

(2012) 10 RAJ CK 0086
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12583 of 2012

Ram Singh Shekhawat and Another	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 26-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2013) 3 BC 143

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Nawal Singh Sikarwar, for the Appellant; S.N. Kumawat, A.A.G. for the State, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—A challenge has been laid in this writ petition to NIT Nos. 1/2012-13, 3/2012-13 and 6/2012-13 issued by the Public Works Department (PWD) Government of Rajasthan on the ground that time granted for submitting bid documents in pursuance to the aforesaid NITs was inadequate hence arbitrary and contrary to the requirement of Rule 327(b)(iv) of the Public Works Financial and Accounts Rules (hereinafter "the FA Rules") as also Rule 33 thereof whereunder minimum 7-30 days" time period for making of bids has been provided in respect of tenders of different valuations. It has been prayed that in view of contravention of the aforesaid FA Rules and inadequacy of time for responding to various works under NIT Nos. 1/2012-13, 3/2012-13 and 6/2012-13, the aforesaid NITs be quashed and set aside and respondents be directed to invite bids afresh by issuing NITs anew. Alternatively it has been prayed that the petitioners be allowed to participate in the aforesaid NIT Nos. 1/2012-13, 3/2012-13 and 6/2012-13 by extending the date of the submission of bids in response to the NITs in issue. The factual background of the case of the petitioners is that the respondent Chief Engineer, PWD invited online tenders through three different NIT Nos. 1/2012-13 (20 package road works), 3/2012-13

(157 package road works) and 6/2012-13 (257 package road works). It is stated that in the aforesaid NITs it was provided that for making a bid, applications could be downloaded by prospective bidders from the department's website beginning June 18, 2012, 9.00 a.m. onwards to July 18 upto 9.30 a.m. The last date for submission of tenders was July 18, 2012 by 10.30 a.m. Opening of the bids was to take place at 1:00 p.m. on July, 20, 2012. It has been averred that the petitioners personally and through their Union i.e. PWD Contractors Association of Bikaner Zone represented to the respondent authorities for extension of time for submission of bids as according to them the NITs aforesaid relating to hundreds of packages of road works had been uploaded belatedly and in some cases merely 2 to 10 days time made available for downloading the bid application forms and submitting the bids. It is alleged that the short period of time allowed for downloading the bid application forms and submission of the bids was wholly arbitrary and that consequently the time for submission of the bids be extended. It has been stated that the petitioners, as AA class contractors, and other members of their union were desirous to submit bids in respect of aforesaid various works under three NITs Nos. 1/2012-13, 3/2012-13 and 6/2012-13, but due to belated uploading of the tender documents they had been denied the right of submitting their bids. It has been further stated that the representation of the petitioners and their Union remained unheeded, defeating the object of an impartial, fair and transparent bidding process. Allegations of arbitrariness and mala-fides as also nepotism have been made against the respondents in their intent to benefit "some favourable contractors". Articles 14 and 21 of the Constitution of India have also been invoked against the alleged arbitrary action of respondent department in the delayed uploading of tender documents in respect of various road works resulting in the petitioners being excluded from submitting their bids prior to the last notified date of July 18, 2012. It is submitted that in the aforesaid circum-stances the petitioners had no option but to approach this Court on the issue now in question once earlier by filing writ petition No. 11323/2012. The writ however, came to be disposed of on 6.8.2012 with the following directions:

In the facts and circumstances of the case as well as the question raised by the petitioners in this writ petition, it is deemed proper that the petitioners should make a request to Hon"ble the Minister, PWD Government of Rajasthan along with a copy of this order so that the representation filed may be decided at the earliest, preferably within a period of one week. As informed by the Counsel for the petitioners that (sic) the office of the Hon"ble Minister is not accepting the representation/correspondence and that is why the same was sent through email. The petitioner is directed to appear before Hon"ble the Minister, PWD Government of Rajasthan on or before 9.8.2012 and make a request of deciding the representation.

