
(2001) 02 AHC CK 0054
In the Allahabad High Court
Case No : Writ Petition No. 407 (MB) of 2001

R.T. Industries

APPELLANT

Vs

U.P. Cooperative Federation Ltd. and another

RESPONDENT

Date of Decision : 23-02-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2001) 2 AWC 1145 : (2001) AWC 1145

Hon'ble Judges : S.K. Sen, C.J.;J. Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jagdish Bhalla, J.—By means of this writ petition, the petitioners has prayed for a writ, order or direction to command the respondents to communicate to the petitioner the acceptance letter of his bid relating to negotiations which took place on 8th December, 2000 to purchase the wheat within the stipulated period. He has further prayed to quash the negotiation proceedings dated 24th January, 2001.

2. The facts of the case, in brief. are that the U. P. Cooperative Federation Limited (hereinafter referred to as P.C.F.) invited tenders for sale of wheat lying in the godowns of the P.C.F. including its godowns at Sahajahanpur wherefrom 6958 metric tonnes of wheat was to be sold by the P.C.F. Besides other firms, the petitioner and respondent No. 3 also submitted their tenders. On 8th December, 2000 tenders were opened. The petitioner-firm had quoted Rs. 500 per quintal for purchase of 2,880 quintals of wheat while the respondent No. 3 offered Rs. 565.52 paisa per quintal for purchase of 4.000 quintals of wheat. Since none of the tenderers had offered to purchase the entire stock of 6,958 metric tonnes of wheat, it was decided to negotiate with the tenderers. During negotiations, the petitioner-firm which had tendered to purchase only 2,880 metric tonnes of wheat offered to take the entire stock of 6,958 metric tonnes of wheat at the rate of Rs. 565.61 paisa per quintal while the respondent No. 3 maintained its

earlier offer, i.e., Rs. 565.52 paisa per quintal but agreed to purchase the entire stock of 6958 metric tonnes of wheat. Thus, the offer of the petitioner was higher than that of respondent No. 3 by 9 paisa per quintal. The Committee of the officers constituted for the purpose forwarded the tenders to the Head Quarter with its recommendation that tenders of either of the two, i.e., either the petitioner or respondent No. 3 be considered. The Committee constituted at the Head Quarter for finalisation of the tenders in its meeting held on 14th December, 2000 accepted the offer of the petitioner and directed it to furnish a Bank Draft of Rs. 12,50,000 (rupees twelve lacs fifty thousands).

3. In the meantime, the respondent No. 3 moved some applications complaining that it was not associated with the negotiations allegedly held on 8th December, 2000 and it was not given opportunity to raise its tender. On receiving the complaints, the Agricultural Production Commissioner, U. P., called for a report from the P.C.F. Thereafter the matter was placed before the State Government and the Principal Secretary, Cooperative suggested that the parties concerned be again negotiated. Accordingly, negotiations again took place wherein the offer of respondent No. 3 at the rate of Rs. 566.10 paisa per quintal was found highest. Ultimately, the offer of respondent No. 3 was accepted and the respondent No. 3 was given the contract to purchase the entire stock of 6.958 metric tonnes of wheat at Shhajahanpur at the rate of Rs. 566.10 paisa per quintal. Aggrieved against the said acceptance of the offer of respondent No. 3, the petitioners have come up before this Court by filing the present writ petition.

4. Heard learned counsel for the petitioner Sri P. K. Khare, learned counsel for the P.C.F. Dr. R. K. Srivastava and learned counsel for respondent No. 3 Sri D. C. Mukherjee. We also perused the original record produced by Dr. R. K. Srivastava.

5. Sri P. K. Khare, learned counsel for the petitioners has submitted that the process adopted by the respondent Nos. 1 and 2 is wholly arbitrary, illegal and without any authority of law. According to him, for accepting the offer of respondent No. 3 a bad practice has been adopted and the practice was abused at the pleasure of the authorities in order to give contract to respondent No. 3. He has further submitted that once the tenders were finalised after negotiations and the petitioner's tender/offer as well as the security deposited by the petitioner were accepted, the respondent Nos. 1 and 2 had no authority to reopen the chapter and to re-negotiate the matter. Therefore, the process adopted by the respondent Nos. 1 and 2 is wholly unconstitutional and the error committed by them is apparent on the face of the record and is liable to be quashed and the petitioner is entitled to purchase the entire stock of 6.958 metric tonnes of wheat in accordance with his tender/offer at the rate of Rs. 565.61 paisa per quintal. In support he has placed reliance on the following cases :

(1) *Tata Cellular v. Union of India* (1994) 6 SCC 651, wherein the Apex Court has held as under :

"It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are Inherent limitations in exercise of that power of judicial review Government is the guardian of the finances of the State. It is expected to protect the financial Interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept In view while accepting or refusing a tender. There can be no question of infringement of quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

Judicial review is concerned with reviewing not the merits of the decision In support of which the application for Judicial review is made, but the decision making process itself.

