

**(2005) 03 DEL CK 0068**  
**In the Delhi High Court**  
**Case No : WP (C) 17158 of 2004**

S.C. Agarwal and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 04-03-2005

**Acts Referred:**

**Citation :** (2005) 1 CTLJ 526 : (2005) 118 DLT 241 : (2005) 81 DRJ 731

**Hon'ble Judges :** H.R. Malhotra, J;D.K. Jain, J

**Bench :** Division Bench

**Advocate :** Rahul Gupta and Rakesh Mukhija, for the Appellant; K.K. Tyagi, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

D.K. Jain, J.—Rule D.B.

2. With the consent of learned counsel for the parties, we proceed to dispose of the matter at this stage itself.

3. In this writ petition under Article 226 of the Constitution, the petitioner questions the legality and propriety of the decision taken by the Central Warehousing Corporation (for short the CWC), respondent No. 2 herein, to cancel the tender process initiated by issue of a public notice dated 7 December 2002 for dismantling and disposal of 29700 MTC godown at Base Depot, Loni, Delhi. Being the highest bidder, the petitioner seeks a writ of mandamus, commanding the CWC to release the work order in their favor.

4. Besides the CWC, Union of India through the Secretary, Ministry of Food and Civil Supplies and the Executive Engineer CWC have been imp leded as respondents 1 and 3 respectively.

5. The CWC, through an advertisement dated 7 December 2002, invited tenders for the aforementioned work. The last date for submission of the tenders was 18 December 2002, which were to be opened on the same day. Pursuant to the said

advertisement, the petitioner submitted their bid. The tenders were opened on 18 December 2002. The petitioner was declared the highest bidder. Having been declared as the highest bidder, the petitioner was invited by the CWC for negotiations. In the negotiations the petitioner increased its offer from Rs.28 lakhs to Rs.29.5 lakhs and it was decided that the bank guarantee to be furnished shall be restricted to ten per cent of the total value. Between the period from February 2002 till August 2004 the CWC wrote several letters to the petitioner asking them to extend the validity of their bid. Being under the reasonable belief that their offer had been accepted, the petitioner consented to extensions of the validity period from time to time and finally up to 31 December 2004

6. It is the case of the petitioner that some time in the months of September and October 2004 they were called to the office of the CWC and were informed by respondent No. 3 that the CWC had taken a decision to cancel the tender and accordingly reject the offer made by the petitioner as far back as on 18 December 2002. It is averred that enquiries made by the petitioner revealed that a fresh notice inviting tender for the same work had been published on 22 October 2004 Hence the present writ petition.

7. In their reply affidavit, the CWC has averred that for a considerable time the tender could not be awarded as they were awaiting the approval of the Ministry of Railways and as in the meanwhile the entire scenario had changed, particularly the astonishing rise in the price of steel and other building materials, the CWC took a decision in public interest to cancel the NIT. It is pleaded that CWC being a public sector undertaking, commercial consideration was the paramount consideration in arriving to the decision to re-invite the tenders. It is pleaded that the decision to cancel the tender and call for fresh NIT has been taken in public interest to safeguard the loss to the tune of Rs.24 lakhs. It is asserted that the decision to scrap the to under and re-invite the same does not infringe any legal right of the petitioner, more so, when they will get an equal opportunity to re-bid in the fresh NIT.

8. Mr. Rahul Gupta, learned counsel appearing for the petitioner, has vehemently submitted that the petitioner was entitled to the award of the contract since admittedly their bid was the highest. Learned counsel contends that the decision taken by the CWC to cancel the bid on the ground that there has been increase in the steel prices is arbitrary and unreasonable. According to the learned counsel, CWC has failed to take into consideration the fact that prices of the other commodities namely, the diesel etc,. as also the wages of the labour had also gone up steeply and, Therefore, there would not be any unreasonable profits in the hands of the petitioner on account of increase in the steel scrap prices. It is also urged that having got the validity of the bid extended from time to time, there was an implied acceptance of the offer by the petitioner and in any case the petitioner had legitimate expectations in getting the contract, which they have been deprived of without any rhyme or reason. In support, reliance is

placed on the decision of the Apex Court in Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, .

