

(1997) 07 AP CK 0022
In the Andhra Pradesh High Court
Case No : W.A. No. 279 of 1997

Navayuga Engineering Co. Ltd. and Another	APPELLANT
Vs	
Visakhapatnam Port Trust and Others	RESPONDENT

Date of Decision : 22-07-1997

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1998 AP 222 : (1997) 5 ALD 102 : (1997) 4 ALT 778 : (1997) 2 ALT 825

Hon'ble Judges : P.S. Mishra, C.J;P. Ramakrishnam Raju, J

Bench : Division Bench

Advocate : C.V. Mohan Reddy, for the Appellant; K. Srinivasa Murthy, for Respondents 1 and 2 and M.R. Reddy, S.C. for CBI for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal has arisen from the judgment in a proceeding under Article 226 of the Constitution of India.

2. Writ petitioner-appellant has claimed that it is an Engineering Contractors Company which submitted its tender to the Visakhapatnam Port Trust for the construction of a multipurpose Berth in response to the tender notification dated 16-3-1996 issued by the Port Trust. It is alleged, the Port Trust decided not to open or consider the tender submitted by the petitioner in view of the filing of an F.I.R. by the C.B.I., against it and others alleging the commission of certain offences in connection with a different work contract previously executed by the petitioner. The said action, the petitioner-appellant had challenged as amounting of blacklisting the petitioner-appellant without affording any opportunity of being heard to him and merely on the basis of a certain F.I.R. which according to it (the petitioner) is not warranted at all. Thus, the rights of the petitioner under Articles 14, 19(1)(g) of the Constitution are violated. There has, however, been no dispute before the Court as respects the qualification of the petitioner-appellant

and/or the tender which it has submitted. Learned single Judge has, however, referred to several authorities and culled out the principles under which the Court limits its judicial review jurisdiction under Article 226 of the Constitution of India and rightly stated that judicial restraint is the order of the day, the Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made, the Court does not have the expertise to correct the administrative decision and it does not substitute its own decision for the administrative decision of the competent authority. Learned single Judge has also rightly taken notice of the principle that the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract, that normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers, that more often than not, such decisions are made qualitatively by experts and observed :

"I am prepared to assume that the impugned action in this case amounts to a sort of blacklisting as it has been decided by the respondent not to open or consider the bid of the petitioner."

and posed the question whether the petitioner has been given a reasonable opportunity of making its representation or not. The Court thereafter has noted that the petitioner was called upon to give its representation, if any, in the matter but before making any representation the petitioner rushed to the Court. The Court gave an interim direction pursuant to which the petitioner made its representation and the Port Trust, as directed by the Court, considered the same but rejected it on 20-2-1997. Thus, in the proceeding, the order dated 20-2-1997 has been impugned. Learned single has, however, recorded as follows :--

"I am, however, of the view that this is a matter which has to be left for the decision of the respondent, a decision which has to be taken bona fide and in public interest. When several other qualified bidders, without any allegations against them, are available, the respondent might have felt that it is not desirable in public interest to consider the bid of the petitioner against whom a premier investigating agency like the C.B.I, has registered a case and the investigation in that behalf is pending. It cannot be said that such a conclusion is so perverse or shocking that no reasonable person would have come to such conclusion. On an overall view of the matter, I am not persuaded to agree with the contention of the learned counsel for the petitioner that the impugned action suffers from the vice of arbitrariness or discrimination.

For the foregoing reasons, I do not find any merit in this writ petition and it is accordingly dismissed."

3. In course of the appeal, however, the Court on 10-6-1997 after hearing the learned counsel for the parties wanted to know from the C.B.I. whether investigation into the F.I.R. had shown any prima facie material of the involvement of the appellant in the alleged crime. After some adjournments, the

Superintendent of Police, C.B.I., Visakhapatnam has given a report by way of an affidavit stating inter alia as follows :--

"Investigation disclosed that A-1 and A-2 in their capacity as In-charge Chairman and Project In-Charge respectively had favoured the alternative design of A-3 alone and allowed them to upgrade their alternative design with full knowledge of the requirements of lower surcharge pressure and other design requirements as suggested by the Consultant Prof. P. S. Rao of III, Madras, which was kept away from the other tenderers.

