
(1996) 11 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10304 of 1996

Sanjeev Kumar

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 115 PLR 143

Hon'ble Judges : N.K. Agrawal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Ravinder Chopra, for the Appellant; Sarabdeep Singh, for the Respondent

Judgement

N.K. Agrawal, J.—This is a petition under Article 226 of the Constitution, seeking the quashing of the order dated 3.4.1996 passed by the Executive Officer, Municipal Council, Ferozepur City, whereby auction for the collection of octroi duty, made on 20.3.1996, in petitioner's favour was stayed.

2. The work relating to the collection of octroi duty was privatised in the State of Punjab. The State Government of Punjab decided to give contracts to private persons for collecting octroi duty. The Municipal Council, Ferozepur City, passed a resolution dated 5.2.1996 for the purpose of giving contract of collection of octroi duty to a private person by prescribed authority. A public auction for the collection of octroi duty for the financial year 1996-97 (1.4.1996 to 31.3.1997) was held on 20.3.1996 and the petitioner being the highest bidder in the public auction, was allotted the contract for a sum of Rs. 1,34,02,000/-. The petitioner deposited, as required, a sum of Rs. 2,00,000/- as security money and also furnished a Bank guarantee for Rs. 10,60,000/-. The Executive Officer of the Municipal Council, Ferozepur, vide his letter dated 22.3.1996, informed the petitioner that contract for the collection of octroi duty had been given to the petitioner and, therefore, the petitioner should furnish Bank guarantee equivalent to 1/10th of the bid amount and should also execute an agreement. The

petitioner then executed an agreement dated 25.3.1996 and submitted it in pursuance of the letter received from the Executive Officer. However, the Executive Officer, vide his letter dated 3.4.1996, informed the petitioner that decision to auction the octroi has been stayed till further orders. The petitioner submitted a legal notice dated 13.6.1996 to the Municipal Council through its Executive Officer, seeking permission to start his work regarding the collection of octroi duty. He also submitted a letter dated 2.7.1996 to the Deputy Director, Local Government, Ferozepore Division, Ferozepore. The petitioner had already collected the octroi on 1st and 2nd April, 1996 and, therefore, he claimed to have duly worked under the contract awarded to him through public auction. Since the Municipal Council did not permit the petitioner to resume his work, he has filed this writ petition in this High Court.

3. The petitioner's case is based primarily on the pleas that he was prevented from doing the work under the contract without any notice to him nor any reasons were assigned in the stay order conveyed to him by the Executive Officer. It is contended by the petitioner that, by not giving any prior notice or opportunity of hearing, the Municipal Council and its Executive Officer acted in violation of the principles of natural justice. The Executive Officer had no power or authority to stay the operation of the agreement under the Punjab Municipal Act, 1911. The petitioner has also asserted that he had been duly awarded the contract because he was the highest bidder in the public auction and there was no reason to stay the operation of the agreement executed by him after the finalization of the auction in his favour.

4. Respondents Nos. 4 and 5, namely, the Municipal Council, Ferozepore and the Executive Officer of the Municipal Council have, in their joint reply, defended the stay order on the basis of a resolution adopted by the Municipal Council on 28.3.1996 whereunder it was decided to keep the auction of the octroi post pending for three months. The Executive Officer issued a direction to the petitioner in pursuance of that resolution only and, therefore, the Executive Officer acted under the authority of the Municipal Council. It is also stated that no agreement was actually executed and the copy of the agreement, on which the petitioner is relying, was not an agreement between the two parties, namely, the petitioner and the Municipal Council inasmuch as the agreement had not been signed by the Executive Officer of the Municipal Council and, therefore, there was no completed contract. It is also stated that the petitioner collected octroi duty for two days without authority.

5. The petitioner's plea, that no notice was given to him prior to staying the operation of the agreement, appears to have force because respondents No. 4 and 5, in their joint reply, have not controverted this plea. Therefore, this is a case of contravention of the principles of natural justice. It is also clear that the Executive Officer did not give reasons in his letter dated 3.4.1996 as to why the contract awarded to the petitioner has been stayed till further orders. A copy of the resolution No. 77 dated 28.3.1996 adopted by the Municipal Council,

