

(1996) 04 PAT CK 0040
In the Patna High Court
Case No : C.W.J.C. No. 901 of 1996 (R)

Security and Intelligence Services (India) Ltd. and Another APPELLANT
Vs
Central Coalfields Ltd. and Others RESPONDENT

Date of Decision : 01-04-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Citation : AIR 1996 Patna 151 : (1996) 1 PLJR 773

Hon'ble Judges : Ashok Kumar Ganguly, J

Bench : Single Bench

Advocate : Basudeo Prasad, Sunil Kumar Sinha, P.K. Prasad and R.R. Nath, for the Appellant; M.M. Banerjee and R.S. Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

A. K. Ganguly, J.—This writ petition has been filed, challenging the impugned clause in the tender document, by the petitioner Company in the following facts of the case.

2. The case of the petitioner Company is that it is a firm enjoying considerable reputation in the field of providing security services to various organisations. In the writ petition it has given a list of its impressive array of clients both in the private and public sector and has claimed that the petitioner Company has at its disposal the requisite expertise and equipments for providing security cover to various organisations.

3. The petitioner Company has also claimed that it has been providing security services to the Central Coalfields Limited (hereinafter referred to as the C.C.L.) since the year 1992 and its agreement for providing security services to the C.C.L. has been extended from time to time and as a result of such extension, it is provided such services till the 31st of March, 1996.

4. From the facts disclosed in the writ petition, it appears that the management of C.C.L. required that the petitioner Company should be enrolled with the

Directorate General of Re-settlement (hereinafter referred to as the said D.G.R.), Ministry of Defence, Government of India. The said requirement of being enrolled with the D.G.R. was made known to the petitioner Company by the management of C.C.L. by its letter dated 4/5th January, 1995 as contained in Annexure 4.

5. In order to meet the said requirement as was demanded by the Management of C.C.L. the petitioner Company wrote several letters to the said D.G.R. authority, one such letter was written on 7th April, 1995 (Annexure-6), in which the petitioner Company prayed for sponsorship licence from the D.G.R. authorities. In answer to the said letter, came the reply from the D.G.R. authority vide letter dated 28th April, 1995 in which it was stated that the request of the petitioner Company cannot be considered since the same is a well established agency having an annual turn over in lakhs already. It was made clear in the said letter that the endeavour of the D.G.R. authority is to provide assistance to those ex-servicemen run agencies who are not well established or are "new in the field of security services" (vide Annexure-7).

6. This stand of the D.G.R. authorities has not been challenged by the petitioner Company at any stage and the D.G.R. authorities have not been even impleaded in this proceeding.

7. Even after the said reply from the D.G.R. authority, the petitioner Company wrote another letter dated 27th Oct. 1995 (Annexure-8) to them requesting the D.G.R. authorities to grant registration to the petitioner Company which the petitioner Company found to be "mandatory" for providing security services. The said letter dated 27th Oct. 1995 was followed by a reminder dated 14th Nov. 1995 (Annexure 8 series). The D.G.R. authority, on the other hand, declined to accept the said prayer of the petitioner Company by its reply dated 15th Nov, 1995 wherein they reiterated the stand taken in the letter dated 28th April, 1995 and further stated that their policy is self explanatory.

8. From the aforesaid exchange of correspondences the following things clearly emerge.

(i) The petitioner Company realised that registration with the D.G.R. authorities is "mandatory" for providing security services to the Public Sector Undertakings.

(ii) Its prayer for registration with D.G.R. authorities has been turned down on the basis of its policy.

(iii) The said policy decision of the D.G.R. authorities has not been challenged by the petitioner Company at any stage,

9. In the background of these facts, came an advertisement by the C.C.L. for the engagement of reliable private security Agencies on contract for a period of one year initially for taking total responsibility of surveillance and protection of Company's assets and its employees. It has also been made clear in the said advertisement that the tenderers who are equipped with all the necessary facilities and gadgets and have physically fit and alert team of Ex-Army Personnel

and are willing to offer their services, may obtain Tender Documents on Cash/ Draft payment of Rs.250/- on the dates mentioned therein. It was made clear that the tenders received will be opened on 14-3-1996 at 3.30 p.m. A copy of the said advertisement appeared in the daily Ranchi Express as well as in the Telegraph and the Times of India.

