(1986) 09 CAL CK 0025

In the Calcutta High Court

Case No : Civil Order No. 10572 (W) of 1986

Pabitra Kumar Das and Others APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 01-09-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 299

Citation : AIR 1987 Cal 243

Hon'ble Judges : Prabir Kumar Majumdar, J

Bench : Single Bench

Advocate : Anupam Chatterjee and Asish Roy, for the Appellant; A.C. Moitra, Dasgupta, Muku Lahiri, Pradip Tarafdar and Kalyan Bandopadhyay, for the Respondent

Judgement

Prabir Kumar Majumdar, J.—In or about May, 1986 an advertisement was published in Mugantar'' Patrika by and on behalf of the Government of West Bengal and Director of Health Services inviting sealed tenders for the purpose of supply of dietary articles to the various hospitals and institutions for the year 1986-87.

2. The tender schedule for 1986-87, contain terms and conditions. It is, inter alia, provided therein that the tenderers would be required to produce up to date Sales Tax clearance certificate. Income Tax clearance certificate and contracts or orders would be awarded only to those concerns which can produce valid Sales Tax clearance certificate and Income Tax clearance certificate. It is further provided that the contracts or orders if awarded would be withdrawn if later enquiry proved otherwise. It is further provided that no firm except those who had participated earlier in diet tender of this Directorate, namely. Directorate of Health Services, would be accepted for 1985-86 unless it produces certificate indicating experience in the similar nature of job at least for one year from a reputable institution acceptable to the Central Diet Committee. The period of contract was from 1st June, 1986 to 31st May, 1987. The petitioners here are

unsuccessful tenderers. The contract was awarded to the respondents Nos. 7 to 12. It is the case of the petitioners that they had duty submitted not only Sales Tax clearance certificate and Income Tax clearance certificate in support of their own business but they also submitted certificates in support of their experience in dealing with or in the matter of supply of dietary articles to the Government Hospitals including Dr. B. C. Ray Chest Sanatorium for the last few years. Apart from those each of the petitioners, as claimed by the petitioners, submitted other particulars within the dates stipulated in the tender form.

3. On 27th May, 1986 the tenders were opened in presence of various participating tenderers including the petitioners. It was found that the respondent No. 7, Narayan Chandra Ghose, running a business in the name and style of ''Narayan Chandra Ghose'' as proprietor thereof, has submitted a tender in respect of Zone VIII to the Central Diet Committee. According to the petitioners on a perusal from the Sales Tax Clearance certificate as submitted by the said Narayan Chandra Ghose started from 1986(V) and it will further appear, according to the petitioners, that prior to 1986 the respondent No. 7 had not undertaken any business in respect of supply of dietary articles or any other articles in the past. It is the further case of the petitioners that along with the said Sales Tax clearance certificate an affidavit said to have been affirmed by Narayan Chandra Ghose, respondent No. 7, was also furnished wherefrom it would appear that the business started only in 1986 and the Superintendent of Dr. B. C. Roy Chest Sanatorium had granted a certificate of experience in support of said Shri Ghose, respondent No. 7, inter alia, stating that the said Sri Ghose had experience in the matter of diet articles in the past. It is claimed by the petitioners that the said certificate granted by the Superintendent of Dr. B. C. Roy Chest Sanatorium was not only vague and manufactured but would also go to show on the basis of it that the same is false and contrary to the statements made by the respondent No. 7 in the affidavit furnished along with the tender application.

4. Regarding respondent No. 9, Manindra Nath Biswas, it is the case of the petitioners that from the perusal of the Sales Tax clearance certificate submitted by the said respondent No. 9 it would appear that Sri Biswas on an oath stated that he has started his business only in the month of May, 1986. Further, according to the petitioners, the respondent No. 9 had also furnished a certificate from a private organisation, namely, Ashoka Hotel dealing in lodging and restaurant business in the town of Krishnagar. The petitioners claimed that the certificate from Ashoka Hotel does not satisfy the requirements of the tender notice, namely, that the tenderers must have some experiences in supplying dietary articles to reputable institutions acceptable to the Central Diet Committee.