The requirement of steel at 3225 MT as worked out by A-2 in consultation with his engineers is also higher than the requirement suggested by the Consultant but owing to differing technical opinions on the subject no mala fides could be attributed to this over-estimation.

Sufficient time was not allowed to the other tenderers to quote for the departmental design with revised quantities as worked out by VPT whereas M/s. NEC Ltd., had the advantage of participating in the discussions with the Consultant for upgrading the design most of which was carried out as per their suggestions.

It was further disclosed during investigation that A-1 and A-2 had projected the national advantages of accepting the alternative design of NEC to the Board of Trustee who accordingly resolved to award the work to M/s. NEC without waiting for Govt. sanction as per norms. As per orders of A-1 the initial letter of intent dt. 30-10-92 with the clause "subject to Govt. sanction" was superseded by another letter of intent dt. 2-11-1992 deleting that clause which eventually prevented VPT from recalling the tenders as suggested by the Ministry.

While all the above facts go to show that there were certain irregularities on the part of A-1 and A-2 in the evaluation of and award of the work to A-3, M/s. Navayuga Engg, Co. Ltd., the evidence collected may not be sufficient to prove any criminal intent on the part of the accused beyond doubt, as the design of M/s. NEC had also been recommended -by the Consultant, and there is varied technical opinion regarding the quantities of various inputs going into the work. Departmental action is being recommended against A-1 and A-2 for the various lapses on their part as stated above. No action is proposed against A-3 as the evidence gathered does not show any misrepresentation or any other criminal act committed by them."

Pending disposal of the appeal, the Court directed as follows :--

"..... respondents shall proceed to open the tenders and take decision about grant of contract to any of the tenderers and in the same also consider the tender of the appellant, but shall not disclose their decision and/or communicate to any person as to who is awarded the contract, until further orders."

Parties have stood by the above and thus, as on today, grant of contract has been kept in abeyance.

4. Court's jurisdiction to interfere in matters pertaining to contract is limited to one whether freedom of trade is in any manner interfered with and such interference is arbitrary so as to attract Article 14 of the Constitution of India and/or in the matter of grant of contract whether there is any discrimination so as to attract the right under Article 14 of the Constitution of India. It would be difficult, on the facts of the case as they stood before the learned single Judge, to say that there was any arbitrariness in the act of the Port Trust or there was such discrimination in deciding not to consider the tender of the appellant which attracted Article 14 of the Constitution of India. In course of the hearing of the appeal, however, the report, as above, indicates that in the eyes of the police (C.B.I.) the appellant is not one which committed any criminal act and/or made any misrepresentation on the earlier occasion when work contract was awarded to it. Opinion of the police does not have any conclusive value and when report is furnished to the Court after investigation is completed, the Court has the power to ignore the report of the police and decide, upon the materials collected by it, whether any offence is disclosed or not, whether further investigation or enquiry is required or not and/or whether on the basis of the materials no further action is required. On principles, thus, on the basis of the police report it cannot be conclusively said that the Port Trust would be bound to consider the tender of the appellant and treat the appellant on par with other tenderers. It can, notwithstanding the above report of the police, find the appellant to be one whose name should be removed from the approved list of contractors and/or be blacklisted. In the instant case, however, the ground to eliminate the tender of the petitioner from consideration has been substantially weakened by the fact that the C.B.I. has, on the basis of the evidence gathered, opined that no action is proposed against the appellant. It would, therefore, be necessary for the Port Trust to give a fresh consideration to the claim of the petitioner-appellant and decide strictly on the materials that are available with it whether there is any ground for not considering the tender of the appellant. On the facts, as above, thus, we are inclined to modify the directions issued by the learned single Judge to the extent that the Port Trust shall take a fresh decision in respect of the tender of the appellant strictly in accordance with law and before doing so apprise the petitioner-appellant of the materials upon which it proposes not to consider appellant's tender. Since in view of the interim order tenders are not finalised, Port Trust shall proceed to finalise the same after complying with the directions as above.

5. In the result, the appeal is allowed to the extent indicated above.