(2021) 03 KL CK 0205

In the High Court Of Kerala

Case No : Writ Petition (C) No. 4403 Of 2021

N.K. Nehru Babu — APPELLANT

Vs

Kerala Tourism Development Corporation Ltd And Ors — RESPONDENT

Date of Decision : 18-03-2021

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2021) 03 KL CK 0205

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : Dinesh R. Shenoy, P. Rohit Premanandan Shenoy, Ebin Mathew, P.A. Ahamed, Thoufeek Ahamed

Final Decision : Dismissed

Judgement

1. The petitioner is in the business of manpower supply for cleaning and other utility services to various organisations. In this writ petition, the petitioner seeks to set aside Ext.P16 letter of the 1st respondent and the award of tender in favour of the 2nd respondent. Certain other incidental reliefs are also sought for.

2. The petitioner would submit that the petitioner was supplying manpower for cleaning and other utility services to the 1st respondent- Kerala Tourism Development Corporation Limited at its Head Office, Regional Offices and other units since 2016 under agreements, the last of which was entered into on 25.07.2019.

3. On 28.12.2020, the 1st respondent floated Ext.P2 tender. The petitioner states that unnecessarily the EMD was doubled and onerous clauses were added, stipulating a minimum turnover of ☐ 10 Crores in the same field, for three years. Earlier, it was ☐ 50 lakhs. A condition was stipulated that documentary proof for all the three years is to be compulsorily produced. This onerous condition was added with a view to exclude contractors from participating in the tender process. Due to this onerous condition, six out of the eight bidders were

disqualified.

4. The petitioner also participated in the tender and submitted Ext.P3 bid on 13.01.2021. Requested documents were also submitted. On 01.02.2021, the petitioner submitted a representation seeking permission to produce GST returns for the year 2019-'20. But, he was issued with Ext.P15 letter dated 08.02.2021 stating that the technical bid of the petitioner has been rejected since the turnover of the petitioner for the year 2016-'17 was less than ☐ 10 Crores. On 13.02.2021, the petitioner was served with Ext.P16 letter stating that the petitioner's contract has been concluded with effect from 20.02.2021.

5. The petitioner challenges the action of the 1st respondent primarily on two counts. According to the petitioner, the petitioner satisfied the condition as to gross turnover. The petitioner had more than ☐ 10 Crores turnover for the financial years 2017-'18, 2018-'19 and 2019-'20. However, his office had produced Trading, Profit and Loss Accounts Exts.P7 to P9 for the financial years 2016-'17, 2017-'18 and 2018-'19 respectively. As the GST return printout for the year 2019-'20 was not available, the petitioner could not produce the same. The petitioner stated that during the financial year 2019-'20, the petitioner had more than ☐ 13 Crores turnover.

6. The petitioner would submit that there was confusion regarding what constitutes authentic proof and which are the preceding three years. The petitioner had produced Certificates issued by his Chartered Accountant. There was no clarity as to which are the three preceding years. If the preceding years are 2017-'18 to 2019-'20, the petitioner had ☐ 10 Crores turnover each year. The petitioner had sought time to produce GST returns, which was not granted. Ext.P3 format provided by the 1st respondent did not call for specific documents.

7. As regards Ext.P16 communication concluding the existing contract with the petitioner with effect from 20.02.2021, the learned counsel for the petitioner argued that the petitioner ought to have been given one month notice prior to the termination of the existing contract. The existing contract had validity up to 20.05.2020 and hence abrupt conclusion of the existing contract and that too without giving one month's notice, cannot stand the scrutiny of law. Ext.P16 letter is therefore liable to be set aside and the petitioner should be permitted to continue with the contract.

8. The 1st respondent contested the writ petition filing counter affidavit wherein it is stated that as per the agreement dated 25.07.2019 executed with the petitioner, the contract will be with effect from 21.05.2019 and it will be in existence till a new agency is appointed. The agreement can be renewed for a further period on the same terms and conditions. As the 1st respondent was at liberty to appoint a new agency, the contract with the petitioner was concluded with effect from 20.02.2021. There is no illegality in terminating the contract.