2. It has been submitted that even subsequent to the directions of this Court as hereinabove, representations to the Minister PWD had been of no avail as he maintained a studied silence. In the aforesaid factual scenario, it has been

prayed in the present writ petition that the aforesaid three NITs Nos. 1/2012-13, 3/2012-13 and 6/2012-13 in respect of all packages of road works (over 500 Nos.) be set aside. Alternatively, it has been prayed that the petitioners be allowed to participate in the bid processes by granting them extension of time for submission of their bids.

3. In reply to writ petition, the Principal Secretary to Government, Public Works Department, Government of Rajasthan has stated that except for works in Hanumangarh and Ganganagar districts, there was no inordinate delay in uploading of tender documents on the website of the department. The delay in uploading of tender documents specific to Sriganganagar and Hanumangarh has been attributed to technical glitches. It has been submitted that as per the bids applications submitted by various participants in tender processes for majority of works competitive bids have been received. It has been submitted that pursuant to order dated 6.8.2012 passed by this Court in Writ Petition No. 11323/2012, the representation submitted by the petitioners has been considered by the Hon'ble Minister and dismissed on 14.8.2012. The dismissal was conveyed to petitioners through registered letter dated 24.8.2012 along with a statement of 57 pages demonstrating the fact that tender documents in respect of substantial majority of works were uploaded to provide reasonable opportunity to interested applicants to download the tender applications and submit their bids. Only in respect of Hanumangarh and Ganganagar districts public works situation obtained where there was a short time span between the uploading of tender documents and the last date for furnishing of the bids. It has been submitted on the merits of the matter that in respect of works in issue, NITs Nos. 1/2012-13, 3/2012-13 and 6/2012-13 elicited a reasonable response in respect of most works notified demonstrating that sufficient time was available for submission of tenders by interested parties. It has also been submitted that the Association which had sent the representation to the PWD, did not file any writ petition in view of the fact that a majority of its members had already submitted their bids in respect to the works covered under NITs Nos. 1/2012-13, 3/2012-13 and 6/2012-13 and were satisfied with the tender process. Oddly only the petitioners had approached this Court on account of the alleged delay in uploading tender application, founded upon a very lopsided view of facts obtaining about the inordinate in respect of Hanumangarh and Ganganagar districts only owing to a technical glitch. It was submitted that the writ was only an attempt to derail the entire tender process for over 500 works for construction and maintenance of roads--an essential public interest.

4. Heard learned Counsel for the parties, and perused the material available on record of writ petition.

5. In my considered view the writ petition is liable to be dismissed on the ground of vagueness of pleadings wherefrom no contravention of any legal or fundamental rights of the petitioners is made out to the satisfaction of the Court. The three NITs Nos. 1/2012-13, 3/2012-13 and 6/2012-13 are in respect of over

500 works stretched across the State of Rajasthan. The petitioners have not focussed on any specific work in which they were interested and in respect of which owing to delay in uploading of tender documents they failed to participate in the tender process and submit their bids. Article 226 of the Constitution of India cannot be invoked for the purpose of challenging any perceived irregularity or even illegality without the petitioners having locus standi. There has to be material on record of the petition and averment as to how and what legal and fundamental right of the petitioners have been infringed. The Hon''ble Supreme Court in case of Life Insurance Corporation of India Vs. Escorts Ltd. and Others, , has held that there was no doubt that every action of the State or Instrumentality of the State must be informed by reason and in appropriate cases, actions uninformed by reason may be questioned as arbitrary, under Article 14 of the Constitution of India. Yet proceedings under Article 226 of the Constitution of India cannot be construed as a charter for judicial review of state action, wherein the State is to account for its actions in its manifold activities on mere askance without a specific case being set out on facts with reference to the rights of the petitioner/s and injury thereto.

