(1993) 03 CAL CK 0021

In the Calcutta High Court

Case No : Matter No. 3842 of 1991 and Appeal No. 711 of 1992

Rashmi Mehata APPELLANT

Vs

Calcutta Port Trust and Others RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Contract Act, 1872 — Section 10

Citation : (1994) 1 CALLT 75

Hon'ble Judges : Anandamoy Bhattacharjee, C.J;Nisith Kumar Batabyal, J

Bench : Division Bench

Advocate : B. Chatterjee and Jishnu Saha, for the Appellant;Suhrid Raychowdhury, A.N. Shaw and Bithikar Mondal, for the Respondent

Judgement

Nisith Kumar Batabyal, J.—This appeal is directed against the order dated 18th of June, 1992 dismissing the application under Article 226 of the Constitution of India filed by the appellant in Matter No. 3842 of 1991.

The respondent, Calcutta Port Trust Authorities in January, 1991 issued Notice inviting Tenders (NIT- in short) for grant of lease of two separate plots of land situated at Boat Canal near its junction with Alipore Avenue, Calcutta. The appellant submitted tenders along with supporting papers as required for obtaining lease of plot "A" category of land measuring 700 sq. mt. within the stipulated time. The rate quoted by the appellant was the highest but the appellant received a letter dated 13th April, 1991 from the respondent No. 3 by which she was informed that her tender was not accepted and she was advised to take refund of the earnest money. According to the appellant, the rejection of the tender by the appellant was arbitrary, illegal and capricious. A lawyer''s letter was sent on behalf of the appellant to the Port Authorities to rescind the letter sent by the Port Authorities rejecting the tender submitted by the appellant. Thereafter, she filed a writ application in this Hon''ble Court for appropriate reliefs. The writ application was contested by the respondents. The learned Trial

Judge has been pleased to hold that the respondents had good reason to reject the tender of the appellant.

2. Being aggrieved by and dissatisfied with the order passed by the Learned Trial Judge the appellant has come before this Court. The appeal is also contested by the respondents.

3. It has been argued by the Learned Lawyer for the appellant that the NIT (marked Annexure "A" to the Memo of Appeal) does not lay down any condition that the applicant cannot be a private individual. His client has complied with all the terms and conditions of the lease as contained in the NIT and therefore the action of the respondent authorities in sending the letter of rejection dated 13th April, 1991 is wholly arbitrary, illegal and capricious, specially in the context that the rate quoted by her was the highest. In paragraph 4 of the written objection filed by the respondents it has been stated that the condition of the NIT along with the prescribed application form for lease required certain essential particulars which were not furnished by the appellant and as such the tender of the appellant was rejected. The Learned Lawyer for the respondents has drawn the attention of the Court to Column VII of the application form for lease (marked Annexure "B") to the writ petition which reads as follows :

"VII. If the applicant is an individual, name and address of his/her father/ husband and also the names and addresses of his/her heirs who are likely to succeed him/her. What is the amount of money invested in the business".

4. It has been submitted that the Port Commissioner invited application from individuals with commercial connection as the deal was a purely commercial one. As no particulars about the amount of money invested in the business by the appellant were furnished, therefore, the respondent authorities could not assess the financial solvency of the tenderer. From the Income Tax Clearance Certificate annexed with the writ petition, it appears that the average annual income of he tenderer during the three years preceding 1990-91 was roughly To. 30,000/- but the monthly rent payable under the proposed lease is Rs. 24,500/- and odd. So it is obvious that the current income of the tenderer was not sufficient to cover the liability to pay rent under the lease. It is true that a person''s financial solvency cannot be judged by his current income. The assets of the person concerned are also to be looked into to judge the general financial solvency of the person. However, it is obvious that the required particulars were not furnished by the tenderer in the prescribed form the application for lease. It has been argued by the Learned Lawyer for the appellant that to guard against the unsatisfactory financial status of the allottees under the lease, there were several provisions in the NIT. The Learned Lawyer has drawn our attention specially to paragraphs 6 and 7 of the NIT. It appears that those paragraphs provide for security deposit for payment of rent and taxes and additional security deposit for payment of rent and taxes equivalent to 12 months'' rent etc.