5. Regarding the respondents Nos. 8, 10, 11 and 12, the case of the petitioners is that each one of them commenced his business recently within a month or two before the advertisement was published in or about May, 1986. They also procured the certificates in support of their experiences from various authorities

including the Secretary of Dr. B. C. Roy Chest Sanatorium and they would go to indicate only that the said certificates are, contrary to the statements made on oath that they had just commenced their business in or about May, 1986. It is the further case of the petitioners that the said respondents did not have the necessary experience in supplying dietary articles to the Health Institutions or any reputable Institution.

6. Therefore, according to the petitioners, each one of the said respondents did not possess the qualifications as prescribed under the terms and conditions of the said tender and also did not possess the necessary experiences required for the purpose of supply of dietary articles.

7. It is further stated by the petitioners that the petitioners submitted the representation to the Director of Health Services on or about May 27,1986 requesting him to look into the matter very carefully. But according to the petitioners, no such action was taken on the basis of the said representation. The petitioners, as claimed, also submitted further representation on June 2, 1986 giving some more details of irregularities and illegalities in the matter of finalisation of tenders. According to the petitioners, the respondents did not care to make any enquiry pursuant to the representation made by the petitioners and finally, the petitioners demanded justice which was also not attended to.

8. According to the petitioners, the respondents Nos. 7 to 12 had been favoured with work order for supply of dietary articles to Dr. B. C. Roy Chest Sanatorium.

9. Being aggrieved by and dissatisfied with the finalisation of the tenders in pursuance of the advertisement published in or about May, 1986 and also issuance of the work orders the petitioners make this application under Article 226 of the Constitution praying, inter alia, for issuance of a writ in the nature of Mandamus commanding the respondents to recall or set aside the work orders issued on June 24,1986 to the respondents Nos. 7 to 12 in respect of supply of dietary articles to Dr. B. C. Roy Chest Sanatorium, Dhubulia, Nadia and for certain other consequential reliefs.

10. This application is directed to be heard as a contested application. AH the respondents have entered appearance. The respondents Nos. 7 to 12 have filed affidavits-in-opposition. The State respondents have neither filed any affidavit nor have produced the relevant files in spite of direction from this Court.

11. The case of the private respondents, inter alia, is that they had necessary experiences in supplying dietary articles for more than a year. It is the case of the respondent No. 7 that he applied for Sales Tax clearance certificate with the impression that such certificate would be required for the business of supplying dietary articles to the Hospital if ultimately his tender was accepted, and therefore, he stated against Entry No. 4 in his application, that is, date of commencement of business, the year 1986. It is the further case of the respondent No. 7 that he was under a mistaken belief that the Sales Tax clearance would be required for a new business, that is, a business for supply of

dietary articles in the event the contract was ultimately allotted to him. It is further stated by the respondent No. 7 that the said certificate given by the Superintendent of Dr. B. C. Roy Chest Sanatorium was issued on the basis of previous experience of supplying various dietary articles on an independent footing as a sub-contractor under the contractor in whose favour the tender for previous year was granted. According to the respondent No. 7, the experience in similar nature of job mentioned in the terms and conditions of the tender is gathered by him as a sub-contractor in the same extent as the contractor. Therefore, according to the respondent No. 7, such certificate as referred to above fulfilled the requirements prescribed in the tender and was considered acceptable to the Central Dietary Committee.

12. The respondent No. 8 also puts up a defence in the same vein as sought to be raised by the respondent No. 7. It is the case of the respondent No. 8 that he was under a mistaken belief that a certificate of sales tax clearance that may be issued meant for the business of supplying dietary articles to the hospitals if ultimately the tender of respondent No. 8 was accepted. It is also stated by the respondent No. 8 that he formed a mistaken notion that the Sales Tax clearance certificate and income Tax clearance certificate related to a new business, that is, a business of dietary articles in the event of contract being ultimately allotted in his favour and reference to any past business experience was not called for. Regarding the certificate of experience it is the statement of respondent No. 8 that he had the necessary experience in supplying similar dietary articles to one Ashoka Hotel at Krishnagar and he produced a necessary certificate issued by the said Ashoka Hotel.