6. In the case of Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, , the Hon''ble Supreme Court has held that in order to have a locus standi to invoke the extraordinary jurisdiction under Article 226 of the Constitution, the applicant should ordinarily be one who has a personal or individual right in the subject matter of the application (except cases of habeas corpus or quo warranto). It has been held that as a general rule, infringement of some personal legal right or prejudice to some personal legal interest inhering in the applicant is necessary to give him a locus standi to lay the writ petition. In the case of Vinoy Kumar Vs. State of U.P. and Others, , the Hon''ble Supreme Court has held that generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor there is an imminent danger of such rights being invaded or his acquired/accrued interests being violated ignoring the applicable rules. The Hon''ble Supreme Court further held that as a rule of prudence, the Court confines the exercise of writ jurisdiction to cases where on facts established before it legal wrong or legal injuries are caused to a particular person. The Court does not to entertain cases of legal wrong or injury at the instance of a third party as in the case of D. Nagaraj and Others Vs. State of Karnataka and Others, , wherein the Hon''ble Supreme Court has held that even where a case of discrimination may be made out, unless a person can show legal injury he cannot maintain a writ petition. The foundation for laying a writ petition thus, to my mind, is in an apparent cause of action being made out on the facts pleaded indicative of a personal legal injury. A legal injury or wrong should be evident from specifics relevant to the petitioner''s case and not based on a general statement of law.

7. In the context of aforesaid state of law, this Court is to consider whether in the facts pleaded, the alleged delay in uploading of tender documents by the

respondent department only in respect of certain works covered under the three NIT Nos. 1/2012-13, 3/2012-13 and 6/2012-13 can provide any cause of action to the petitioners and confer on them locus standi to lay this writ petition? On this aspect, a plain reading of the writ petition indicates that the petitioners have made omnibus allegations of delay in uploading tender documents. No specific works have been mentioned by the petitioners in respect of which the petitioners were interested to make their bids or prevented from bidding for such works. The petitioners have not even stated the areas in the State of Rajasthan where they have ordinarily executed contracts for the PWD or other entities. Nor the petitioners have placed any material to show as to how they were adversely affected by the delay in uploading of tender documents for Hanumangarh and Ganganagar districts--general statement of facts withstanding. The petitioners have admittedly not even bid for any work under the NITs in issue, tender documents in respect of which were uploaded 20-27 days before the last date for submission of bids, such as at Sr. Nos. 82, 83 and 84 for work in Baran District, where time gap was 25 and 24 days respectively.

8. The question of delay in uploading of tender application for Hanumangarh and Ganganagar districts could have been addressed by this Court only in the event the petitioners had set up a case of their having been interested in making of the bids in respect of works in Hanumangarh and Sriganganagar districts. No averment in this regard have been made in the writ petition. On the contrary pleadings of the petitioners on this score are absolute vague and omnibus. The petitioners seek cancellation of the entire bid process in respect of over 500 works under the three NITs Nos. 1/2012-13, 3/2012-13 and 6/2012-13. Every error or deviation from any Rule by the State without injury to a citizen, cannot at his instance supply a cause of action to lay a writ petition as Article 226 which as held by the Hon''ble Supreme Court is not a general charter for judicial review [LIC v. Escorts Ltd. (supra)]. Pleadings set up by the petitioner should have been complete and specific to make out a well grounded cause of action. The Hon''ble Supreme Court in the case of Raj Kumar Soni and Another Vs. State of U.P. and Another, , has held that it is a fundamental principle of law that a person invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India must not only come with clean hands but must make a full and complete disclosure of facts to the Court. The Hon''ble Supreme Court held that foundational facts are required to be pleaded to enable the Court to scrutinize the nature and content of the right alleged to have been violated by the authority. In the case of Bharat Singh and Others Vs. State of Haryana and Others, , the Hon''ble Supreme Court has held that when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove essential facts by evidence which must be averred in the writ petition. It has been further held that if the facts are not pleaded, the Court would not entertain the point raised as there is a distinction between a pleading under the CPC and pleadings under a writ petition.

9. In the case presently before this Court the petitioners have not pleaded the essential facts to make out a case of infringement of their fundamental or legal right. Even while the whole case is founded upon and inadequate time between the uploading of tender documents for works and last date for the submission of bids in respect of Hanumangarh and Sriganganagar districts, it has not been pleaded by the petitioners that they were interested bidders for works in the said districts. Further the petitioners have not disclosed in the petition, the fact that inordinate delay in uploading of tender documents was occasioned only in respect of Hanumangarh and Ganganagar districts. They have not disclosed the fact that tender documents were uploaded upto 20-27 days before the last date for submission of bids in respect of works in other districts, and yet they made no bids.