The duty of the Court Is to confine itself to the question of legality. Its concern should be :

- (1) Whether a decision making authority exceeded its powers?.
- (2) Committed an error of law,
- (3) Committed a breach of the rules of natural justice,
- (4) Reached a decision which no reasonable tribunal would have reached or,
- (5) Abused its powers.

Therefore, it Is not the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case.

(2) M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, .

In this case, the Apex Court has held that while public interest is paramount there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. The Government is free to enter into any contract with citizens but the Court may Interfere where it acts arbitrarily or contrary to public interest. The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate. It is open to the Government to reject even the highest bid at a lender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons. Broadly stated, the Courts would not interfere with the mailer of administrative action or changes made therein, unless the Government"s action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.

(3) Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, , wherein the Hon"ble Supreme Court held as under :

"Even though the highest tenderer can claim no right to have his tender accepted, there being a power while inviting tenders to reject all the tenders. yet the power to reject all the tenders cannot be exercised arbitrarily and must depend for its validity on the existence of cogent reasons for such action."

6. On the basis of the above case law, it has been submitted by the learned counsel for the petitioner that since the process has been abused and the action of respondent Nos. 1 and 2 is arbitrary. discriminatory and contrary to public interest and the provisions of Article 14 of the Constitution and. therefore, such actions of the respondents 1 and 2 are liable to be quashed and the petitioner is entitled to get the contract.

7. Dr. R. K. Srivastava, appearing on behalf of respondents 1 and 2 has argued that the P.C.F. floated tenders for sale of 6.958 metric tonnes of wheat at Shahjahanpur. Initially the tender of respondent No. 3, i.e.. M/s. Amit Industries was the highest among all the tenders received and opened, i.e., at the rate of Rs. 565.52 paisa per quintal. Since none of the tenderers had offered to take the entire stock of wheat, it was decided to negotiate with the tenderers so that they should specify their prices for taking the entire quantity of 6.958 metric tonnes of wheat. During negotiations, the respondent No. 3 offered to take entire stock of 6.958 metric tonnes of wheat at the price of Rs. 565.52 paisa per quintal. However, the petitioner- firm offered to take the entire stock of wheat at a price of Rs. 565.61 paisa per quintal which was higher by 9 paisa than the price offered by respondent No. 3. The tender committee which was seized of the matter forwarded Its recommendations to the P.C.F. 10 the effect that either of the two tenderers, namely, M/s. Amit Industries Ltd. (respondent No. 3) or M/s. R. T. Industries Ltd. (petitioner) be considered for award of the tender. He has further submitted that M/s. R. T. Industries Ltd, (petitioner) was not in a position to lift the entire stock on its own. It, however, offered to take the entire stock of wheat in collaboration with M/s. Pawan Trading Company, M/s. Sri Ram Floor Mills and M/s. M. C. Floor Mills and it was given in writing by them that the earnest money deposited by them along with their respective tenders be taken into consideration as earnest money for purchase of wheat by R. T. Industries Ltd. (petitioner). On 12th December. 2000, the respondent No. 3 moved an application complaining that it was not associated with the negotiations held on 8th December, 2000 and that the tender of the respondent No. 3 being highest, the contract should be given to it. This application was considered by the Committee of the P.C.F. at the Head Quarter and was rejected on 14th December. 2000, i.e., on the same day on which the offer of the petitioner was accepted by the said Committee.

8. On 13th December, 2000, the respondent No. 3 again moved an application to the effect that negotiations with the petitioner-firm were conducted in a clandestine manner and in case any negotiations were conducted, the

respondent No. 3 ought to have been invited for negotiations. Respondent No. 3 moved another application on 14th December, 2000, stating that they were ready to raise the price in their tender and were also willing to purchase the entire stock of wheat at the rate of Rs. 566.02 paisa per quintal. On 15th December, 2000 another application was moved by the respondent No. 3 to the P.C.F. stating that it was not aware of the negotiations that might have been held for increase over the price offered by it. Through this application, the respondent No. 3 offered Rs. 566.02 paisa per quintal as purchase price for the entire stock of wheat. The applications of respondent No. 3 dated 14th and 15th December, 2000, were not considered by the Committee at the Head Quarter as the same were received after the decision had already been taken in this regard on 14th December, 2000, as mentioned above.

