(1998) 04 GAU CK 0003

In the Gauhati High Court

Case No : Civil Rule Nos. 1873 and 1916 of 1998

Rural Development Organisation For Lower Assam, Sc, St and Weaker Section People : Jyoti Prakash Sarda — APPELLANT

Vs

Assam Fisheries Development Corporation Ltd. — RESPONDENT

Date of Decision : 28-04-1998

Acts Referred:
Constitution of India, 1950 — Article 226, 226

Citation : (1998) 2 GLJ 221

Hon'ble Judges : D.N.Chowdhury, J

Bench : Single Bench

Advocate : A.K.Sharma , A.K.Choudhary, A.K.Bhattacharyya, A.Hazarika , C.K.Das, D.Choudhary, A.Sharma, U.Barua, Advocates appearing for Parties

Judgement

1. One and the same issues are raised in these two petitions, therefore, both these petitions shall be dealt with by a common judgment and order.

2. The sole controversy raised in these two petitions is relating to acceptance of quotation of respondent No.4 in both the civil rules, viz., Shri Khokan Saha. Quotations were invited from the intending purchasers to purchase 20.287 MT (approx) Rice and 20.988 MT (approx) Pulses, which were damaged due to insect infestation and not fit for human consumption and stored in Assam State Warehousing (ASWC) Warehouse at Guwahati and Bongaigaon. As per the notice inviting tender, quotations were to be received by the Managing Director of the respondent No. 1, Assam Fisheries Development Corporation Ltd, upto 2 PM of 20.3.98 and were to be opened on the same date in presence of the quotationers or their authorised representatives. The Notice contained the following conditions: ''The quotation must be accompanied by an IPOof Rs. 10/ (Rupees ten) only payable to the Assam Fisheries Development Corporation Ltd.

An earnest money of Rs.5,000/ (Rupees five thousand) only in the form of Bank Call Deposit drawn in favour of the Assam Fisheries Development Corporation Ltd is to be submitted along with the quotation, without which no quotation will be considered complete.

The quotationer should quote their rate per quintal firmly both in figure and words.

The earnest money of the unsuccessful quotationers will be released after finalisation of the quotations and that of the successful quotationer will be released after satisfactory completion of lifting of the commodities from the ASWC Warehouse.

The quotationer may inspect the commodities at his own cost in the Warehouse with the prior permission of the undersigned before submission of quotation.

The successful quotationer will have to deposit the value of the commodities in full by Bank draft drawn in favour of the Assam Fisheries Development Corporation Ltd payable at Guwahati to the undersigned before lifting the commodities within 7 (seven) days from receiving the order.

If the successful quotationer fail to deposit the value of the commodities within 7 days after receiving the order, his/her order will be treated as cancelled and the earnest money is liable to be forfeited and no further communication will be made in this regard.

The successful buyers will have to give an undertaking before lifting the commodities to indemnify the Assam Fisheries Development Corporation Ltd and the World Food Programme against any claims whatsoever arising from the use of the commodities, ''

The successful buyers will have to lift the commodities from the respective ASWC Warehouses at his/her own cost and risk within 7(seven) days from receiving the order of lifting.

The successful buyers will have to give an undertaking that the commodities will not be released, utilised and resold for human consumption."

3. As per the comparative statement, eight quotations were received for consideration. From the comparative statement, it appears that the petitioner in Civil Rule No.1873 Of 1998, Shri Sunil Choudhury, the Secretary of the Rural Development Organisation for Lower Assam SC, ST and Weaker Section People, offered the highest rate of quotation whose expected total value of the offer was Rs. l ,53,608.55 (Rupees one lakh fifty three thousand six hundred eight and paise fifty five) only. Shri Jyoti Prakash Sarda, the petitioner in Civil Rule No. 1916 of 1998, offered to the extent of Rs.1,49,705.85 (Rupees one lakh fourty nine thousand seven hundred five and paise eighty five) only; and the total value of the offer made by respondent No.4, Khokan Sana, was Rs. 1,47,552.18 (Rupees one lakh forty seven thousand five hundred fifty five and paise eighteen) only. According to the petitioners, since the petitioners offered higher rates than that offered by respondent No.4, the highest offer ought to have been accepted instead of the impugned decision of the respondents to allot the contract in

favour of respondent No.4, which is arbitrary, discriminatory and violative of Article 14 of the Constitution of India,1950.

