
(2003) 02 CAL CK 0043
In the Calcutta High Court
Case No : Writ Petition No. 15622 (W) of 2002

Rabi Lochan Deogharia

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Citation : (2003) 2 ILR (Cal) 114

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Amit Prakash Lahiri and Swapan Banerjee, for the Appellant; P.K. Ghosh, Dinesh Chandra Roy, Dhruba Mukherjee for Respondent Nos. 2, 3 and 4 and Dinabandhu Daw, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This writ petition has been made by an unsuccessful Tenderer before this writ Court making the Bharat Sanchar Nigam Limited authorities and successful tenderers as party Respondents therein.

2. The contention of such tenderer before this Court is that the successful tenderers are not eligible for the distributorship as per Clause (3) of the tender document. Clause (3) of the tender document prescribes that prospective distributor should have experience in distribution of Fast Moving Consumer Goods (FMCG) items for at least two years. According to the Petitioner that at least one of the successful candidates is a transporter and has no experience in distribution of Fast Moving Consumer Goods.

3. The date of filing of the writ petition is October 3, 2002, when the selection was finally made on September 20, 2002, and work order or orders has or have been issued on September 30, 2002.

4. The sum and substance of the case of the Petitioner is that the ground on which the cause of the Petitioner has been rejected, on the same cause the tender was accepted at least for one of the Respondents.

5. I have called upon the records. I have directed the appearing Respondents authorities as well as the private Respondents whosoever is there, to exchange their affidavits which they have accordingly done.

6. I find from the documents that an Evaluation Committee was formed by the Chairmanship of General Managers/Commercial and Marketing of the authority concerned. All the members cannot be said to be the official personnel of the authority but also outsiders. Such committee considered various aspects of the matter as I find from the record. From the evaluation chart I also find that one of the ground of rejection of the cause of the Petitioner is that no certificate for distributorship or dealership as per the requirement of the eligibility criteria has been produced by him. Whatsoever documents he produced from which it appears that he is a sub-distributor. Upon taking into account such documents and various aspects of the matter ultimately the cause of the Petitioner was not entertained. However, it is very difficult for the writ Court to evaluate the cause of the Petitioner vis-a-vis the private Respondents when the same has already been evaluated by an evaluation committee.

7. Mr. P.K. Ghosh, learned Senior Counsel appearing on behalf of the authority concerned, relied upon a very recent three-Judges Bench judgment of the Supreme Court center For Public Interest Litigation and Another Vs. Union of India and Others, . Paragraph 20 of such judgment is as follows:

20. It is clear from the above observations of this Court that it will be very difficult for the courts to visualise the various factors like commercial/technical aspects of the contract, prevailing market conditions, both national and international and immediate needs of the country etc. which will have to be taken note of while accepting the bid offer. In such a case, unless the court is satisfied that the allegations levelled are unassailable and there could be no doubt as to the unreasonableness, mala fide, collateral considerations alleged, it will not be possible for the courts to come to the conclusion that such a contract can be prima facie or otherwise held to be vitiated so as to call for an independent investigation, as prayed for by the Appellants. Therefore, the above contention of the Appellants also fails.

8. Mr. Dinabandhu Daw, learned Counsel appearing for the private Respondent relied upon two judgments reported Smt. Naseem Bano Vs. State of U.P. and others, as well as Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, . On the ratio of the first cited judgment he contended before this Court that the writ Petitioner has not filed any affidavit-in-reply controverting the averments made by the private Respondents as well as state authorities in their respective affidavit-in-opposition. Therefore, whatever averments have been made therein explaining the position are justifiably stand. If this Court perused the averments made in such affidavit-in-oppositions it will be found that justifiability have been correctly explained therein.

9. By citing the second judgment he contended that in a case of contract by an

unsuccessful tenderer the court should not substitute its own decision on the decision of an expert evaluation committee.

10. Mr. Amit Prakash Lahiri, learned Counsel appearing on behalf of the Petitioner, contended before this Court by citing a judgment of the Supreme Court *Rohtas Industries Vs. S.D. Agarwal and Others*, that the terms and conditions for coming to conclusion by the Governmental authority can be examined by the court whether those circumstances were existing when the order was made. In other words, the existence of the circumstances in question is open to judicial review though the opinion formed by the Government is not amenable to review by the courts. He further cited a judgment of the Supreme Court *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, being a five Judges Bench judgment, to establish such facts more particularly.

11. I have carefully examined all pros and cons of the matter. According to me, when the evaluation committee has already evaluated the eligibility criteria of the parties in giving distributorship, Writ Court should not interfere with the same until and unless any malafide or unfair play are established beyond doubt from the face of it. If there is a slightest doubt for examining the materials then the Writ Court is not in a position to replace its own view. In the instant case selection was made on September 20, 2002 where the Petitioner was also a bidder. Work order has been issued on September 30, 2002 in favour of the appearing Respondents and the writ petition was filed on October 7, 2002. Although there is no such delay as apparent, but delay in the cases of the writ petitions are depending upon the facts and circumstances of each case.

12. When this writ petition has been made a third party right has already been accrued. I am not unmindful in holding the view that even if that right has been accrued it can be reopened but in such occasion a cast iron case as to be established. This is not the case herein. Morefully, now a days Supreme Court has given various guidelines in considering the matters connected with the contracts or tenders. If a selection committee held a view that some of the candidates are properly given distributorship eliminating others, such tenderers, without obvious valid ground, cannot come out and challenge the selection where he/she has already participated. Therefore, whether it is an appropriate case or not, cannot be justified on the affidavit evidence as given herein even not from the records produced by the authorities. In such circumstances, I cannot hold anything in favour of the writ Petitioner.

13. Therefore, the writ petition stands dismissed.

14. No order is passed as to costs.

15. However, this order will not prevent the Petitioner to pray for any relief before an appropriate civil court and/or forum if he is entitled to in accordance with law.

16. Records produced before this Court by Bharat Sanchar Nigam Limited are returned.

17. Let urgent xerox certified copy of this order, if applied for be given to the learned Counsel for the appearing parties within a fortnight from the date of putting the requisites.