 13-08-1997

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1997) 2 KLJ 682

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : K.P. Satheesan and M.R. Jayaprasad, for the Appellant; U.K. Ramakrishnan, E.K. Mahadevan, P.V. Lohithakshan, V. Krishna Menon, P. Ravindran, Chandramohan Das and C.S. Manilal, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—The petitioner has approached this court challenging the contract awarded in favour of the 3rd respondent pursuant to Ext.P1 notification, and seeking a direction to the 1st respondent to award the contract in favour of the petitioner. Admittedly, the petitioner and the 3rd respondent along with others responded to Ext.P1 notification issued by the 1st respondent inviting sealed competitive quotations for providing good conditioned vehicles in the routes mentioned therein for the purpose of conveyance of the employees of the 1st respondent. Clause 13 of Ext.P1 provides that the tenderer will have to submit quotation in the proforma and he should produce "ownership details of the vehicles, copies of the registration certificates and testimonial showing previous experience in similar operations". The tender submitted by the 3rd respondent was lower than the petitioner. When the tenders were opened, it was found that the tender submitted by the 3rd respondent did not contain the particulars of the vehicles owned by him or any experience in the similar line as required in the condition extracted above. It is submitted by the petitioner that he objected to the tender submitted by the 3rd respondent as it did not satisfy

the requirements. Therefore, the petitioner bona fide believed that though the rate quoted by him was higher than the 3rd respondent, the petitioner's bid would be accepted. As he was the lowest among the tenderers who satisfied all the tender conditions, the petitioner filed a suit and obtained an interim injunction. That was later vacated on submission by the 1st respondent that the contract had already been awarded to the 3rd respondent. It is in the above circumstances, the petitioner approached this court with this original petition. Exhibit P1 is the notification issued by the 1st respondent. That notification contains several conditions to be satisfied by the tenderers even before submitted the tender. Therefore, every tenderer has to satisfy those conditions, and a person who does not satisfy those conditions has to be excluded. The 1st respondent being a public sector organisation and coming with the purview of Article 12 of the Constitution cannot deviate the norms professed in Ext.P1 with reference to the subject matter therein. First respondent cannot favour any person who did not satisfy the conditions in Ext.P1. Therefore, the issue is whether the tender submitted by the 3rd respondent was proper or not.

2. It is an admitted case that the 3rd respondent had not submitted the ownership details of the vehicles, copies of the registration certificates. Those were submitted later and those documents belatedly submitted were taken note of and it was on the basis of such documents that the tender of the 3rd respondent was accepted. It is contended by the Counsel for the 1st respondent that there is no illegality in it.

3. Exhibit P1 being a tender notice, every person responding pursuant to that should have satisfied all the requirements contained in Ext.P1. Relaxation of any of the requirements in favour of a particular person will lead to arbitrariness and discrimination against those who had complied with the conditions. It is settled law that an authority under Article 12 of the Constitution of India dealing with matter of awarding contract cannot deviate from the conditions in the tender notification. When there is a condition that the tenderers should, along with the tender, produce all the ownership details of the vehicles and the registration certificates; that is a condition precedent for acceptance of the tender. The 1st respondent cannot allow any person to cure such defects on a later date than the date fixed for opening the tenders. In this case, that had been done and the 3rd respondent was allowed to produce the documents mentioned in Clause 13 of the Tender Conditions on a later stage and the documents so produced were acted upon and the work was awarded to the 3rd respondent. It is submitted by the counsel for the 1st respondent that it is permissible and there is no illegality. In support of this contention, he relied on the decision reported in *M/s. G. J. Fernandez Vs. State of Karnataka and others*, . That was a case at the pre-qualification stage and for consideration of the offer and not for consideration to award.

4. Certainly, if the documents available at the time of submitting tender were not in possession of the tenderer to produce at the time of submitting the tender, he

may perhaps be allowed in appropriate circumstances to be produced it later. But, that shall not be made use of to produce documents obtained later or which were not in existence at the time when the tender was submitted. At any rate, the eligibility and qualification of the tenderer on the basis of the tender notification shall be determined with reference to at least on the last date mentioned in the notification. A person who becomes eligible later than that, cannot be allowed to submit the documents whereby he became eligible on a later date and cannot be preferred to others who stood qualified and eligible in terms of the conditions in the notification.

5. As it was submitted that the 3rd respondent was unable to produce certain documents available at the time of submitting the tender and he only produced it later and therefore there was nothing unusual in preferring him to award the work as he was qualified and eligible even as on the date of submission of the tender, the 1st respondent was directed to produce the relevant files relating to tender.

6. As per Ext.P1, the last date for submission of tenders was 6.5.1997. The file shows that the 3rd respondent had produced certain documents in respect of transfer of the vehicles in his favour. One among them is an agreement to sell the vehicles with numbers KL-7/D-4280 and KL-7/D-9412. That agreement is seen entered on 27.2.1997 between a person residing in Palluruthy, in the western part of Cochin and the 3rd respondent residing in Aluva, But, the stamp paper is seen to be purchased from a Stamp Vendor in a far distant place in the eastern part of the district at Kothamangalam. There is no reason for the 3rd respondent residing at Aluva to purchase a stamp paper from Kothamangalam to and to enter into an agreement with a person in Palluruthy. Anyhow, by reason of that, it cannot be perhaps taken that there is anything unusual in that agreement. But he has produced another agreement also with respect to sale of two vehicles KL-9/B-8008 and KL-7/D-3175. The 3rd respondent has entered into this agreement with the same person in Palluruthy. This agreement is written in three stamp papers. All these three stamp papers were purchased from the very same vendor at Kothamangalam. The agreement is dated 6.12.1996. The endorsement by the stamp vendor on the reverse side of the stamp paper discloses the serial number in the register of the stamp vendor at the time of sale of such stamp papers. The said three stamp papers used for the second agreement contain serial numbers such as 15891, 15892 and again 15892. There cannot be the same serial number for different sheets of the stamp paper sold on the same day. The linking of these three stamp paper to be used for a single document is also not endorsed on the reverse side of the stamp paper. This makes it clear that that agreement was entered into on a subsequent date by obtaining stamp paper from the vendor at Kothamangalam with an endorsement of purchase on an earlier date. That makes it clear that the 3rd respondent was not in ownership and possession of the vehicles to make him eligible to submit the tender in terms of Ext.P1 at the time when he submitted the tender. Thus, it is clear that the 3rd respondent was not eligible in terms of Ext.P1 as on the last

date fixed for submission of tender as per Ext.P1 and therefore he is not entitled to be awarded the contract. Award in favour of the 3rd respondent is thus illegal and it is quashed. It is for the 1st respondent to consider other available eligible hands who submitted tenders pursuant to Ext.P1 for award of the work.

The O.P. is allowed to the above extent. No costs.