

(2015) 08 KL CK 0081

In the High Court Of Kerala

Case No : Writ Petition (C) No. 2954 of 2015 (T)

Pulari Plantations Private Limited

APPELLANT

Vs

Spices Board and Others

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Citation : (2015) 08 KL CK 0081

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : S. Vinod Bhat and Legith T. Kottakkal, for the Appellant; V. Abraham Markos, Binu Mathew, Tom Thomas, Abraham Joseph Markos, Isaac Thomas and Noby Thomas Cyriac, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J—The petitioner challenges Exhibit P9 order, by which the e-auction license was declined. The grounds on which the challenge is made are that, (i) the criteria on which Exhibit P9 order was passed having not been disclosed to the petitioner earlier to Exhibit P9 and (ii) the conflict of interest insofar as the Directors of the respondents 3 to 5 being members of the Board of the 1st respondent.

2. The petitioner applied for e-auction license by Exhibit P1, as per the "eligibility criteria" laid down in Exhibit P2. The petitioner relies on Exhibits P3 and P4, to evidence the sufficiency of the space for carrying on the auction and produces certain photographs of machineries, which, according to him, are available in his premises. The petitioner also specifically refers to the invoice, produced at Exhibit P6, to controvert the allegation in Exhibit P9 that an Electronic Scale was not available in the petitioner's premises. The petitioner having been issued with Exhibit P9, submitted Exhibit P10 objections and is said to have went on with the procedure of obtaining a bank guarantee, to satisfy the eligibility criteria of security deposit, as is evidenced at Exhibits P11 and P12.

3. The petitioner contends that the inspection though conducted on 19.12.2014, was in a biased manner and no copy of the report was supplied to him. The requirements, the absence of which were found to be against the petitioner in Exhibit P9, were said to have been never put to the petitioner. The entire exercise was a farce, insofar as the respondents 3 to 7, who were granted licenses, having their Directors in the Board of the 1st respondent. This raises serious question of conflict of interest and vitiates the very issuance of the licenses, is the argument.

4. I have heard the learned counsel for the petitioner and the counsels for respondents 3 to 7 as also the Standing Counsel for respondents 1 and 2.

5. Exhibit P2 is the "Eligibility Criteria for e-auction license". The applicants were required, under Clause 6, to have sufficient storage facilities or go down and collection depots, including electronic weighing machines and moisture meters at the pooling centre. By Clause 16, the list of go down/pooling centers existing and proposed and proof of documents of the go down/pooling centers owned/leased/rented by the company was to be produced. The details of cleaning facilities, machineries and go downs available at the pooling centers or in other places were also to be provided, as per Clause 17. True, there was no exact area specified for conducting the auction of cardamom. However, it is the specific contention of the respondent-Board that as per the Rules applicable to the award of e-auction licenses, being the Cardamom (Licensing and Marketing) Rules, 1987 as amended in 2014, the satisfaction of the Board, as to the suitability of the premises offered and sufficient storage or go down or collection depot facility to store the cardamom pooled and for cleaning and grading of cardamom as provided under Rule 4, is mandatory.

6. It is trite that a satisfaction required to be arrived at by a public authority cannot be left to the whims and fancies of such authority. Nor can it be said to be a variant depending upon each of the applicants. However, in the present case, none of these grounds can be taken, since Exhibit P9 specifically finds that normally in one auction about 50 MT (metric tons) is the minimum quantity brought in and, hence, the required space of storage would be 75 MT. These are affairs of the specific business, which the petitioner ought to have been aware of, especially when he declares to be engaged in such business and seeks a license for enabling e-auction with the Board. The petitioner also does not have a case that either of the respondents 3 to 7 lack such facilities.

7. It is pertinent that the respondents 3 to 7 were persons who had earlier licenses and had applied for renewal in the present period as per Exhibit P2. It is also not disputed that, along with respondents 3 to 7 another seven concerns were also given the e-auction license, making the total licensees 12 in number. It is quite significant that there is no restriction in the number of e-auction licenses to be issued and the petitioner has been excluded not for the reason that he having not come within the zone of consideration. The petitioner was denied license only for having not satisfied the basic requirements.

