
(1991) 11 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 205 (SH) of 1989

Shri Ratan Kumar Sarawgi	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 22-11-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 299

Citation : AIR 1992 Guw 64

Hon'ble Judges : S.N. Phukan, J;N.G. Das, J

Bench : Division Bench

Advocate : S.R. Sen, T. Yangi and J.B. Rai, for the Appellant; R.K. Purkayastha, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition is under Article 226 of the Constitution against the respondents for non-supply of tender documents to the petitioner.

2. This petition was filed in the year 1989 and although an interim order was passed on 21-11-89, it was vacated on 29-11-89. Subsequently, on 20-2-91, a Division Bench of this Court directed the respondents to supply tender papers to the petitioner which has not yet been done and against this order a petition for modification was filed on 11-9-91 which has not yet been disposed of.

3. Briefly stated, the facts are as follows :

The petitioner is the proprietor of the firm known as M/s. Galaxy Construction with branch office at Shillong. The allegation of the petitioner is that the respondents Nos. 5 and 6 floated tender notices in respect of 16-items, but the tender papers were not supplied to the petitioner in spite of repeated request. Hence, the present petition.

4. In the counter filed on behalf of the respondents various pleas have been taken, inter alia, that at the time of registration of the firm with the respondents

it was a partnership firm, but it was changed to proprietorship and in view of this fact respondents have denied that the firm is an enlisted one with the MES. We find from the petition and the counter that there was a Court case in respect of an earlier contract and as such a plea has been taken that the petitioner is not entitled to get any tender paper unless the matter is disposed of, and that even if petitioner firm was an enlisted one and in view of the terms of the enrolment as contractor, petitioner cannot claim as a matter of right, tender papers. It has also been stated in the counter that notices inviting tender are duly published in the News Paper and the petitioner can approach the concerned authority to supply the tender papers.

5. We have heard Mr. Sen, learned counsel for the petitioner and Mr. R.K. Purkayastha, learned Standing Counsel for the Union of India.

6. According to Mr. Sen, in view of the Court case which arose out of a previous agreement, the respondents are not supplying him tender papers deliberately and that even if notice inviting tenders are issued in News Papers, even now petitioner has not been supplied with the tender forms. Reliance has been placed by Mr. Sen in a case decided by a Division Bench of this Court in *Shri Kamakhya Prasad Mozika v. The Union of India* 1988 (1) GLJ 507 wherein it was held that "While we are conscious that unnecessary inconveniences should not be put in the execution of the work. We are on the other hand aware that a citizen's right should not be trembled in a cavalier manner....."

Mr. Sen also placed reliance on two interim orders passed by this court which we need not refer to. According to Mr. Sen, the case which was filed in respect of the earlier contract by the petitioner was referred to an arbitrator in terms of the agreement and the award of the arbitrator has been given in favour of the petitioner and it was made a Rule of this court.

The point urged by Mr. Purkayastha is that out of 16 item for which tenders were called for, 14 items were settled before this writ petition was filed and it was decided not to allot the other 2 items for construction. According to learned Standing Counsel for the Union of India, so the present petition has become infructuous and is liable to be dismissed.

7. It is true that in view of the above position, petition has become infructuous, but as according to Mr. Sen even now the petitioner is not getting tender papers for other works also, we are of the opinion that in the interest of justice and to avoid multiplicity of litigation, the matter has to be decided. It may be stated that the writ court is always mould its direction in appropriate cases as per settled law.

8. Regarding the allegation that the firm in question was earlier a partnership firm and subsequently became a proprietorship firm Mr. Sen has stated that even after the firm became a proprietorship firm, respondents awarded contract and in this connection papers have been placed before us. From the said papers, we find that the tender of the petitioner was accepted and in the acceptance form

the firm was shown as proprietorship firm. So, first contention has no force.

9. Mr. Purkayastha, learned Standing Counsel has urged that this is a contractual matter and the court cannot interfere. In support of this contention, learned counsel has placed reliance on a decision of the learned single Judge of Madras High Court in Andhra Civil Construction Company v. The Government of India represented by its Andhra Civil Construction Company Vs. The Government of India and others, wherein the court held that for breach of contract writ petition is not maintainable and further rejecting the offer of the tender without assigning any reason is not arbitrary. Our specific attention has been drawn to para 16 of the Judgment by Mr. Purkayastha, wherein the court observed that as per terms and conditions of the tender which was duly signed, the Govt. had right to reject it.

10. In our opinion, the above ratio is not applicable to the case in hand, inasmuch as, the question of obtaining tender paper did not come up for consideration in that case. That case was for breach of contract and naturally for such breach the parties may have to seek remedies in Civil Court and not by filing writ petition. We make it clear that there may be exception to the above law, as in some cases the writ courts have interfered in respect of contract when facts are not disputed.

11. In the Landmark decision in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, the apex court held as under : --

"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 larges, 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 norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of larges 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."

12. We find that their Lordships also noted the law laid down in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, whereby plea taken that no person has a right to enter into contractual relationship with the Government and the Government like any other private individual, has the absolute right to enter into contract with any one it pleases was rejected. In the case in hand the argument advanced by Mr. Purkayastha that in such contractual matter, the respondent can deal in any way that it pleases is not sustainable.

13. In the counter the application for enrolment as contractor has been annexed

as Annexure-1 and Mr. Purkayastha has drawn our attention to Clauses 11 & 14. The said clauses are quoted below:--

"11-I/We understand and agree that the appropriate MES Authority has the right as he may decide, not to issue tender form in any particular case also to suspend, remove or black-list my/our name from the M.E.S. List of Contractors in the event of my/our submission of non-bona fide tenders or for technical or other delinquency in regard to which the decision of the appropriate M.E.S. Authority shall be final and conclusive."

"14-I/We note that registration as M.E.S. Contractor does not carry with it the right to I tender for M.E.S. Works."

According to Mr. Purkayastha, in view of the above clauses the M.E.S. Authority may decide whether to issue a tender form in a particular case or not. Learned counsel has further urged that the petitioner agreed vide Clauses 11 & 14 quoted above that registration as M.E.S. Contractor does not carry with it the right to tender for M.E.S. Works.

14. In view of the settled law, we are of the opinion that while exercising powers by the Authority under the above two clauses, the Authority must act fairly without any arbitrariness and in the public interest. By its own sweet will, the authority cannot refuse to issue tender papers. We make it very clear that merely because tenders papers are issued the authority is not bound to accept the tender. It has to be done as per normal practice after taking into consideration all relevant factors and after comparing the rates of different contractors. But in accepting or rejecting any tender the authority cannot act arbitrarily and cannot discriminate one contractor from another. As the petitioner is the registered contractor he is bound to get tender papers from the respondents and he has got a right to submit tender.

15. From what has been stated above, we allow the petition with the direction that to the respondents to give tender papers to the petitioner and shall have also to accept tenders submitted by the petitioner if other conditions are fulfilled and shall consider tenders of the petitioner along with other tenderers as indicated above. No costs.