13. The other affidavits filed by the other private respondents are more or less in the same pattern, that is, the application for Sales Tax clearance certificate was made under the mistaken notion that certificate meant for business for supplying of dietary articles to the Institutions or Hospitals if the contract was ultimately allotted to the tenderers and regarding affirming affidavit furnished along with the tender application the explanations of those respondents were that while affirming the affidavit they were labouring under some misconception etc.

14. Before I deal with the respective arguments of the learned Advocate appearing for the parties I refer to certain documents. In all the applications for Sales Tax clearance certificate, copies of which are included in Annexure ''C to the petition, it is stated against Column 4 in each of the applications that the date of commencement of business is 1986, against Column 7, that is, whether connected with any other business the respondents, namely, the tenderers did not give any particulars against the said column. It appears from each of the applications for Sales Tax clearance certificate filed by the private respondents, that there was an endorsement by the Commercial Tax Officer, Krishnagar, Nadia, stating that the applicant was not a registered dealer and liability of payment of tax, if any, had not yet been determined. Each of the said applications as filed by each of the said tenderers contained a statement that they intended to start a

new dietary and General order supply business from the year 1986. All the applications for Sales Tax clearance certificate filed by all the private respondents are in similar terms containing similar affidavits and all of them stated that they had intended to start business from 1986. All the applications contained the similar endorsements from the Commercial Tax Officer that the applicants were not registered dealers and liability for payment of tax, if any, had not yet been determined. On the basis of the said particulars as furnished by the private respondents, the appropriate respondent authority accepted the tender of the said private respondents, namely, respondents Nos. 7 to 12 and issued work orders to the said respondents. One would not have any hesitation to conclude that the respondent authority had not applied its mind in awarding the work orders of the contract to the said private respondents. It would appear from their own statements that they had not necessary experiences in the field. The respondent authority clearly ignored one very necessary requirement as appearing from the terms and conditions of the relevant tender schedule of the contract that the contracts would be awarded only to those concerns which could produce valid Sales Tax and Income Tax clearance certificates. It is not clear from the materials on record whether the private respondents had submitted any Income Tax clearance certificate. It is clear from the affidavits of the private respondents that they did not furnish any satisfactory evidence as to whether they had any necessary experience in the similar nature of job at least for one year in a reputable Institution.

15. Mr. Anupam Chatterjee. learned Advocate appearing for the petitioners, has cited decisions in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and also the case of Harminder Singh Arora Vs. Union of India (UOI) and Others, . It has been observed in the case reported in Harminder Singh Arora Vs. Union of India (UOI) and Others, that the Government may enter into a contract with any person but in so doing the State or its instrumentalities cannot act arbitrarily. In absence of any specific policy of the Government it is open to the State to adopt any policy. But if the authority or the Stale chooses to invite tenders then it must abide by the conditions laid down in the tender notice. If the lender form submitted by any party is not in conformity with the conditions of the tender notice, the same should not have been accepted.

16. Mr. Anupam Chatterjee, learned Advocate appearing for the petitioners, has contended that admittedly all the respondents Nos. 7 to 12 had no experience in similar nature of job at least for one year from a reputable institution acceptable to the Central Diet Committee. It is the further contention of the learned Advocate appearing for the petitioners that the said private respondents failed to produce both Sales Tax Clearance certificate and Income Tax clearance certificate. It has been particularly stipulated in the tender notice that failing production of Sales Tax clearance certificate and Income Tax clearance certificate the tender submitted by the applicants will not be considered and the contracts and orders will not be awarded. In spite of all these, as contended, by the

learned Advocate for the petitioners, the respondent authority without any application of mind to the terms and conditions of the tender Notice had arbitrarily issued work orders to the said respondents Nos. 7 to 12. Relying on the said decision reported in Harminder Singh Arora Vs. Union of India (UOI) and Others, the learned Advocate appearing for the petitioners also contends that if the authority concerned chooses to invite tenders then it must abide by the conditions laid down in the tender notice.

