
(2009) 07 GAU CK 0038
In the Gauhati High Court
Case No : Writ Petition (C) No. 5650 of 2006

Raj Narayan Paul

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 5 GLT 766

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : J.P. Sarma, for the Appellant; B. Chetry, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—The order dated 27.06.07 communicated by the Chairman, Dhubri Municipal Board. Dhubri Respondent No. 4 accepting the offer of the Respondent No. 5 for construction of the Lainey Market (Ground floor) for Group B work at Dhubri Town, Ward No. 5 and the allotment of the said construction work in favour of Respondent No. 5 on the basis of tender notice is under challenge in this writ petition.

2. The Chairman, Municipal Board, Dhubri i.e. Respondent No. 4 by notice dated 24.2.06 invited sealed tender in prescribed form for construction of Lainey Market (Ground Floor) under IDSMT, at Ward No. 5, Dhubri, Assam Group A and Group B, from Govt. registered contractors of Class-I (A, B, C) category. The bidders were asked not to tender on percentage based rate. They were further asked to submit current Sales Tax, Income Tax certificates, details of past experience of works of similar nature for last three years, tools and machinery etc. The total value of the Group B work was Rs. 22,06,856/-. The writ Petitioner being an eligible Govt. registered Class-I (B) Contractor belonging to the O.B.C. category submitted a tender as per terms of the notice aforesaid. On 24.05.06 tenders were opened and out of three bidders including the Petitioner and the private Respondent No. 5, the amount quoted by the Petitioner was found to be

Rs. 21,52,717/- while the rate quoted by Respondent No. 5 stood at Rs. 22,06,833/-

The Petitioner also annexed two works experience certificates dated 01.10.2003 and 15.03.2005 issued by the Executive Engineer. R.W.D. Roads, Dhubri, Road Division.

3. Though the Petitioner, being the lowest eligible bidder was confident to get the offer, to his utter surprise, he was served with a caveat dated 26.6.06, issued by the Respondent No. 5. In the said caveat it was mentioned that the Respondent No. 4 had accepted the bid of the Respondent No. 5 for construction of the Group B works of the Lainey Market at Rs. 22,06,833/-. Subsequently, the Petitioner came to know that the Respondent No. 4 had accepted the offer of the Respondent No. 5 depriving the Petitioner. According to the Petitioner the Respondent No. 5 was an inexperienced person and that the work aforesaid was allotted to a person without experience causing serious injuries to the Petitioner. It was further alleged that the tender of the Respondent No. 5 was accepted only on the ground that he was the son of the Chairman of Dhubri-Gauripur Development Authority. The Petitioner being, deprived in the alleged way causing loss to the State Exchequer, has come up with this writ petition, invoking the writ jurisdiction under Article 226 of the Constitution of India, seeking a direction/order for setting aside the order dated 27.06.07 communicated by the Respondent No. 4, thereby by accepting the offer of the Respondent No. 5 for construction of the work Lainey Market and for further direction to re-consider the offer made by the bidders afresh.

4. Notice being issued, the Respondent No. 4 refuted the Petitioner's claim. By filing an affidavit-in-opposition, he stated that the Tender Committee upon scrutiny and consideration of all the relevant documents, along with technical report, found the Respondent No. 5 suitable for the work and accordingly awarded the contract to the Respondent No. 5. A copy of the Minute of the Meeting of the Tender Committee, held on 17.06.06 has also been annexed as Annexure-A to the affidavit-in-opposition. The Deponent further stated that the Petitioner, while submitting tender application, did not fill up all the columns of the tender papers and that he failed to submit the necessary papers/certificates regarding experience in respect of construction of buildings. The Deponent further denied the Petitioner's contention that he had submitted certificates dated 1.10.03 and 15.3.03 as mentioned in the writ petition. It was further contended that the Petitioner did not comply with all the essential terms and conditions of the tender. The Deponent categorically denied the allegations that the work was allotted to the Respondent No. 5 on the ground that he was son of the Chairman, Dhubri-Gauripur Development authority. Denying the allegation of malafide, the deponent stated that the Petitioner's allegation, that the Respondent No. 5 had no previous experience, was not correct. In her affidavit-in-opposition, the Respondent No. 4 stated that the work was allotted to the Respondent No. 5 by following proper procedure and on merit. It is also stated,

