

(2013) 07 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 654 of 2013

RSRTC

APPELLANT

Vs

M/s. Rosmerta Autotech Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Citation : (2013) 4 WLN 288

Hon'ble Judges : Narendra Kumar Jain, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : R.N. Mathur and Mr. Vinayak Joshi, for the Appellant; Abhijeet Sharma, for the respondent No. 1, for the Respondent

Final Decision : Partly Allowed

Judgement

1. The learned counsel for the contesting respondent (writ-petitioner) having appeared, while dispensing with service on the proforma respondent, i.e., respondent No. 2, at the request and with the consent of the learned counsel for parties, we have heard the matter finally at this stage. This being an intra-court appeal essentially against an interim order passed in a pending writ petition and for the order proposed to be passed, dilatation on all the factual aspects does not appear necessary. Only a brief reference to the background aspects would suffice.

2. The writ-petitioner (respondent No. 1 herein) had been one of the bidders in E-tendering process initiated by the appellant Rajasthan State Road Transport Corporation ("the Corporation") for supply of Electronic Speed Limiters. It appears that after the bids were submitted and the bid price of the writ-petitioner was disclosed, fresh notice inviting tenders was issued by the appellant-Corporation while cancelling the earlier process. The writ-petitioner, feeling aggrieved of the procedure so adopted in the matter of awarding of a contract, preferred the writ petition (CWP No. 10150/2013), which remains pending for consideration of a learned Single Judge of this Court.

3. The said writ petition was entertained by a learned Single Judge of this Court

on 26.06.2013 and, while issuing notices to the respondents returnable by 02.07.2013, status quo was ordered to be maintained.

4. It appears that on 05.07.2013, the matter was heard on admission and on the prayer for interim relief by the learned Single Judge after appearance of the parties; and, after taking note of the rival submissions, the learned Single Judge formed a prima facie opinion that cancellation of the earlier bid was rather on specious grounds and the process as adopted by the appellant-Corporation was a questionable one. The learned Single Judge, therefore, considered it just and proper to confirm the interim order dated 26.06.2013 and ordered accordingly. The learned Single Judge also appears to have taken note of the urgency of the matter and hence, posted the main petition for hearing on 18.07.2013.

5. However, even while posting the matter for hearing, the learned Single Judge observed that a case was made out for preliminary inquiry by the Anti Corruption Bureau into the manner in which the earlier bid process was cancelled after opening of the price bid and the bids afresh were called in respect of the same product without any change of specification rather enabling one of the bidder to compete, who had otherwise been relegated to the second spot. The learned Single Judge, with these observations, directed that a copy of the order be sent to the Anti Corruption Bureau, Jaipur for necessary action. The relevant part of the observations and directions of the learned Single Judge read as under:-

Having heard learned counsel, in my considered opinion the reason for the cancellation of the earlier bid was specious. RSRTC had competitive bids inter-alia for cable based governors where the petitioner company was the lowest. If the RSRTC was desirous of purchasing cable based governors only, it was free to purchase them from the petitioner company, it being the lowest. Further even a lower price than the bid price could have been negotiated with the petitioner company as L-1 if so desired by the RSRTC. There was no good ground to call afresh for bids for the same product with the same specifications within a couple of months giving the second lowest bidder in the earlier tender M/s. GRL an opportunity to quote a lower price (price of the petitioner company having been disclosed) and come back into reckoning for supply of cable based governors to RSRTC. I am thus of the considered view that the interim order dated 26.6.2013 deserves to be confirmed and is hereby confirmed.

I am also of the considered view that the facts of the case make out reasons enough for the Anti Corruption Bureau holding a preliminary inquiry into the manner in which the earlier bid process for supply of cable based governors was cancelled after the opening of price bids and bids afresh soon thereafter called for in respect of the same product without any change of specification enabling M/S. GRL to re-compete in the tendering process for supply of cable based governors after having been earlier relegated to second spot by the petitioner company quoting a more competitive price in the first instant.

A copy of this order be sent to the Anti Corruption Bureau, Jaipur through the

office of the Dy. Registrar (Judicial) for necessary action.

List the main petition for hearing on 18.7.2013.

