
(2011) 04 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2891 of 2011

National Advertising Co.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : (2012) 1 RLW 31

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Advocate : A.K. Rajvanshy, for the Appellant;

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—The petitioner, said to be engaged in the business of outdoor advertising display and undertaking contracts on Build, Operate & Transfer ("BOT") basis, has filed this writ petition challenging the Invitation-to-Offers as extended by the respondent-Municipal Corporation, Jodhpur ("the Corporation") for installation of various Overhead Gantries, Bus Queue Shelters etc. under the advertisements dated 11.02.2010 (Annex. 4), 24.09.2010 (Annex. 5) and 27.10.2010 (Annex. 6). It is submitted that the Urban Improvement Trust, Jodhpur ("UIT") has entered into the exclusive and long term agreements with the petitioner on 28.9.2002, 17.10.2002 and 11.2.2003 (Annex. 2 collectively) for the construction work of public utility projects like installation of various Overhead Gantries, Bus Queue Shelters, Tree Guards etc. on BOT basis; and the petitioner has already constructed a number of such facilities at various places in the City of Jodhpur. According to the petitioner, this Court issued directions in PIL Petition No. 441/2004 to the Corporation for constructing 100 toilets at various places but the Corporation, finding itself unable to carry out the directions, made a proposal under the communication dated 23.10.2005 (Annex. 1) with reference to the agreements already entered into by the UIT with the petitioner that the other projects in the areas falling within the jurisdiction of the Corporation may also be got executed on the conditions laid down by the UIT,

now the Jodhpur Development Authority, Jodhpur ("JDA"). It is alleged that the Corporation, however, illegally removed/damaged the unipoles installed by the petitioner wherefor the petitioner has filed a separate writ petition that remains pending in this Court.

2. The grievance of the petitioner in this writ petition is that the Corporation has now started inviting tenders and awarding projects to other parties; and no care is being taken of the objections raised by the petitioner. It is submitted that if the respondent Corporation is having any requirement of installation of Overhead Gantries, Bus Queue Shelters, Tree Guards etc., the petitioner ought to be asked to execute such work through JDA. The petitioner has averred that the representations were made to the Corporation against the questioned advertisements wherefor the tenders were not opened for some time but then, all of a sudden, some Bus Queue Shelters have been installed indicating that "now the tenders might have been opened or without opening tenders illegally some one is allowed by agreement or otherwise by the corporation".

3. The petitioner contends that the advertisements as issued and the offers as invited run contrary to exclusive contract given to it by the UIT (now JDA) with the consent of the Corporation. It is submitted that when the Corporation gave out its inability to provide public facilities and stated its consent for getting the work executed through the agency already in contract with the UIT (i.e., the petitioner), it is impermissible for the Corporation to issue independent advertisements contrary to the exclusive rights existing in the petitioner.

4. Having given a thoughtful consideration to the submissions made on behalf of the petitioner and having perused the material placed on record, this Court is unable to find any legal basis for the grievance as stated and the relief as claimed by the petitioner.

5. Even if the petitioner is assumed to have been awarded the so-called exclusive rights to execute certain projects on BOT basis, such had been the agreements (Annex. 2) only between the petitioner and the UIT (now JDA). It is difficult to accept the suggestion that merely for the communication dated 23.10.2005 (Annex. 1), as sent by the Chief Executive Officer of the Corporation to the Government in its Local Self Department, directly a contract came into existence between the petitioner and the Corporation and that too of such an exclusive nature that the Corporation cannot get the necessary work executed within the areas of its jurisdiction by inviting offers.

6. The monopoly as sought to be claimed and foisted upon the Corporation by the petitioner in the matters of public utility works with reference to its agreements with UIT (now JDA) cannot be countenanced. In an overall comprehension of the matter, this Court is unable to find any privity of contract between the petitioner and the Corporation so as to consider any legal basis for the grievance suggested by the petitioner against the Corporation.

7. Moreover, the advertisements in question were issued way back in the months

of February and September 2010; and even from the cursory averments taken in the writ petition, this much is apparent that the work under such advertisements had already started before the petitioner chose to file this writ petition, only on 29.03.2011. Viewed from any angle, no case for interference in the writ jurisdiction is made out.

The writ petition fails and is, therefore, dismissed.