in the said affidavit-in-opposition, that 90% of the work had already been completed. Denying the contention made in the affidavit-in-opposition aforesaid, the Petitioner also submitted an affidavit-in-reply. In the said affidavit-in-reply, the Petitioner contended that the work was illegally allotted to the Respondent No. 5 and that the claim that 90% of the work was completed was not correct. According to the Petitioner only 10% of the work was completed.

5. Relying on the decisions, of the Supreme Court held in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, (2) Ashok Kumar Yadav and Others Vs. State of Haryana and Others, and (3) Ranjit Thakur Vs. Union of India (UOI) and Others, Mr. J.P. Sarma, learned Counsel for the Petitioner has submitted that the allotment of the work in favour of the Respondent No. 5 was illegal, on the grounds that the construction work was offered to an inexperienced person in violation of the terms and conditions of the Tender Notice and that the work was allotted to the son of the Chairman of Dhubri- Gauripur Development Authority showing favour to the Respondent No. 5.

6. Refuting the said argument. Mr. B. Chetry, learned Govt. Counsel appearing for the State-Respondents, has submitted that the Tender Committee had accepted the offer made by the Respondent No. 5 after considering all the relevant papers including the work experience etc. The learned Counsel advanced the argument that the Notice Inviting tender (NIT) was issued by the Chairperson. Municipal Board, Dhubri. and that work was allotted by the Municipal Board, Dhubri.

7. Referring to Annexure-A i.e. the Minutes of the Tender Committee Meeting held on 17.6.06 and the Annexure-A-1 i.e., the list of members of the tender Committee, Ext. 7, the learned Counsel submitted that the Chairman Dhubri-Gauripur Development Authority played no role in the entire process of allotment of the work.

8. In the case of Ramana Dayaram Shetty (supra) the tender notice was issued inviting offer in prescribed form from registered 2nd Class holders having at least 5 years experience for putting up and running a 2nd Class Restaurant and two snack Bars at the Airport for a period of 3 (three) years. After the work was allotted, the question of eligibility as per terms and conditions of the tender notice came up before the Hon'ble Court. The Court held that the test of eligibility laid down was an objective test and not a subjective one. The appeal was dismissed with the following observations.

Moreover, the writ petition was filed by the Appellant more than five months after the acceptance of the tender of the 4th Respondent and during this period, the 4th Respondent incurred considerable expenditure aggregating to about Rs. 1,25,000/- in making arrangements for putting up the restaurant and the snack bars and in fact set up the snack bars and started running the same. It would now be most inequitable to set aside the contract of the 4th Respondent at the instance of the Appellant. The position would have been different if the Appellant

had filed the writ petition immediately after the acceptance of the tender of the 4th Respondents but the Appellant allowed a period of over five months to elapse during which the 4th Respondent altered their position.

9. In the case of Ranjit Thakur (supra) the principles of natural justice has been laid down. It was observed by the Apex Court that there should not be any bias in the decision making process.

10. In the light of the above principle and the law laid down by the Hon''ble Court, this Court is required to examine as to whether the work was allotted to the Respondent No. 5, violating the terms and conditions of the Notice Inviting Tender (NIT) and whether there was any bias in the decision making process. The contention of the learned Counsel for Petitioner was that the terms and conditions of the NIT was violated by allotting the work to an inexperienced person, who did not possess the required work experience. In the NIT it was specifically mentioned that current sales tax and income tax certificates, details of past experience of works or similar nature for last three years and construction and other tools and machineries owned by the bidders along with relevant proof should be submitted with the tender.

