
(1994) 01 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 94 (K) of 1993

Shri Mogo Nagi

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 24-01-1994

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1995 Guw 6

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : C. Jajo and L.S. Jamir, for the Appellant; Govt. Advocate, for the Respondent

Judgement

H.K. Sema, J.—The facts given rise to filing of the present writ petition briefly recited are these.

2. On 26th July 1993, the 3rd respondent issued tender notice, inviting tenderers for the disposal of unserviceable materials from Contractors/Suppliers. The tender along with earnest money was to be received up to 12 noon of 9-8-1993 and would be open on the same day at 1 p.m. in presence of intending tenderers. It was stipulated in the tender notice that as it is a case of disposal, highest quoted rate would be finally accepted. It was further stipulated that the undersigned reserves the right to reject any or all the tenderers without assigning any reasons. The item of materials was shown as G. I. Pipes 50mm, and the approximate quantity was shown as 4,000 metres, the approximate value was shown as Rs. 1 lakh.

3. Pursuant to the aforesaid tender notice, the petitioner applied along with requisite Court-fee stamp and the earnest money on 9-8-93, Tender was open on 9-8-93 in presence of the petitioner and others, it may be relevant to mention herein that, altogether 4 (four) tenderers including the petitioner were competing, The petitioner's quoted rate at Rs. 12/- per running metre came to be the highest. The rate offered by the petitioner was approved by the

Government in its letter dated 31 st Augst, 1993 of the 2nd respondent addressed to the 3rd respondent (Annexure-2).

4. By the aforesaid letter, while 2,000 metres of G: I. Pipes was allowed to the petitioner at its quoted rate, another 2,000 metres, 1,000 each had been allotted to the 5th and 6th respondent (non tenderers) at the rate quoted by the petitioner. Being aggrieved, the petitioner represented to the 3rd respondent by its petition dated 3rd September, 1993, without any result. Hence the present petition.

5. I have heard Miss C. Jajo, learned counsel for the petitioner, Mr. E. Y. Ren-thungo, learned Jr. Govt. Advocate for respondents Nos. 1 to 3 and Mr. R. Iralu counsel for the 5th and 6th respondents.

6. It is submitted by Miss C. Jajo, learned counsel for the petitioner that entire 4,000 metres of G. I. Pipes ought to have been allotted to the petitioner at his highest quoted rate as per the terms and conditions of the tender,

7. Respondents Nos. 1 to 3 as well as 5th and 6th respondents have filed counter. The case of the respondents Nos. 1 to 3 is taken in paras 5 and 8 of the counter. It is stated in para 5 that it is within the entire discretionary power of the Government to make an allotment of the properties including the materials and the Government has exercised its discretion in allotting 2,000 metres of G. I. pipes to the 5th and 6th respondents on humanitarian ground. The further case of the respondents Nos. 1 to 3 is that, the petitioner has no vested right to claim the whole quantity of the materials and the petition should be rejected in limine.

8. Further in para 8 of the counter, it is stated that Minister in charge of the concerned department is being the final authority had given directive for allotment of unserviceable materials and as such, the authority of the Minister in charge in the present case is final and binding to the concerned department. At this stage, I may refer to the note dated 15-7-93 (Annexure-5) issued by the Minister in charge of (PHED) to the 3rd respondent. In the note, the Minister-in-charge directed that 2.000 metres may be allotted to the petitioner and 1,000 metres each may be allotted to 5th and 6th respondents. Purportedly, on the basis of this note, the impugned order of allotment has been issued to 5th and 6th respondents to which reference has been made in para 8 of the counter. It has been contended by Mr. Iralu appearing on behalf of the 5th and 6th respondents that no fundamental right of the petitioner has been violated by allotting 1,000 metres each of G. I. pipes to the 5th and 6th respondents and Government has exercised its discretionary power, The respondents admitted that 5th and 6th respondents are non-tenderers.

9. By now it is well settled principle of law by a catena of decisions of the Apex Court that in commercial and contractual transaction with private parties, the State of its instrumentalities must act in consonance with Article 14.