8. With respect to the other requirements, even Exhibit P2 eligibility criteria specifically provided for cleaning facilities and machineries. Exhibit P9, by paragraph No. 2, finds that neither mechanical nor manual cleaning/grading facilities are noticed in the proposed main go down or in any of the collection centers. Paragraph 3 also found that there is no evidence produced to show that an Electronic weighing machine and Moisture meter at the main go down/storage or collection depots are provided. These facilities, on inspection, were found to be absent, on which the petitioner's application for e-auction license was declined.

9. The reliance placed on Exhibit P6 invoice is specious, to say the least. When the application at Exhibit P1, in accordance with Exhibit P2 eligibility criteria, was made on 16.12.2014, the petitioner is said to have purchased an Electronic Scale on 17.12.2014, one day after the application was made. Further, as is pointed out by the learned counsel for the respondents 3 to 7, there is nothing produced to indicate that the petitioner had registered himself with the Department of Legal Metrology after the purchase made at Exhibit P6, which condition is available in Exhibit P6 itself. Definitely no reliance can be placed on the photographs produced, since that would lead to an assumption that the photographs produced were in fact of the machineries available in the premises of the petitioner. The inspection found otherwise and this Court cannot looking at the photographs alone come to a different finding.

10. Further ground raised by the petitioner is with respect to the conflict of interest, insofar as the respondents 3 to 5 having its Directors in the Board of the 1st respondent. Two Directors of the 3rd respondent and one Director of the 4th respondent, admittedly, are members of the 1st respondent-Board. As to the 5th respondent, the Board Member and the Director are said to be father and son. The petitioner would make much of the conflict in interest insofar as the Directors of the licensees being in the Board relying on the decision in Board of Control for Cricket in India and Others Vs. Cricket Association of Bihar and Others(2015) 1 SCALE 608 : (2015) 3 SCC 251 .

11. At the outset, it is to be noticed that the contention of the Spices Board is that, the Board does not itself take a decision to issue the licenses and all of these Directors of respondents 3 to 5 are appointed from the persons involved in the trade as per the statute, being the Spices Board Act, 1956. The Directors of the respondents 3 to 5, who are said to be members of the Board, are appointed by the Ministry of Commerce and Industry, Government of India in their capacity as representatives of Traders, Farmers, Planters, etc.; of spices in general and cardamom in particular. The Board members are said to have no role in the general administration or the day-to-day affairs of the 1st respondent. Their presence is more insofar as formulating policy and taking decision for overall development of the industry. The presence of such persons in the Board were always known to the petitioner and the same was available in the website of the 1st respondent also. The petitioner had been also aware that the respondents 3

to 7 were already licensees of e-auction, under the Board. The petitioner had willingly participated in the e-auction licensing process and had made an application claiming to have satisfied the guidelines and on being rejected; turned around to challenge the same on the ground of conflict of interest.

12. As was noticed above, the petitioner does not have a contention that either of the party-respondents do not have the basic requirements, which was found against the petitioner. The petitioner also does not have a case that no inspection was conducted. Nor does he have a contention that the space available is one which is satisfactory and conducive to the conduct of the e-auctions, as has been stated in Exhibit P9. The mere fact that exact measurements of the space was not given in the guidelines, would not deviate from the fact that the guidelines provided for satisfactory space being available with specific facilities; along with machineries. The petitioner would, merely on the basis of an invoice [Exhibit P6], Exhibit P3 ownership certificate, Exhibit P4 lease and on the basis of the photographs [Exhibits P5, P7 and P8] assert that the machineries were available at the time of inspection.

13. No reliance at all can be placed on these materials to upset the factual findings on inspection. Even the averments in the writ petition does not commend a re-look into the inspection report. The vitiating factor raised on the ground of conflict of interest has already been found to be unsustainable. In such circumstances, this Court does not find any reason to interfere with the rejection at Exhibit P9, of the petitioner's e-auction license application.

The writ petition would stand dismissed. The parties are directed to bear their respective costs.