(2014) 07 CAL CK 0015

In the Calcutta High Court

Case No : W.P. No. 12948 (W) of 2014

Pankaj Kasera APPELLANT

Vs

The Andaman and Nicobar Administration and Others RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 5 CHN 604 : (2015) 1 WBLR 696

Hon'ble Judges : Shubhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Malay Kumar Ray and Krishna Rao, Advocates for the Appellant; Nadeem Akhtar Khan, Advocates for the Respondent

Judgement

Shubhro Kamal Mukherjee, J.—This is an application under Article 226 of the Constitution of India challenging an order dated March 20, 2014 passed by the Chief Secretary, A & N Administration. This writ petition has a chequered history. The Administration floated a tender on August 07, 2013 for procuring 4800 MT sugar. In the tender notice there were two important requirements that the bidders must have a trade licence and agmark certificate for trading in sugar.

2. None of the bidders had either trade mark or the agmark certificate.

3. When the matter was placed before the Bid Evaluation Committee, the said committee found that none of the bidders had either trade licence or the agmark certificate. Thus, the committee recommended relaxation of those two conditions and recommended for acceptance the bid of this writ petitioner.

4. The Administration did not accept the recommendations of the Bid Committee. Thus, the bid of this writ petitioner was not accepted.

5. The writ petitioner was aggrieved and, therefore, approached this Court with an application under Article 226 of the Constitution of India, which was registered as WP No. 14 of 2014.

6. I.P. Mukerji, J. by judgment and order dated February 21, 2014, inter alia, directed the Chief Secretary to consider the matter afresh within four weeks from the date of communication of His Lordship''s order. However, His Lordship in His Lordship''s order held that non-production of agmark certificate for sugar and trade licence for the commodity could not be a ground for cancellation of the bid as those requirements were not must for carrying trade in sugar. Therefore, His Lordship observed that insertion of those conditions in the tender notice was erroneous.

7. The matter went back to the Chief Secretary. The Chief Secretary found that the bid submitted by the petitioner is higher than that of a supplier, who has been supplying sugar to the Administration. Thus, the offer of the petitioner was not accepted.

8. Being aggrieved this petitioner has approached this Court once again by filing this writ petition.

9. The basic question is that when two very important conditions have been waived whether there should be fresh tender inviting bidders to bid for supply of sugar or not.

10. The Supreme Court of India in M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, upheld the order of High Court for carrying out the process afresh.

11. Once a decision was taken to delete two important clauses, fairness and equal treatment required that the process should be carried out afresh to determine whether better or high offers would be received upon deletion of those clauses expecting higher and better bid.

12. Therefore, I affirm the order of the Chief Secretary, however, on a different reason, that the offer of the writ petitioner can not be accepted and there must be a fresh tender with modified tender conditions.

13. The writ petition is, therefore, rejected. I make no order as to costs.