10. The petitioner Company in response to the said advertisement applied in the prescribed form and thereafter the tender document was issued to them by the Chief Security Officer of the C.C.L. and on obtaining the tender document, they found a clause which, according to them, was contrary to their expectations and also to the terms of the advertisement, The said offending clause was the one in which it was made clear that the tenders are invited from bona fide and experienced Agencies registered with D.G.R. authority, Government of India.

11. The grievance of the petitioners is that as they are not registered with the Government of India, they will not be able to participate in the same and as such challenging the said clause in the tender document, the instant writ petition was filed before this Court on 11-3-1996. Thereafter this Court on 13-3-1996 issued interim orders restraining the respondents authorities from finalising the tender. The matter was thereafter heard upon exchange of affidavits finally at the admission stage.

12. From the facts already noted in this writ petition, it is clear that the condition of registration was not a new one to the petitioner Company. In fact, the C.C.L. authorities were insisting on such registration since 5th Jan. 1995 and the petitioner Company realising the said requirement to be a "mandatory " one was also trying to get itself registered with the authorities of the D.G.R. but its prayer for getting the registration was refused by the D.G.R. authorities on the ground as stated here-in-above. Therefore, the petitioner Company cannot be heard to say that they were taken by surprise by the aforesaid condition in the detailed tender notice.

13. The next ground of challenge is that such a ground is un-reasonable and arbitrary and as a result of imposition of the said condition, the petitioners' right to carry business under Article 19(1)(g) of the Constitution has been violated and the said condition is opposed to Article 14 of the Constitution of India.

14. Learned counsel for the respondents has advanced the following submissions:

(i) The condition of registration which has been imposed in the detailed terms of the tender notice is nothing new. It was well known to the petitioner Company even at the time of purchasing the tender document that such a condition was insisted upon by the authorities of C.C.L.

(ii) The next submission made by the learned counsel for the respondents is that the said condition was brought into existence by the authorities of C.C.L. in public interest and this will appear from the office memorandum circulated by the Government of India, Ministry of Defence vide its memorandum dated 11th Nov.

1994 enclosing therein a copy of office memorandum dated 4th Feb. 1994. A combined reading of the two memoranda will show that the Government had insisted on the said condition on the ground that a number of public sector Undertakings under the administrative control of different Ministries/Departments employ security agencies to meet their requirements of security personnel by awarding contract through open tenders. The Government has felt that in many such cases, in their anxiety to secure contracts from public sector undertakings/ autonomous Organisations, the private security agencies quote competitive rates and in the process do not pay reasonable wages to security personnel employed under the contract. These security agencies usually employ ex-Servicemen and such Ex-Servicemen are exploited by the private security agencies. Therefore, in order to prevent such exploitation of ex-Servicemen the D.G.R. has evolved a scheme whereby a panel of retired service officers, State ex-Servicemen, Corporations and Ex-Servicemen Co-operative Societies desirous of obtaining security work on contract is maintained. And in such case the wages are to be paid to the Ex-servicemen deployed by them under the contract as per wage formula promulgated by the D.G.R. and such wage structure has been evolved keeping in view the provisions of Minimum Wages Act and also Variable Dearness Allowance Act etc. It is in this context that proposal for sponsoring the Ex-Servicemen Security Agencies was insisted in those two office Memoranda. Copies of both the aforesaid Office Memoranda dated 11th Nov. 1994 and 4th Feb. 1994 have been disclosed in the counter affidavit filed by the respondents authorities. The respondents have also relied on a further memorandum issued by the Department of Public Enterprises, Ministry of Industry dated 19th Dec. 1995 stating therein that in a writ petition filed in the High Court of Kerala to the effect that certain public sector undertakings are not following the aforesaid instruction, the Hon'ble High Court has directed the department concerned, namely, the Department of Public Enterprises to pass appropriate orders in that regard. In the context of such direction of the High Court, the Ministry was requested to make a review of all Public Sector Undertakings under their administrative control and furnish a status report about the implementation of the instructions contained in the aforesaid two office memoranda.

