

(2015) 02 MP CK 0136

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1451 of 2014

Saraf Electricals Proprietor Firm

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 02 MP CK 0136

Hon'ble Judges : P.K. Jaiswal, J;Alok Verma, J

Bench : Division Bench

Advocate : Umesh Gajankush, Learned Counsel, for the Appellant; Mini Ravindran, Learned Dy. G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Heard.

By this writ petition under Article 226 of the Constitution of India, the petitioner is praying for quashment of condition No. 9(d) and (u) of the NIT No. 08/2013-14 (Annexure-P/21) dated 13.02.2014 issued by the respondent No. 2 with regard to electrification and single point connection in Khargone district.

2. By this NIT, they invited 4th tender vide tender No. TWR/54 and No. TWR/55 for Group-A and Group-B with respect to electrification of village.

3. Brief facts of the case are that the respondent No. 2 issued NIT dated 21.05.2013 for rural electrification and single point connection in Khargone district for work of Scheduled Tribe farmers well (energification of pump).

4. The petitioner, after complying all the terms and conditions of NIT, submitted his tender. After opening of financial and technical bids, the respondent No. 2 cancelled the NIT. For the same work, second call was made on 10.07.2013 with almost similar conditions. In the aforesaid NIT, the petitioner submitted his tender and after opening of technical and financial bids, the same was also

cancelled. Thereafter, on 31.12.2013, 3rd NIT was issued. The petitioner submitted his tender and technical and financial bids of the petitioner was opened along with other intended bidders and later on, all of them were called for negotiation on 06.02.2014. Thereafter, the tender in question (4th tender - Annexure-P/21) was issued by changing the condition No. 9(d) and (u) with a malafide intention to accommodate other participants, who were earlier not fulfilling the terms and conditions of the tender.

5. He submitted that this tender is wholly arbitrary and is subject to judicial review. In support of the aforesaid, he placed reliance on the decision of *Noble Resources Ltd. Vs. State of Orissa and Another*, AIR 2007 SC 119 : (2006) 2 CTLJ 233 : (2006) 12 JT 185 : (2006) 9 SCALE 181 : (2006) 10 SCC 236 : (2006) 6 SCR 53 Supp .

6. In reply, it is submitted that in pursuance to 4th NIT, number of persons submitted their tender and after completing the tendering process, two successful bidders namely, M/s. Vidyut Consultant, Indore and M/s. Prashant Electricals, Bhopal have been given the work order on 14.03.2014 and at present, they have completed the whole work. In respect of earlier tender, it is submitted that the tender of May-June, 2013 was cancelled due to the fact that the price quoted by the bidders were too high and on such a bid amount if the work was allowed to be done at such a cost then it would have caused the State Government additional financial burden. Therefore, the tender process was cancelled by the Collector who is the head of the tendering committee.

7. The 2nd tender was also cancelled on the same reason as the rates quoted by the bidders were very high.

8. In respect of 3rd tender, it is submitted that the petitioner submitted the documents of the financial year 2011-2012 whereas one another bidder submitted the documents regarding financial year 2013-2014. The matter was referred to the Collector. The Collector allowed both of them to participate in the tendering process and they were also called for negotiation and after negotiation, the said tendering process was cancelled by the Collector on the advice of the Superintending Engineer due to technical reasons.

9. The 4th tender (Annexure-P/21) is a continuation of the earlier tendering process and some of the conditions of the intended NIT has been changed and the same would be applicable to the petitioner and, therefore, it cannot be said that it was changed to give un-due benefit to a particular contractor.

10. In the matter of *M/s. G. J. Fernandez Vs. State of Karnataka and others*, AIR 1990 SC 958 : (1990) 1 JT 134 : (1990) 1 SCALE 117 : (1990) 2 SCC 488 : (1990) 1 SCR 229 , it has been laid down that in the matter of contract with instrumentality of State, minimum qualifying requirements for intending tenderers and information and documents in support thereof to be furnished along with the application for issue of blank tender book prescribed in two separate paragraphs of NIT. Both the paragraphs of NIT should be read

harmoniously, so read, the Apex Court held that apart from possessing the minimum qualifying requirements, the documents which are material in assessing whether applicant fulfilled those requirements must be furnished, otherwise the intending tenderer would be excluded from consideration. The minimum qualifying requirement should be strictly observed by the instrumentality of the State equally in cases of all the intending tenderers. Where the instrumentality of State consistently and bona fide interpreting the standards so prescribed in a particular manner and acting accordingly, Court would not interfere and substitute an interpretation which it considers to be correct.

11. In the matter of Tata Cellular Vs. Union of India, AIR 1996 SC 11 : AIR 1994 SC 11 : (1994) 4 JT 532 : (1994) 6 SCC 651 : (1994) 2 SCR 122 Supp , the Apex Court has laid down that only in the case of irrationality it is open to the Court to review the decision-maker's evaluation on the facts. A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. The Apex Court has laid down certain principles. The modern trend points to judicial restraint in administrative action. The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. The Government must have freedom to contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness but must be free from arbitrariness not affected by bias or actuated by malafides. Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

12. The Apex Court in the matter of Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, AIR 1996 SC 51 : (1993) 1 JT 187 : (1993) 1 SCALE 36 : (1993) 1 SCC 445 has laid down that only decision making process is open to judicial review. Court cannot act as an Appellate Authority but if process is violative of Article 14, Court can strike down the decision and action taken pursuant thereto.

13. In respect of malafide, the law is well settled. The Apex Court time and again has held that mere use of words such as malafide, corruption, and corrupt practice is not enough. It is necessary to give full particulars of such allegations and to set out the material facts specifying the particular person against whom such allegations are made so that he may have an opportunity of controverting such allegations. In the instant case, there is no specific plea of malafide as required and on facts decision could not be said to be suffering with malice.

14. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act

validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities.

15. In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted.

16. It is not the case of the petitioner that the action of the respondent No. 2 is not in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited.

17. The condition 9(d) and (u) have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work and this court would not interfere with the terms of the tender prescribed by the respondent No. 2 because it feels some other terms in the tender would have been fairer, wiser or more logical.

18. On perusal of the material facts, we are satisfied that the above mentioned condition in any way cannot be classified or is malafide.

19. For the above-mentioned reasons, we do not find any valid ground to quash the terms of the tender condition and work, which was awarded and the same has been completed by the successful bidders. In spite of knowing well that the work has been awarded, the petitioner has not prayed for their impleadment and, therefore, the petition filed by the petitioner has no merit and is accordingly, dismissed but without any order as to costs.