
(1982) 03 CAL CK 0041
In the Calcutta High Court
Case No : C.R. No. 9100 (W) of 1981

Omprakash Patwarika

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-03-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 299

Citation : AIR 1982 Cal 340

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : B.C. Dutt and M.K. Basu, for the Appellant; Nani Coomar Chakraborty, Madhusudan Banerji, D.N. Das and P.K. Ghosh, for the Respondent

Judgement

Suhas Chandra Sen, J.—By a Tender Notice No. 4A 81-82 dt. 4th May, 1981, the Divisional Rly. Manager, Eastern Rly., invited tenders for execution of new works, works for additions and alterations as also repairs and maintenance works of miscellaneous nature for Zone No. 108 from 1st July 1981 to 30th June, 1982, on the terms and conditions mentioned in the Tender Notice. The notice was issued by the Office of the Divisional Railway Manager, Eastern Railway. The petitioner, Om prakash Patwarika, one Bijoy Sankar Bohra and Santosh Kumar Sharma submitted their tenders in response to the aforesaid notice. The tenders were also submitted on 17th June, 1981, and were opened in the presence of the representatives of the tenderers. It appears that the rates quoted by Omprakash Patwarika, the petitioner herein, were the lowest Santosh Kumar Sharma's quotations were on the whole the highest of the three tenders that were submitted. By a memo dated 5th Aug. 1981, the Divisional Engineer asked all the three tenderers to submit analysis against items Nos. 1 & 2 (Cement, concrete and brick work) in support of the rates quoted in the tenders. The petitioner and Sarkar (San-tosh) Kumar Sharma submitted detailed analysis of their quotations as required by the Divisional Engineer. Bijoy Sankar Bohra, however, did not submit any such analysis. It appears that the tender of Santosh Kumar Sharma who had on the whole quoted the highest rates was accepted.

2. The petitioner, Omprakash Patwarika has challenged the legality and validity of the aforesaid decision of the Railway Authorities to accept the bid of Santosh Kumar Sharma, the Respondent No. 6 herein. It has been contended on behalf of the petitioner that the Railway Authorities were not bound to give work order to the lowest tenderer in all cases, but if the lowest tender is not accepted there must be some reasonable ground for that. Strong reliance was placed upon the judgment of the Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . It was argued that the Government did not have an unfettered or arbitrary discretion in the matter of accepting tenders. It was argued that the petitioner had successfully submitted tenders quoting the same rates in respect of Zone No. 96, an adjacent zone under the same Division. It was, therefore, submitted that the petitioner had made identical bids in two adjoining zones, one was accepted but the other was rejected as unworkable by the Railway Authorities.

The petitioner submitted that this action of the Railway Authorities was clearly against the principle laid down by the Supreme Court in the aforesaid judgment.

3. It was submitted on behalf of the Railway Authorities that the quotations were on the face of it unreal and could not be accepted having regard to the market price. It was submitted that the analysis of the quotations were invited only for the purpose of being fair to the petitioner and also to the other tenderers.

4. The contention of the petitioner, however, cannot be accepted. The petitioner's allegations in paragraph 18 of the petition that the petitioner submitted a tender in respect of Zone No. 96 under the Divisional Engineer 3, quoting exactly the same rate quoted in Zone No. 108 are factually incorrect. It appears from the tender papers produced by the Railway Authorities at the hearing that the petitioner had quoted much higher figures for Zone 96 where his bid was successful. The petitioner's quotation for Zone 108 was much lower.

5. In view of the aforesaid it cannot be said that the decision of the Railway Authorities not to accept tender of the petitioner on the ground that the rates quoted by the petitioner in respect of Zone No. 108 were unworkable is not on the face of it capricious or arbitrary.

6. Reliance was also placed on behalf of the petitioner in the case of S.P. Das v. State of West Bengal, (1980) 2 CHN 480. In that case an agreement was entered into for a period of five years by the State of West Bengal. Thereafter, the period of contract was abridged without assigning any reason. There was no allegation that the petitioner was guilty of any defect or breach of any of the terms of the contract. The petitioner was also not given any opportunity of showing cause against the order that was ultimately passed. In these facts T.K. Basu, J. held that the Government could not act arbitrarily or capriciously. The facts of the present case, however, are quite different. The Railway Authorities have rejected the tender submitted by the petitioner as unworkable on the ground that the rates quoted by the petitioner were absurdly low.

7. In the case of Barun K. Sinha and Another Vs. District Magistrate, Murshidabad and Others, the petitioner had submitted a tender within the stipulated time for supply of dietary articles to the State-owned Hospitals. The tender of another contractor, who quoted rates much higher than the rates of the petitioner, was accepted. No reasons were advanced for rejecting the tender quoted by the petitioner. In this case, however, the Divisional Engineer invited the tenderers to submit analysis of the rates quoted by them. It has been stated by the Divisional Engineer in his affidavit-in-opposition "that the petitioner himself worked during the preceding 2 zonal periods at much higher rates than the rate accepted during the current zonal period. So it is abundantly clear that the interest of the Government has been properly looked into. The abnormally low rate quoted by the petitioner in the current zone period by itself smacks of ulterior motive which could not be overlooked in view of the much higher rate at which he worked in the same zone in the past."

8. The tender by the petitioner was not ignored or rejected arbitrarily. It was duly considered and analysis of the rates was invited and only after due consideration of the analysis, the tender submitted by the petitioner was rejected. The petitioner in the writ petition has tried to justify the abnormally low rates quoted by him on the ground that he had stocks of raw materials bought when the market prices were much lower and, therefore, he was in a position to submit the tender quoting such low rates. That the rates quoted were abnormally very low having regard to the prevailing market prices cannot be denied and has not been denied by the petitioner. If the Tender Committee was of the view that the rates quoted by the petitioner were unworkable, it cannot be said that an arbitrary or capricious view has been taken. An analysis of the rates was invited. The petitioner gave an analysis of his rates which was found to be not satisfactory. In my opinion, the allegation of capricious or arbitrary action has not been established in the facts of this case.

9. Another point was made that the work order in this case was issued on a Sunday. It was argued that the said order was back dated and was issued out of ulterior motive and with a view to show special favour to the successful tenderer in this case, the Respondent No. 6. It has been stated in the supplementary affidavit that for urgent work of the Railways, the railway employees also work on Sundays and holidays. In my view, no adverse inference, in the facts of this case, can be drawn against the Railway Authorities only from the fact that the disputed communication issued on a Sunday.

10. A number of legal points have been argued by the counsel appearing on behalf of the Respondent No. 6. In the facts of this case it is not necessary to go into those questions.

11. In the premises, this Rule is discharged and all interim orders vacated.

12. There will be no order as to costs.

13. The prayer for stay of operation of the order is refused.