5. The Learned Lawyer for he appellant has submitted that if the respondent

authority considered that the interest of the authorities had to be protected against the uncertainties of payment of rent then they could have enforced the terms and conditions as per paragraphs 6 and 7 of the NIT instead of rejecting the tender.

6. On behalf of the respondents it has been submitted that there was prima facie interpolation of the Income Tax Clearance Certificate submitted by the Tenderer and that there was non-compliance with the terms and conditions of the Tender as the wanted essential information was not furnished as per prescribed form. So far as the point regarding interpolation of the Income Tax Clearance Certificate is concerned, it appears that certain portion of the front page of the Income Tax Clearance Certificate has been XXXed out without any authorisation and the name of the individual has written as "Rashni Mehata" which has been changed to "Rashmi Mehata" of P-545, Lake Road Extension Calcutta-700 029. The letter ''n'' in the word "Rashni" has been over-typed as ''m'' but no one has initialed the changes. At middle portion of the second page of the Income Tax Clearance Certificate, the form is signed by the "R. Mehata" and the address has been given as 5B, Ezra Mansion, 10, Government Place (East), Calcutta. It is not understood how this address does not find place at the front page top right-hand corner where the address of the person is required to be given. It is really unfortunate that this matter have not been satisfactorily explained by the Learned Lawyer for the appellant.

7. However, we do not want to attach undue importance to such mistake in the spelling of the name. But the question is whether the terms and conditions of the Tender and the application form of the lease taken as a whole were properly complied with and whether the act of the respondent authorities in rejecting the Tender application quoting the highest rent was tinged with arbitrariness and caprice.

8. It has been submitted that the NIT did not contain any condition as referred to in paragraph 7 of the application form for lease and as such the appellant was an eligible tenderer under this notice.

It has been argued by the Learned Lawyer for the O.P. that in view of the decision in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , there is no substance in the contention of the Learned Lawyer for the appellant. It was laid down in that case is that it is a well settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the court should not be prompt to ascribe superfluity to the language of a document "and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use. To reject words as insensible should be the last resort of the judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning (Vide paragraph 7 of the reported judgment).

9. The Learned Lawyer for the appellant has submitted in this connection that unless the factual foundation for the proposition that one of the requirements for the tenderer was that the tenderer should not only be an individual but also an individual with business and solvency, there is no scope for application of the principle laid down in the case cited above.

10. Section 10 of the Indian Contract Act provides what agreement are contracts. In the NIT, it was specifically mentioned under paragraph 5 that "the lease will be granted on terms and conditions as embodied in the Trustees" standard lease form and on any other conditions as may be imposed by the Trustees'' before granting the lease. The standard lease form as also the plan showing the plots of land are available in the office of the undersigned for inspection during office hours".

11. It is thus clear that the persons interested in submitting the tenders were invited to take note of the terms and conditions of the standard lease form along with the particulars and terms as stated in the NIT. The offer embraces both the particulars of the NIT and the terms and conditions as embodied in the standard lease form. It is obvious that the respondents authorities insisted upon, in case of individuals, business connection and the solvency of the tenderer, as paragraph 7 of the standard form of lease required the amount of investment in the business. In this context, it can be said, by applying the principles laid down in the cases referred to above, that the terms of the tender included the terms of the NIT as also of the terms and conditions of the standard lease form. There was nothing wrong or arbitrary or irrational in the respondent authorities'' insistence on individual tenderers with business and of financial solvency in the matter of selection of lessee. On the facts disclosed by the appellant in the papers submitted by her, it was not possible to assess the financial solvency of the tenderer as her monthly income was about Rs. 2500/- only when the rent per month quoted by her as payable was to the tune of Rs. 24,500/- and odd.

12. In the circumstances, it cannot be stated that the order of the respondent authorities in rejecting the tender of the appellant suffer from any illegality or vice. In the result, the appeal fails. The order passed in Matter No. 3842 of 1991 dated 18th of June, 1992 is accordingly affirmed. In the circumstances of the case, no order is made as to costs.

A.M. Bhattacharjee, C.J.

13. I agree.