15. Learned counsel for the respondents submitted that a copy of the said Office Memorandum dated 19th December, 1995 was also addressed to the Department of Coal and it is in the context of these facts that the respondents authorities have insisted on the requirement of registration of the petitioner Company right from the month of January, 1995 and ultimately in the detailed condition relating to the tender documents the aforesaid clause, namely, that tenders will be received from the experienced Agencies registered with the D.G.R. has been inserted.

16. Learned counsel for the respondents submitted that there is no unreasonableness in insisting on such a condition and the same is neither arbitrary nor does it, in any way, curtail or infringe the petitioners' right to carry on business under Article 19(1)(g) of the Constitution.

17. This Court is inclined to accept the aforesaid stand of the respondents.

18. It is not the case of the petitioner Company that the aforesaid clause in the tender document was inserted in a mala fide manner just to eliminate them from participating in the tender. It is clear from the stand of the respondents that the clause which has been inserted is of general application. The said clause is evidently based on public interest and on a policy decision and which the court does not find either un-reasonable or arbitrary.

19. The general murmur of mala fides as has been urged by the petitioner's Counsel does not deserve any serious consideration by the Court. Such allegations are without particulars and are more feigned than real.

20. The law in this particular filed, namely, invitation of tenders and acceptance thereof has been reviewed by the Supreme Court in a very elaborate judgment in the case of Tata Cellular v. Union of India reported in Tata Cellular Vs. Union of India, .

21. On a review of various authorities in this branch of law, the Hon''ble Supreme Court, in the said three Judges' Bench, has given sufficient guidelines as to the nature of judicial review permissible in this field. In this connection the principles which have been deduced by the Apex Court in paragraph 77 at page 677 of the report in Tata Cellular Vs. Union of India, are quoted below:--

"The duty of the court is to confine itself to the question of legality. Its concern should be

1. Whether decision-making authority, exceeded its power,
2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision, taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.

(ii) Irrationality, namely, Waynesburg unreasonableness

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further

grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, Ex. Brind*, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention."

22. Again in paragraph 94 of the said judgment in *Tata Cellular Vs. Union of India*, the following conclusions have been reached:

"The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender can not be open to judicial scrutiny because the invitation to tender is in the realm of contract.

Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of 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 (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by *mala fides*.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

23. Going by the aforesaid principles, this court does not find that the decision of the respondents authorities in inserting the aforesaid clause in the detailed conditions relating to tender document is either unreasonable or the same is, in any way, opposed to either Articles 14 or 19(1)(g) of the Constitution of India.

24. Learned counsel for the respondents has also relied on another decision of the Supreme Court in this regard in order to repel the petitioners' argument of violation of right under Article 19(1)(g) of the Constitution. The said decision was delivered in the case of *Mahinder Kumar Gupta and Others Vs. Union of India (UOI), Ministry of Petroleum and Natural Gas*, . It has been stated in the said judgment that when the governmental authorities, as a matter of policy, lay down certain guidelines or criteria in matters of granting a contract, as has been

done in the instant case in the tender document, the petitioners cannot claim any independent right to have any business or avocation under Article 19(1)(g) of the Constitution, dehors those guidelines.

25. This Court has already held in this case that such guidelines are not either unreasonable or arbitrary. In the context of this authoritative pronouncement of the Supreme Court, this Court is unable to appreciate and uphold the arguments made by the learned counsel for the petitioners that the aforesaid condition in the tender document is either unreasonable or arbitrary.

26. For the reasons aforesaid, this Court dismissed this writ petition and vacates all interim orders passed earlier in this writ petition. There will be no order as to cost.