11. By filing the affidavit-in-opposition, the Respondent No. 4 denied the Petitioner's allegations and contended that the Petitioner himself failed to submit relevant papers regarding his past experience in respect of construction of building works and that he submitted tender paper without filling up all the columns. It was clearly stated that the Petitioner did not submit any certificate/ documents regarding construction of building works. The Respondent No. 4 has stated, in her affidavit-in-opposition, that the Tender Committee after proper scrutiny of all the relevant papers and documents and the technical report found the Respondent No. 5 suitable and accordingly, the work was allotted to him.

12. The Minutes of the Meeting of the Tender Committee comprising of seven members, including the Respondent No. 4, indicates that the Committee had duly scrutinized all the papers and found the Respondent No. 5 suitable for allotment of the work. In the said meeting the Committee aforesaid observed that the tender papers submitted by Smt. Khadiza Ahmed and Shri Raj Narayan Paul (Petitioner) lacked information and were not as per terms and conditions of the NIT.

13. Though the Petitioner has contended that he had submitted all the required papers, he could not substantiate the said contention. There is nothing on record to show that the Petitioner had submitted all the relevant documents along with the tender papers.

14. The Minute of the Meeting also negates the Petitioner's claim aforesaid. It appears that the tender papers submitted by the Petitioner were not found to be inconformity with the terms and conditions of the NIT and that the Tender papers submitted by the Respondent No. 5 were found inconformity with the terms and conditions of the N.I.T.

15. In view of the above. I find no force in the contention of the Petitioner that the work was allotted to the Respondent No. 5 violating the terms and conditions of the NIT.

16. Regarding the allegations of bias and showing favouritism to the Respondent No. 5, it appears that the father of the Respondent No. 5 was the Chairman of a separate body i.e. Dhubri-Gauripur Development Authority. He neither invited tender for the said work, nor participated in the meeting of the Tender Committee in the Selection Process.

17. The learned Counsel for the Petitioner, drawing my attention to the copy of the NIT, submitted that a copy of the same was issued to the Chairman, Dhubri-Gauripur Development Authority i.e. the father of the Respondent No. 5 and that this was sufficient to indicate that the father of the Respondent No. 5 had played role in the decision making process. The Chairman, Dhubri-Gauripur Development Authority has been impleaded as party Respondent No. 3 in this case. Copies of the NIT were sent to the Respondent No. 3 along with the Director, Town & Country Planning, Assam, Dispur, Guwahati, The Deputy Commissioner, Dhubri, The Deputy Director, Town & Country Planning, District Office, Dhubri. The Executive Engineer, P.W.D. (Roads), P.W.D. (Building), P.H.E., Dhubri and The District Information & Public Relation Officer, Dhubri. The said copies were sent for favour of information. Admittedly, the Respondent No. 3 who is the father of the Respondent No. 5 was holding the office of, Chairman, Dhubri Gauripur Development Authority, which was a separate body. The copy of the N.I.T. was sent to the Respondent No. 3 for favour of his information in his capacity of the Chairman of the said independent body. He was not invited to play any role in the decisions making process regarding allotment of the work. There is nothing on record to show that he had played any role in the said process.

18. In view of the above, issuance of copy to the Chairman, Dhubri-Gauripur Development Authority, who happened to be the father of the Respondent No. 5 is not sufficient to draw inference that the said father of the Respondent No. 5 had played any role in the said allotment of work. Therefore, I find no substance in the contention of the Petitioner that undue favour was shown to the Respondent No. 5.

19. Mr. J.P. Sarma, learned Counsel for the Petitioner has fairly submitted that the work has almost been completed.

20. That being the position, in the light of the observations made by the Apex Court in the case of Ramana Dayaram (supra) there is no scope to entertain this writ petition for granting the relief (s) sought for.

21. In view of the discussions and observations made above, I do not see any merit in this writ petition. Consequently, this writ petition stands dismissed.