9. The learned counsel for the 1st respondent argued that Ext.P18 is not an agreement signed by the 1st respondent. Ext.R1(c) is the agreement. The said

agreement made it clear that it is valid only till a new agency is appointed. As regards the documents to be submitted along with the tender, if the petitioner had any doubt, the petitioner could have obtained details from the office of the 1st respondent as stated in Ext.P2 tender notification. The petitioner did not opt to do so.

10. Relying on the Constitution Bench judgment of the Hon'ble Apex Court in Ramkishorelal and another v. Kamalnarayan [AIR 1963 SC 890], the learned counsel for the petitioner argued that while construing an agreement, the court has to consider the relevant portion of the document as a whole. In case of conflict, an earlier disposition should prevail over the latter directions. The agreement between the petitioner and the 1st respondent would make it clear that the period of agreement is one year. When the said agreement is renewed, in the absence of an intention to the contrary, the validity of the renewed agreement will also be one year. The respondents have committed error in concluding the contract before the expiry of one year.

11. Relying on the judgment of the Apex Court in Radha Sundar Dutta v. Mohd. Jahadur Rahim [AIR 1959 SC 24], the learned counsel for the petitioner contended that if in a deed, an earlier clause is followed by a latter clause which destroys altogether the obligations created by the earlier clause, the latter clause is to be rejected as repugnant and the earlier clause prevails. In view of the said judgment, the validity of the period of contract should be treated as one year, ignoring the clause that the contract can be concluded when a new agency is appointed.

12. The learned counsel appearing for the 1st respondent, on the other hand, pointed out that the issue involved in the writ petition is falling within the realm of contract. The scope of interference/judicial review is very limited. Relying on the judgment of the Hon'ble High Court of Orissa in Jagruti Welfare Organisation, Bhubaneswar v. State of Odisha and another [2017 KHC 5197], the counsel for the 1st respondent urged that it is only when the authorities have acted in an arbitrary, unreasonable and discriminatory and malafide manner, this Court will be justified in invoking Article 226 of the Constitution of India.

13. I have heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the 1st respondent.

14. Clauses 7 and 8 of Ext.P2 terms and conditions of the tender provide that the bidders should have a minimum annual turnover of ☐ 10 Crores and should attach experience for carrying out similar works or having a minimum yearly gross billing of ☐ 10 Crores during the preceding three financial years, out of which at least one single work should be of a minimum gross billing of ☐ 50 lakhs. It has been further stipulated that details of such job done/on hand shall be stated in the offer and authentic proof thereof furnished. It has been specifically mentioned that the offer without complete details is liable to be rejected.

15. It is an admitted position that for the year 2016-'17, the petitioner produced gross billing of ☐ 8,74,97,460/- only. The argument of the petitioner that the records maintained by the 1st respondent would have disclosed that the petitioner had turnover of more than ☐ 10 Crores, cannot be accepted. When submission of documents along with bid is made mandatory, it is not open to the petitioner to state that the 1st respondent ought to have gathered information from other sources. This Court do not find any ambiguity in the tender notification or in the terms and conditions mentioned therein. In the circumstances, this Court is of the opinion that the respondents were justified in rejecting the technical bid of the petitioner.

16. As regards concluding the contract by Ext.P16 communication, though in Ext.R1(b) agreement it is stated that the petitioner wishes to undertake the cleaning services in the units and offices under the first party for one year and the 1st respondent has agreed to provide the contract for one year, Clause (a) of the General Specifications and Terms and Conditions contained in the agreement specifically provides that the period of agreement will be with effect from 21.05.2019 till a new agency is appointed. Therefore, this Court is of the opinion that though the agreement was for a period of one year, the 1st respondent was entitled to terminate the contract earlier under the terms of the agreement, when a new agency is appointed. There is no ambiguity or conflict in the terms of the contract. The judgments of the Apex Court relied on by the petitioner would therefore not apply to the facts of the case.

For all the above reasons, this Court finds no merit in the contention of the petitioner. The writ petition fails and consequently, it is dismissed.