17. The learned Advocate appearing for the private respondents sought to justify the action of the respondent authority in awarding contract to the private respondents by urging that the admission in the present case made by the private respondents in their respective affidavits in an application for supplying of Sales Tax clearance certificate should not be taken strictly as an admission, if such admission is contrary to the facts otherwise, which according to the learned Advocate appearing for the private respondents were fully explained in their respective affidavits. In support of the said contention the learned Advocate appearing for the private respondents cited decisions of the Supreme Court, reported i''n Nagubai Ammal and Others Vs. B. Shama Rao and Others, and Avadh Kishore Das Vs. Ram Gopal and Others, . 18. It is the further submission of the learned Advocate appearing for the private respondents that if there are two views possible then the Court exercising the writ jurisdiction should not interfere with the matter. In support of the proposition the learned Advocate appearing for the private respondents cited 1980 Excise LT 280 (Bom) and State of Andhra Pradesh Vs. Sree Rama Rao, . The learned Advocate has not propounded clearly what could be the two views on the facts as stated by the private respondents in their respective affidavits furnished along with the tender application and also their statements made in the respective affidavits filed in this proceeding.

19. The learned Advocate appearing for the State has not produced any record relating to the instant case so as to enlighten the Court what weighed with the relevant authority in awarding contracts in favour of the private respondents. The State has also not cared to file any affidavit to explain the position in spite of direction. The learned Advocate appearing for the State sought to justify the action by submitting that the requirement of experience was only in respect of tender for 1985-86 and that is not for tender schedule for 1986-87. It is the further case of the State that all the private respondents had fulfilled all the conditions as to the experience in the similar nature of job at least for one year from the reputable Institutions as required in the said tender. This statement of the learned Advocate appearing for the State is not supported by any record or document which was considered, if at all considered, by the respondent authority.

20. I am constrained to observe that this Court did not obtain any assistance at all from the State respondents and all the necessary records pertaining to the case were deliberately withheld by the said respondents from this Court. The learned Advocate appearing for the State from time to time sought adjournment

of the matter so that the State Counsel could procure the relevant records from the department and also could file the necessary affidavit. The matter has been adjourned from time to time to enable the State respondents either to produce records or to file affidavit. The State respondents have neither filed any affidavit-in-opposition nor have produced any relevant record or document before this Court,

21. I have no hesitation in holding that in this particular matter the State respondents without taking into consideration the relevant facts involved and also the requirements of the tender arbitrarily allotted the work orders to the private respondents.

22. The work orders issued to the said private respondents are all set aside and quashed. The respondents Nos. 7to 12 should be restrained from supplying any more dietary articles to the Institutions even on ad hoc basis. The respondents State authorities are directed to invite fresh tenders for supplying dietary articles to the said B. C. Roy Chest Sanatorium, Dhubulia, Nadia and award contracts in accordance with law. Until the contracts are awarded to the successful tenderers in respect of supplying of dietary articles the respondents should procure the dietary articles from the other tenderers who had been supplying previously to this Institution but such acceptance of supplies should be on the ad hoc basis. The respondents are, further, directed not to accept any dietary articles from any of the respondents, namely, respondents Nos, 7 to 12. This order would not, however, be construed as a bar to the respondents Nos. 7 to 12 to participate in the tenders that may be issued in future provided they satisfy the requirements to be fulfilled before submitting the tender application.

23. For the reasons aforesaid, this application should succeed. There would be no order as to costs.

24. There will be a stay of operation of this order as prayed for till Monday next.