9. Thereafter, the respondent No. 3, on 19th December, 2000, moved an application to the Agricultural Production Commissioner, Government of Uttar Pradesh, Lucknow, reiterating the same facts as were mentioned in its earlier applications given to P.C.F. The Agricultural Production Commissioner called for a report from the P.C.F. The P.C.F. in its report stated that till 13.12.2000, the respondent No. 3 had not offered for any increase in the wheat price and it was only in the application dated 14th December, 2000, that the respondent No. 3 offered increase in the wheat price by 50 paisa per quintal. It was further submitted in the report that since all the negotiations took place at Bareilly, it was not lawful to consider the increase in the price by any party at Lucknow, On the basis of the said report, the Principal Secretary, Dugdh Vikas Vibhag, who was also looking after the work of the department of Cooperatives in absence of its Principal Secretary, was of the view that acceptance of offer of highest tender would be justified and in accordance to the Rules. Thereafter the matter was put up before the Managing Director of the P.C.F. who endorsed the recommendation that the tender of the petitioner being the highest, i.e., at the rate of Rs. 565.61 palsa per quintal, be accepted. Thereafter, the matter was forwarded to the State Government. The Principal Secretary In his order dated 12.1.2001 expressed his opinion that had the negotiations been carried out properly, there would have been further increase in the prices offered by the parties and suggested that it was stilt open to the P.C.F. to enter into proper negotiations with the parties concerned.

10. In pursuance to the aforesaid suggestion of the Principal Secretary, Cooperative, the P.C.F. decided to Invite the petitioner as well as respondent No. 3 to enter into negotiations to be held on 24.1.2001 at the P.C.F. Headquarter. Lucknow. On 24th January, 2001, the representatives of both the parties, i.e., the petitioner as well as respondent No. 3 appeared for negotiations. During negotiations, a letter was submitted on behalf of the petitioner to the members of the negotiation committee to the effect that the petitioner be allowed to lift the wheat in accordance with its tender which has already been accepted otherwise they would be compelled to go to the Court of law at the cost of P.C.F. The representatives of the petitioner did not sign the attendance sheet. On the

other hand, the representatives of respondent No. 3 submitted a letter enhancing the rate of wheat from 565.52 paisa to Rs. 566.10 paisa along with a Bank Draft of Rs. 7.5 lacs towards the remaining amount of the tender price. The negotiation committee recommended to accept the offer of respondent No. 3. Accordingly, the offer of respondent No. 3 was accepted and respondent No. 3 has been given the contract and it has also started lifting the wheat from Shahjahanpur godowns.

11. It has been argued by Dr. R. K. Srivastava that in view of the above facts. It is clear that the State Government has acted fairly in the matter and there has neither been any abuse of process, arbitrariness, discrimination or violation of the provisions of Article 14 of the Constitution. In support of his argument, he has placed reliance on the case of *Ram and Shyam Company Vs. State of Haryana and Others*, wherein the, Apex Court in para 12 held as under :

"On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz., the welfare State may be able to expand its beneficent activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognized public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy."

12. He has further placed reliance on the case of *Life Insurance Corporation of India v. Escorts Ltd. and others*. (1986) SCC 264, wherein it has been held that when State or its instrumentality is engaged in ordinary commercial transactions like a private person and not in the capacity of State, private law would be applicable and its action would not be questionable on grounds of arbitrariness and unreasonableness violative of Article 14 of the Constitution.

13. He has further argued that renegotiations were made in order to get maximum benefits which was in the interest of the P.C.F. and as such, the impugned action of the respondent Nos. 1 and 2 cannot be said to be improper or illegal. In support, he has placed reliance on the case of *Committee of Management of Pachaiyappa's Trust Vs. Official Trustee of Madras and Another*, wherein it has been held by the Apex Court that the primary duty of the Court is to safeguard the interest of the trust.

14. Sri D. C. Mukherjee, appearing on behalf of respondent No. 3, has argued that against the offer of Rs. 500,00 per quintal for purchase of wheat made by the petitioner, an offer of Rs. 565.52 paisa per quintal was made by the respondent No. 3 which on opening of the tenders was found to be the highest offer amongst all the tenders. He has further submitted that the petitioner-firm

had offered for purchase of only 2.880 quintals of wheat out of 6,958 metric tonnes of wheat while the respondent No. 3 had offered 4,000 quintals of wheat. Therefore, in every respect, the offer made on behalf of the petitioner-firm was lower than the offer made on behalf of respondent No. 3.

15. He has further submitted that there was a secret deal between the petitioner and the officials of respondent No. 1 behind the back of respondent No. 3 for awarding contract to the petitioner. He has further submitted that actually there were no negotiations after opening of the tenders on 8th December, 2000 and it was only when the representatives of respondent No. 3 left the office of the respondent No. 2, after having been given assurance by the tender committee regarding acceptance of its tender being the highest, that some foul play took place in between the petitioner and the officials of respondent No. 1 who in order to extend undue benefit to the petitioner manipulated the theory of such fake negotiations to make the offer of the petitioner higher by 9 paise only than the offer made by the respondent No. 3 in its tender. The representatives of the respondent No. 3 were never informed of any negotiations being made in the matter on 8th December, 2000. He has further submitted that the petitioner, after opening of the tenders, had known about the price quoted by the respondent No. 3 but the respondent No. 3 could not know about the subsequent offer made by the petitioner as the alleged proceedings of negotiations were made secretly with the connivance of the officials of respondent No. 1 to give undue benefit to the petitioner.

