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(1994) 07 GAU CK 0008

In the Gauhati High Court

Case No : Writ Appeal No. 309 of 1994 in Civil Rule No. 2517 of 1994

S. Ali and Another — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 26-07-1994

Acts Referred:

Citation : (1995) 1 GLR 127

Hon'ble Judges : V.K. Khanna, C.J;S.N. Phukan, J

Bench : Division Bench

Advocate : P.K. Goswami, A.C. Borbora, R. Borbora and R.K. Barman, for the Appellant; R.P. Kakati, Central Govt. Standing Counsel and G.K. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

V.K. Khanna, C.J.—This appeal has been filed against the judgment of the learned single Judge dated 5.7.94 passed in Civil Rule No. 2517 of 1994.

2. At the admission stage we have heard Mr. PK Goswami, learned Counsel appearing for the Appellants, Mr. RP Kakati, learned Counsel appearing for the Union Government and Mr. GK Bhattacharyya, learned Counsel appearing for the Respondent-Petitioner.

3. After hearing the learned Counsel for the parties, the present appeal is being finally disposed of at the admission stage.

4. The facts for the purpose of adjudicating the present appeal are that the Executive Engineer. Gauhati Central Division, CPWD. Guwhati invited sealed item rate tenders from approved and eligible Contractors of Central PWD for undertaking certain works. The sealed tenders were to be submitted upto 3.00 P.M. on 21.4.94. In the notice itself it was stated that the tenders would be opened at 3.30 P.M. on 21.4.94. The Petitioner-Respondent filed Civil Rule No. 2517 of 1994 in this Court alleging that he visited the office of the Executive Engineer to submit the tender for the works for which the advertisement had

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been made. According to him as soon as he reached the building situated at Bamunimaidan, Guwahati, some unidentified youths who were waiting in front of the office did not allow the Petitioner-Respondent to enter the office and submit his documents. The obstruction according to the Petitioner-Respondent continued till 3.00 P.M. when the time for receipt of tenders was over. According to the Petitioner-Respondent he immediately went to the Chandmari Police Station and logged an FIR with the Officer-in-charge stating about the facts. A copy of the FIR has been annexed as Annexure-V to the writ petition. On the same day a letter was also written to the Executive Engineer which is contained in Annexure-VI to the writ petition and a complaint was also made to the Chief Engineer, CPWD, Shillong on 15.0.94 (Annexure-VII to the writ petition in which it has also been stated that a letter had already been written on 21.4.94 to the aforesaid authority. It has been stated in the writ petition by the Petitioner-Respondent that he had deposited the security money of 2 lakhs and had also obtained the requisite tender papers from the Executive Engineer on 11.4.94. It may also be mentioned that according to the Petitioner-Respondent the tender papers were sent by speed post on 23.4.94 to the concerned Executive Engineer and as he had been obstructed in submitting the tender in time. A writ of Mandamus was prayed for to the extent that either the tender of the Petitioner-Respondent be considered along with the other tenders or all the tenders should be cancelled and fresh tenders be invited.

5. Learned single Judge at the admission stage believed the version put forward by the Petitioner-Respondent and directed the Respondents-2 and 3 to the Civil Rule to consider the tender of the Petitioner which has already been received by them along with the other tenders in accordance with the Rules without rejecting it on the ground of non-submission of the same on or before 3.30 P.M. of 21.4.94 as there was no negligence on the part of the Petitioner-Respondents and that he was prevented by some unidentified elements from submitting the tender in time.

6. It is against the aforesaid order passed by the learned single Judge that the Appellant No. 1 M/s Shahid Ali and Appellant No. 2 M/s Kiron Construction have filed the present writ appeal as the aforesaid two Appellants had also submitted tenders for getting the construction works from CPWD.

7. Mr. P.K Goswami, learned Counsel appearing for the Appellants, has urged that the learned single Judge erred in law in granting the relief prayed for by the Petitioner-Respondent firstly on the ground that the persons who had submitted valid tenders in time were not made parties to the Civil Rule and secondly that the tender which had been submitted after 3.00 P.M. on 21.4.94 could not be accepted as all (sic) menders had been opened by the competent authority at 3.30 P.M. on 21.4.94. The Petitioner-Respondent admittedly had sent his tender on 23.4.94 by speed post, that is much after the other tenders has been opened and thus the tender submitted by the Petitioner-Respondent could not be called to be valid tender in pursuance of the advertisement which had been made by the Executive Engineer, CPWD, as referred to above.

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8. Mr. GK Bhattacharyya learned Counsel appearing for the Petitioner-Respondent has, however, urged that the materials existed on record which clearly established that the Petitioner-Respondent had been obstructed from filling or making the tender by 3.00 P.M. on 21.4.94 even though he was present in the office of the Executive Engineer along with all the documents. In this circumstance it has been agred before us that as there was no fault of the Petitioner-Respondent and as he was (sic) from making the tender, the order passed by the learned Single judge was justified in issuing the Mandamus to the Respondents 2 and 3 to consider the (sic) of the Petitioner-Respondent.

8A. The purpose of notice inviting tender is to get work done by the best possible contractor and at the competitive pride. For this purpose tenders are to be submitted in sealed cover and those are to be opened in presence of tenders on date and time fixed earlier as per tender notice. Opening of such tender in (sic) of the tenderers is a protection for the tenderers so that subsequently rates quoted by each tenderer cannot be changed. If a tender is allowed to be accepted (sic) opening of other tenders the whole object of calling for tenders in sealed cover will be frustrated.

9. After considering the arguments raised by the learned, counsel for the parties we are of the opinion that the tender which was sent by the Petitioner-Respondent on 23.4.94 by speed post could not be treated to be a tender in pursuance of the advertisement which had called for sealed tenders to be submitted by 21.4.94 on or before 3.00 P.M. Inviting of sealed tenders is an accepted procedure for awarding contracts and as stated above the basic idea of keeping the tenders sealed and fixing a time by which the tenders should be submitted by the concerned parties is to give a chance to the concerned parties to quote their rates for the purpose of getting the contracts in their favour. In case any tender is, accepted after the sealed tenders have been opened, the principle on which the contract is sought to be sealed is completely violated inasmuch as any person who is allowed to make a tender after the other tenders have been opened and the information contained therein has become known, may submit a tender which may be lowest of the tenders which have already been submitted. In these circumstances, even if we presume that the Petitioner-Respondent was in fact obstructed and could not submit the tender, that would not provide a valid ground for accepting the tender at a later dale after other sealed tenders had boon opened and have become known to every one. In these circumstances we are of the opinion that the view taken by the learned single Judge that the tender submitted by the Petitioner-Respondent on 23.4.94 be treated to be a valid tender and to consider the same along with other tenders is not correct. It may be noted that the Petitioner-Respondent has already placed his case before the competent authorities by writing various letters to them.

10. It has not been disputed before us that the contract has not yet been awarded to any one on the basis of the tenders which have been submitted. There is a procedure prescribed for accepting the tenders and awarding the

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contract. We are confident that the authorities concerned will follow the procedure and norms which have been laid down for accepting tenders and take appropriate decision in accordance with the rules and guidelines for awarding the contracts after considering the entire materials available before them.

11. Subject to the aforesaid observations, the present appeal is allowed and the judgment of the learned single Judge dated 3.7.94 passed in Civil Rule No. 2517 of 1994 is set aside. Looking to the entire facts and circumstances of the case, the parties shall bear their own costs.

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