9. Mr. Tyagi, learned counsel appearing for the respondents, on the other hand, submits that the decision to cancel the bid was preceded by due application of mind on all the relevant factors and the entire decision making process culminating in the cancellation of the tender is based on rational and reasonable consideration and is a result of bona fide exercise of administrative power. Learned counsel has also submitted that since petitioner's bid was never accepted, as it was awaiting the clearance on the Ministry of Railways, the petitioner had neither any reason nor vested right in getting the contract.

10. The law with regard to the duties of the government and its instrumentalities, while entering into commercial transactions, is well settled. The interference of the Courts in the exercise of power of judicial review is limited and can be classified under three heads, namely, (i) illegality; (ii) irrationality and (iii) procedural impropriety. It needs little emphasis that the Courts are slow in interfering in matters relating to administrative functions unless the decision is tainted by any vulnerability such as lack of fairness in procedure, illegality and irrationality. All these principles have been highlighted in Tata Cellular Vs. Union of India, and the said decision has been followed in catena of later decisions. It is so settled that in the process of contract formation the government or a public authority acts in a commercial sphere and possesses what is termed as a greater elbow room than in other administrative matters. Nevertheless, such body is bound by the principles of non-arbitrariness, reasonableness and it has to act in a bona fide exercise of power. The judicial review is confined to examination of the decision making process and to ensure that the decision is not tainted by mala fides, unreasonableness or arbitrariness.

11. In Monarch Infrastructures P. Ltd Vs. Commissioner, Ulhasnagar Municipal Corporation AIR 2001 SC 2272 it was observed by their Lordships of the Supreme Court that the State or public agency has in the commercial field sufficient discretion to decide whether to accept the tender of the lowest bidder at all. It was observed that as long as the decision not to accept the tender or entering into contract was based upon reasonable considerations and there was no mala fide intention or illegality, the Courts would not interdict such an administrative exercise of power.

12. Tested on the touchstone of these broad principles, we are of the considered view that the decision taken by the CWC to cancel the tendering process and not to accept the bid of the petitioner, cannot be categorised as arbitrary or unreasonable.

13. In deference to our direction, the CWC has produced the original records wherein the subject tender had been processed. Various notings on the file indicate that though the petitioner's bid was declared to be the highest but the tender could not be finalised due non-approval of the project by the Ministry of

Railways. In fact the validity of the bid was got extended from time to time due to non-clearance by the Railways. Finally on 6 October 2004 when the file was processed for being put up to the Managing Director to accept the tender of the petitioner, a note was appended by the EE-I stating that after the receipt of the tenders on 18 December 2002 the rates of scrap steel had gone up very high and the CWC may get handsome value for steel. It was proposed that a fresh notice to tender may be issued. Though we do not find any specific order by the competent authority ordering cancellation of the NIT already issued, but the competent authority did accept the proposal for issue of fresh notice to tender, observing that there had been material change in the conditions as the steel prices had gone up substantially in the last one to two years.

14. We think that as a public authority and acting in a commercial sphere, the CWC was within its rights to make a fair assessment of the prevailing market conditions. Having regard to the fact that the competent authority had not granted its approval to the award of the work to the petitioner, as acceptance of the tender was subject to the grant of approval by the Ministry of Railways, we are unable to hold that the final decision to cancel the tender in view of the rise in the price of steel is either arbitrary or unreasonable, warranting interference in the exercise of our power of judicial review. Since, as noted supra, the process of finalisation of the tender was still under way and the tender had not been accepted by the competent authority, to the knowledge of the petitioner as they were extending the validity period of the bid, there was no question of any expectation arising in the mind of the petitioner that he was bound to get the tender. At best, it was a fond hope of getting the job.

We do not find any material on record which may suggest any mala fides or arbitrariness in the final decision taken by the CWC to cancel the tender.

15. For the foregoing reasons, we do not find any merit in the writ petition and same is dismissed accordingly. Rule is discharged. However, there will be no order as to costs.