10. In Sterling Computers Limited and Others Vs. M and N Publications Limited

and Others, it has been held that "Decision making process of public authorities, if influenced by extraneous/ irrelevant considerations would vitiate the decision even if it is without bias. Though public authorities have some discretion in contracts having commercial element, discretion is not absolute and must be governed by some norms and procedures in public interest and for public good."

11. In Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, it has been held that:

"Non-arbitrariness, fairness in action and due consideration of legitimate expectation of affected party are essential requisites for a valid State action in contractual transaction of a State or its instrumentality."

12. In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, the Apex Court in para 12 of its judgment observed at pages 1637 and 1638 of AIR :

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

13. In Ram and Shyam Company Vs. State of Haryana and Others, it was pointed out that;

"The Government is not free like an ordinary individual, in selecting recipient for its largesse. It need not deal with any one but if it does so, it must do so fairly and without exercising absolute and unfettered discretion and without unfair procedure."

14. Reverting to the facts of the case at hand, of all the four tenderers, admittedly, the petitioner's bid was the highest being at Rs. 12/- per running metre and it was approved by the Government by its letter dated 31st August, 1993. The quantity of materials put to tender was G. I. pipes 50mm 4,000 metres. Therefore, the petitioner had legitimate expectations for allotting 4,000 metres in his favour. Legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. In case of a failure of a State or its instrumentality to give due weight to legitimate expectation of a citizen, it becomes an enforceable rights.

15. That apart, 1,000 metres each of G. I. pipes was allotted to the 5th and 6th respondents who are non-tenderers at the rate offered by the petitioner. By their own action, the respondents have failed to discharge its duties reasonably and fairly, Consequently, the petitioners has suffered an unfair treatment by the State in discharging its administrative functions thereby violating the fundamental principle of fair play in State action. The fact that 1,000 metres each of the G. I. pipes have been allotted to the 5th and 6th respondents at the rate offered by the petitioner without any cogent reason or for that matter without any reason would be arbitrary and the same is violative of Articles 14 and 16 of the Constitution which strikes at arbitrariness in State action. Keeping in view of the Minister's note dated 15-7-93 (Annexure-5) it would clearly appear that the allotment of 1,000 metres each of G. I. pipes to the 5th and 6th respondents was influenced by extraneous/ irrelevant considerations, other than in public interest.

16. The argument that the allotment of 1,000 metres each of G. I. pipes to the 5th and 6th respondents who are non-tenderers has been done in exercise of discretionary power of the State is no argument. There is no unfettered discretion in public law. The public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adapt the procedure which is fair play in action. Failure to act fairly and non-arbitrarily in State action and its instrumentalities would amount to an abuse or excess of power culminating in challenging the action or exposed to judicial review on the ground of arbitrariness. In the instant case, the petitioner being the highest bidder had a legitimate expectation of allotting 4,000 metres of G.I. pipes in favour of the petitioner. This legitimate expectation of the petitioner has been thwarted by the instrumentalities of the state arbitrarily without any cogent or ostensible reason. No doubt, the State or its instrumentalities have some discretion in dealing with contract or commercial transactions or in disposing state largesse, but exercise of such discretionary power must be supported with reasons acceptable in fair play.

17. For the aforesaid reasons the order dated 31st August, 1993 in so far with regard to the allotment of 1,000 metres of G. I. pipes to the 5th and 6th respondents concerned are hereby quashed and set aside.

This petition is accordingly allowed. No order as to costs.

18. Despite of allowance of the rule, it is submitted by Mr. Iralu that the 6th respondent had deposited the security amount on 21-9-93, and apart of work had been executed. In this view of the matter, in order to do complete justice to the parties coupled with mercy on humanitarian ground, and in the interest of fair play, I am constrained to order that the 6th respondent may continue with the execution of the work in terms of allotment order dated 31 st August, 1993 with respect to 1,000 metres of G. I. pipes.