Ferozepore, has also been placed on record by the respondents but therein also no reasons have been given as to why the operation of the agreement was kept pending. The Municipal Council in the said resolution only observed that "the auction of the octroi post be kept pending for three months". This cryptic observation does not help the respondents to justify its unilateral action without assigning any reasons. In the written statement also, there is no mention of any breach of condition of agreement on the part of the petitioner. In these circumstances, the petitioner's plea is found to have force and is to be accepted. There must be valid reasons to cancel the contract. It has to be noticed that auction was conducted under the supervision of Deputy Director, Local Government, Ferozepore; Tehsildar-cum-Executive Magistrate, Ferozepore; and the President and Executive Officer of the Municipal Council, Ferozepore. If there was any reason to cancel the auction, that should have been made clear in the resolution whereby the operation of auction was kept pending for three months. In the absence of any reasons whatsoever, the resolution No. 77 dated 28.3.1996 cannot be upheld, as it is arbitrary and illegal.

6. The petitioner has placed on record a copy of the agreement signed by him on 25.3.1996. In pursuance of this agreement, the petitioner commenced his work and collected octroi of Rs. 42,517/- on 1.4.1996 and Rs. 45,998/- on 2.4.1996. It is thus evident that the petitioner did work for two days under the agreement and collected octroi duty. He was prevented from doing the work on 3.4.1996 onwards. The rate of octroi duty held been fixed by the Municipal Council. The work was being done earlier by the employees of the Municipal Council and octroi duty was being collected at the rates so fixed. The petitioner has claimed to have employed a work force consisting of 45 persons in addition to the employees of the Municipal Council. The money collected on two dates is said to have been deposited by the petitioner with the Municipal Council. These facts do establish that the petitioner did work under the Contract. It cannot be argued by the respondents that the petitioner had not completed his part of the contract. Not only the bid was finalized in the open auction in favour of the petitioner but the petitioner also executed an agreement and furnished the same to the Municipal Council. Thereafter, work was performed for two days. It was, therefore, necessary for the respondents to give notice or opportunity of hearing to the petitioner before cancelling the contract. Neither any reason was assigned or specified in the resolution dated 28.3.1996 nor was it mentioned in the letter of the Executive officer whereby the petitioner was informed about the stay order. This letter dated 3.4.1996 reads as under:-

"Decision to auction the octroi by the Municipal Council, Ferozepore, is hereby stayed till further orders/decision."

7. The Executive Officer thus conveyed no reasons to the petitioner as to why decision to stay the operation of the contract was taken. Prior to the said decision, the Executive Officer, vide his order dated 22.3.1996 had required the petitioner to furnish Bank guarantee and to execute the agreement in favour of

the Municipal Council. Letter of the Executive Officer, dated 22.3.1996, reads as under:-

"On 20.3.1996 you had given the bid for collection of octroi for one year, that is, 1.4.1996 to 31.3.1997 of Municipal Council, Ferozepur. The bid was hammered in your favour because you were the highest bidder for Rs. 1,34,02,000/-. The bank guarantee of 1/10th of the bid amount. You are also to execute an agreement on stamp paper of Rs. 15/- in favour of Municipal Council."

8. From the facts emerging from the pleadings of the parties as well as the documents, it is apparent that the petitioner, being the highest bidder, was required to go ahead with his contract by furnishing a Bank Guarantee as well as executing an agreement. Not only that, the petitioner was allowed to operate the agreement by collecting the octroi duty for two days, namely, 1.4.1996 and 2.4.1996. The agreement was thereafter stayed without giving any reasons. The auction of the Municipal Council, Ferozepore City, is, therefore, bad in law and arbitrary inasmuch as neither any notice was given to the petitioner nor any reasons were assigned for staying the operation of the agreement. The action, therefore, cannot be sustained. No reasons have even been given in the joint reply filed by respondents Nos. 4 and 5.

9. The petitioner was awarded contract for a period of 12 months on a bid" amount of Rs. 1,84,02,000/-. Since the period of 7 months has already passed, the petitioner is left with the work for the remaining five months in the financial year 1996-97. Proportionately, the bid money for five months comes to Rs. 55,84,166/-. It would be just and fair to reduce the contract amount from Rs. 1,34,82,000/- to Rs. 55,84,166/- in view of the reduced period of contract.

10. In the result, the petition succeeds and the respondents are directed to allow the petitioner to run the contract and collect the octroi duty as per the agreement from 6.11.1996 to 31.3.1997. The petitioner has already done the work of collection for two days in April, 1996. In this way, the contract will be operative for a period of five months and the amount of contract has, therefore, been reduced accordingly. The petitioner is entitled to costs which are assessed at Rs. 5000/-.