6. The learned Senior Counsel appearing for the appellant has made two-fold submissions against the order impugned: one, that there has not been any justification for putting the entire tender process at halt, particularly when the process involves all the elements of public interest and where installation of governors is otherwise necessary pursuant to the directions of the Hon"ble Apex Court; and second, that in any case, there was no reason that at the given stage, the learned Single Judge ordered for a so-called inquiry from the Anti Corruption Bureau without having considered the matter finally on merits.

7. The learned counsel for the respondent No. 1, i.e., the writ-petitioner has duly supported the order impugned and submitted that for the process suffering from want of reasonableness and fairness, the petitioner has been constrained to approach the writ Court; that the writ petition being based on strong grounds, has been duly admitted by the learned Single Judge after hearing the parties; and that in the given set of facts and circumstances, the interim order has rightly been confirmed to last until the decision of the writ petition. The learned counsel for the writ-petitioner though candidly submitted that no such prayer for inquiry by the Anti Corruption Bureau was made by the writ-petitioner but suggested that the order being only of a preliminary inquiry, the same cannot be said to be prejudicial to the appellant.

8. After having given thoughtful consideration to the rival submissions and having examined the record, we are clearly of the view that even when the part of the order impugned, confirming the interim order, does not call for interference, the other part, as regards inquiry by the Anti Corruption Bureau, deserves to be put in abeyance until final disposal of the matter by the learned Single Judge.

9. So far the grant of interim relief is concerned, the matter is essentially of the discretion of the learned Single Judge hearing the writ petition. In the totality of the facts and circumstances of the case and looking to the grounds as urged and issues as arising in the writ petition, passing of the interim order for maintaining status quo cannot be said to be unjustified or suffering from any such infirmity as to call for interference in intra-court appeal. Hence, this part of the order impugned, confirming the interim order for maintaining status quo, is not interfered with.

10. So far the urgency of the matter is concerned, it is but apparent from the impugned order itself that the learned Single Judge has taken the same into consideration and hence, posted the matter for out of turn hearing on 18.07.2013.

11. We would hasten to observe that so far the submissions on the merits of the case are concerned, the observations, whether occurring in the order impugned

dated 05.07.2013 or in this order, the same could only be construed to be tentative in nature and meant only for the purpose of reasons for grant of interim relief and not beyond. Every other aspects of the matter on merits is, obviously, open for consideration by the learned Single Judge in the pending writ petition, which has already been posted for early hearing.

12. So far the observations and directions of the learned Single Judge for holding of a preliminary inquiry by the Anti Corruption Bureau are concerned, with respect, we are unable to endorse the same, as made at the given stage of the proceedings, particularly when the writ petition is yet to be finally heard and final findings are yet to be reached by the learned Single Judge. In this regard too, we would hasten to observe that after having heard the parties and while finally disposing the matter with specific findings, the learned Single Judge has the plenary jurisdiction to pass any appropriate order as considered fit, necessary and expedient. However, at the interim stage, and where the matter is yet to be heard finally, in our view, permitting any other process of inquiry and that too, by the Anti Corruption Bureau, could only said to be a direction given rather premature.

13. In our view, looking to the nature and purport of the order impugned where the interim order was being confirmed and the matter was being posted for hearing, even if the prima facie view of the Court was indicated in the order impugned, a positive direction, for inquiry by Anti Corruption Bureau, could not have been issued at the given stage. Such an inquiry, whether preliminary or final or intermediate, does not appear necessary or expedient unless there are strong reasons therefor after the matter has been finally adjudicated upon.

14. In view of what has been observed hereinabove, it appears just and proper that the questioned part of order impugned i.e., the directions for holding of preliminary inquiry by the Anti Corruption Bureau be kept in abeyance until final disposal of the writ petition by the learned Single Judge. Ordered accordingly.

15. It goes without saying that at the time of final disposal of the writ petition, any such order as deemed fit, necessary and expedient can always be passed by the learned Single Judge irrespective of this order.

16. So far the hearing of the writ petition is concerned, as noticed, the learned Single Judge has already posted the matter for hearing on 18.07.2013. No further observations in regard to the hearing of the matter appear requisite. However, it is open for the parties concerned to make appropriate request before the learned Single Judge for taking up of the matter for hearing and for early disposal.

17. Subject to the observations foregoing, this intra-court appeal is partly allowed to the extent and in the manner indicated. No costs.