16. He has further submitted that Annexure-2 to the writ petition filed by the petitioner itself shows that the petitioner-firm had not deposited the full security amount to the tune of Rs. 19.40 lacs. Actually, the petitioner had deposited only three drafts, i.e., Draft No. 731597 for Rs. 20,000. Draft No. 731598 for Rs. 3,50,000 and Draft No. 681907 for Rs. 3.50.000. Thus, the petitioner had deposited Rs. 7,20,000 only while he had to deposit Rs. 19,40,000. Besides the aforesaid three drafts, no other draft was submitted on behalf of the petitioner. He has further submitted that the five drafts submitted on behalf of M/s. M. C. Floor Mill. M/s. Sri Ram Roller Floor Mills and Pavan Trading Company along with their tenders cannot be counted towards the margin money deposited by the petitioner. Thus, the petitioner-firm has never been eligible and qualified to make any offer and as such the petitioner-firm has no locus standi to file and maintain this writ petition.

17. We have given our earnest consideration to the facts and circumstances of the case as well as the arguments made on behalf of the respective parties. We are of the considered opinion that respondent No. 3 who had offered the highest amount of money in its tender for purchase of wheat could not come to know about the subsequent offer made by the petitioner raising its amount by 9 paise higher than the offer of respondent No. 3, during the negotiations although the petitioner was aware about the rate quoted by the respondent No. 3 in its tender. The said proposition violates the principles of natural justice. The respondent No.

3 had right to know about the increase in the offer made by the petitioner during negotiations to enable it to make its offer over and above the offer of the petitioner, if it so desired. When the respondent No. 3 came to know about the hike of 9 paisa by the petitioner above the rate quoted by the respondent No. 3 by which the profit to the Government would have been about Rs. 5,000 to Rs. 6,000, the respondent No. 3 further hiked its rate from Rs. 565.52 paisa to Rs. 566.02 paisa, therefore, the contract was rightly given to respondent No. 3. The said decision was taken after examining the entire matter by the authorities concerned and it cannot be said that there was any arbitrariness on the part of the authorities while awarding contract to respondent No. 3. In the light of the above discussions, we are of the opinion that the negotiations with respondent No. 3 cannot be termed as re-negotiations.

18. We have also analytically examined the order contained in Annexure-1 to the rejoinder-affidavit filed on behalf of respondent No. 1 wherein the petitioner was called upon to deposit Rs. 12.5 lacs of rupees by way of bank draft within 7 days independently on its own and not with support of any other working partner along with a condition that if the petitioner fails to deposit the said amount, the offer will cease. Since the petitioner failed to deposit the said amount, the petitioner has no right to maintain this petition and. therefore, this petition is liable to be dismissed on this score alone. We have also carefully examined the original record placed before us by Dr. R. K. Srivastava and we find that the matter was examined at the highest level by the Agricultural Production Commissioner and Principal Secretary. Cooperative and thereafter the contract was awarded to respondent No. 3.

19. We further find that since the contract has already been offered to respondent No. 3 who has also started functioning as well and this fact is In the knowledge of the petitioner but the petitioner, for the reasons best known to it, failed to amend the writ petition and maintained this writ petition with a prayer that appropriate direction be Issued to the respondent Nos. 1 and 2 to communicate to the petitioner the acceptance letter relating to negotiations which took place on 8th December, 2000, to sell the wheat. Once the contract was given to respondent No. 3 and this fact came to the knowledge of the petitioner, it was open for the petitioner to amend the writ petition and to challenge the contract, awarded with a prayer to quash the award of contract.

20. No doubt, judicial review is also, possible in contractual matters relating to Government bodies in order to prevent the arbitrariness or favouritism. However, the scope of such Judicial review has been explained in *Tata Cellular v. Union of India* (supra). *Monarch Infrastructure (P.) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation and others* (supra) and *Food Corporation of India v. Kamdhenu Cattle feed Industries* (supra) and in the light of the above while examining the case in hand, we are of the considered opinion that the decision-making authority has not exceeded its power. Further, the authority concerned has neither committed any error of law nor breach of principles of natural Justice

and has also not taken a decision which no reasonable tribunal would have reached, nor has the authority concerned abused its powers. The fact is that while awarding the contract, the law was adhered to and the error which was being committed under law was also ratified.

21. In the light of the above the writ petition falls and is dismissed. No order as to costs.