4. Mr. AK Bhattacharyya, learned counsel assisted by Mr. D. Choudhury and Mrs AK Choudhury, appearing on behalf of the petitioner in Civil Rule 1916 of 1998, and Ms U. Baruah assisted by Mr. A. Sarma, Mr. CK Das and Mr. AK Sharma, learned counsel appearing on behalf of the petitioner in Civil Rule 1873 of 1998, questioned the legitimacy of the decision making process as being arbitrary and discriminatory. In support of their contentions, the learned counsel cited the following decisions of the Supreme Court ; (1) GJ Fernandez vs. State of Karnataka (1990) 2 SCC 488; (2) Poddar Steel Corporation vs. Ganesh Engineering Works & others, (1991) 3 SCC 273; (3) Tata Cellular vs. Union of India, (1994) 6 SCC 651;

Civil Rule No.1873 of 1998 was presented before this on 24.4.98. On that date, Mrs. A. Hazarika, learned counsel appearing on behalf of the respondent/ Corporation agreed to produce the original records before this Court to enable this Court to dispose of the matter since the matter relates to disposal of some insect infested articles. Accordingly Mrs. A. Hazarika sought for time to produce the records before this Court till 27th of April, 1998 on which date she produced the records.

5. I have perused the records produced by Mrs. A. Hazarika. From the records, it appears that the offer of the petitioner in Civil Rule 1873 of 1998 was not accepted because of its positive stand taken vide its letter dated 20th March, 1998. In that letter, the Secretary of the petitioner/Organisation amongst others. made the following note:

''That Sir, we have come to know that AFDC Ltd is going to sale the rest food of WFP. We, the NGO has decided to purchase the food commodities of WFP for distribution to the labour class people of SC, ST & Weaker section people and to utilies the food for repairing and development of the beel fisheries with cash.

So, we request you to accept the following rate (not competitively) for the benefit of the people and assistance to the NGO."

In view of the aforesaid endorsement, the authorities refused to accept the offer of the said petitioner.

6. Ms U. Baruah, learned counsel for the petitioner in Civil Rule No. l 873 of 1998, pointed out that subsequently her client clarified its position by way of an Affidavit whereby it was stated that the commodities/articles in question would not be utilized for human consumption in any circumstances. She further submitted that the offer of the petitioner ought not to have been rejected only on the basis of the aforesaid ground because only after acceptance of the tender, the petitioner was to give the undertaking about the purpose/object of use of the commodities.

7. I have verified the application, Affidavit as well as the decision of the authority

and the rejection of the tender of the petitioner on that ground cannot be said to be arbitrary.

8. In Civil Rule No.1916 of 1998, petitioner Jyoti Prasad Sarda, undoubtedly offered higher rate/price than that offered by respondent No.4, Khokan Sana, by an amount of Rs.2,153.67. In this case, the petitioner''s tender was found to be defective on the ground that instead of furnishing a Call Deposit or Call Order, the petitioner furnished a Banker''s cheque in the form of security.

9. Mr. AK Bhattacharyya, learned senior counsel appearing on behalf of the petitioner in Civil Rule 1916 of 1998, submitted that Banker''s cheque was as negotiable as liquid as a Call Deposit or Call Order was. At any rate, the respondents acted in a most mechanical manner in rejecting the offer of the petitioner on the alleged ground or furnishing a Banker''s cheque instead of a Call Deposit or Call Order. Shri Bhattacharyya, therefore, submitted that the decision making process of the authority suffered from the vice of illegality since the decision maker failed to understand correctly the facts as well as the law regard to the decision making power. The learned senior counsel therefore submitted that the respondents could not have in those circumstances rejected the tender of the petitioner.

10. I have given my anxious consideration to the matter and in fact it appears that the respondents were not justified in rejecting the tender of the petitioner on that ground.. The respondent/Corporation only followed the letter of the tender notice instead of the spirit. But despite that infirmity, I am not inclined to exercise the discretionary powers vested under Article 226 of the Constitution of India,1950 since the difference between the rates of the tenders of the two persons is negligible. The authority has already taken a decision, bonafide, keeping in mind all the relevant aspects of the matter and more so the public interest. I am, therefore, not inclined to interfere in that decision making process since no injustice as such is caused.

The writ petitions are accordingly dismissed.