10. Aside of the aforesaid facts, the learned Additional Advocate General Mr. Kumawat has submitted that from the facts it is evident that there was no link between the time available for submission of bids and the uploading of tender documents on the PWD website. He submits that reasonable responses were received for the majority of works notified even when the time gap between the uploading of bids and last date of submission of bids was small as in the case at Sr. No. 76 for construction of road in Alwar district, where time gap was only four days--still three bids were received. Contrarily even when there was a time gap of over 15 days no bid or only a single bid was received as in the case at Sr. No. 563 for construction work of BT Road in Sirohi District, where time gap was 24 days and only one bid was received.

11. Mr. Kumawat, learned Additional Advocate General has further submitted that the petitioners have filed the writ petition emphasizing only the inordinate delay in uploading tender documents in respect of Hanumangarh and Ganganagar districts (which they do not claim any specific interest) owing to technical glitch suppressing the important but correct facts from the Court. It is submitted that in respect of a very large number of works for construction/maintenance of roads covered under NITs Nos. 1/2012-13, 3/2012-13 and 6/2012-13 there was adequate time between the uploading of tender documents on the department's website and the last date for submission of bids, which was compliant with the FA Rules for obtaining competitive bids. This is sought to emphasised by the learned Addl. Advocate General from the fact that in respect of the three NITs Nos. 1/2012-13, 3/2012-13 and 6/2012-13 covering about 625 works through out the State of Rajasthan, most had time gaps ranging from 7-27 days between the uploading of tender documents and last date for submission of bids. In this regard, the chart relied upon by the learned AAG during the course of arguments is taken on record.

12. In my considered view, the vagueness of pleadings by petitioners in challenging the entire bid process for over 500 works under the three NITs Nos. 1/2012-13, 3/2012-13 and 6/2012-13 without any specific facts indicating contravention of their legal and/or fundamental rights disentitles them to claim

any relief in this writ petition. Further as Mr. Kumawat has submitted, fresh NITs would be issued for public works in various districts where no bids were received or bids received were not accepted. I thus, find that no prejudice would be caused to petitioners by this Court not interfering in this writ petition. Further, from the reply to writ petition it has come on record that the case set up by the petitioners was founded on distorted facts emphasizing only the delay in uploading of tender documents in respect of Hanumangarh and Ganganagar districts owing to technical glitch suppressing the fact that in respect of substantially large number of works covered by the three NITs in issue there was adequate time gap between the uploading of tender documents and the last date for submission of bids. The petitioners did not submit bids for any of the large number of works for which there was evidently sufficient time. A large number of contractors have filed their tender application in respect of the works covered under the three NIT Nos. 1/2012-13, 3/2012-13 and 6/2012-13. This the distortion of facts in writ petition seeking to invoke the equitable extraordinary jurisdiction of this Court would even otherwise have been sufficient to non-suit the petitioners. Aside of the aforesaid suppression of facts by the petitioners, the petitioners have not, as indicated above, pleaded necessary facts to make out an infringement of their fundamental or legal rights due to the delay in uploading of tender applications in respect of Hanumangarh and Ganganagar districts. Learned Additional Advocate General further submitted that with regard to Hanumangarh and Ganganagar districts and some others, where proper bids were not received, the respondent department would issue fresh NITs, wherein the petitioners, if they were interested could participate if otherwise eligible.

13. I therefore find no force in the writ petition, and the same is dismissed with costs of Rs. 20,000/- to be paid to the Rajasthan State Legal Services Authority, Jaipur within 90 days from today. A certified copy of the order be sent to the Rajasthan State Legal Services Authority, Jaipur for recovery of costs. If necessary, the Rajasthan State Legal Services Authority may file an application for recovery of costs before this Court.