(1990) 03 MP CK 0031

In the Madhya Pradesh High Court

Case No : M.P. No. 268 of 1990

Siddhartha Tubes Ltd. and Another APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 30-03-1990

Acts Referred:
Stores Purchase, Acquisition, Custody and Accounts Rules — Rule 14, 3, 7

Citation : (1991) 36 MPLJ 152 : (1991) MPLJ 152

Hon'ble Judges : Y.B. Suryavanshi, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : V.S. Kokje, for the Appellant; Surjitsingh, Government Advocate, A.K. Chitale and A.M. Mathur, for the Respondent

Judgement

A.G. Qureshi, J.

This order shall also dispose of M. P. No. 366 of 1990.

The petitioner No. 1 in this petition is a company incorporated under the Companies Act. It has a factory at Sarangpur, district Rajgarh. The Company manufactures black and galvanised steel pipes and tubes in its aforesaid factory at Sarangpur. It is a medium scale industry with a licensed and installed capacity of 25000 metric tonnes per annum. The petitioner No. 2 is the Director of the petitioner No. 1 Company. According to the petitioners, the Government of Madhya Pradesh gave definite assurances to the medium and large scale industries in Madhya Pradesh, wherein it was started that a scheme will be prepared to give preference for purchase by the State Government Departments of goods produced by the medium and large scale industries. In accordance with the aforesaid policy, the State Government provided in the Stores qurchase, Acquisition, Custody and Accounts Rules incorporated in the Madhya Pradesh Financial Code, Part 2, Schedule 5, wherein priorities have been specified in the matter of purchase. According to the Purchase rules, the first priority was given to the products manufactured by the Small Scale Industries and second priority was given to the medium and large scale industries in Madhya Pradesh on condition that the quality and price of the product is comparable to other States. A preference of ISI mark is also mentioned in the rules. As such, in accordance with the afore-mentioned rules, some items were specified for being reserved for purchases through the M. P. Laghu Udyog Nigam Ltd. (hereinafter referred to as MPLUN) from the small scale and medium and large scale units in the State. These items have been mentioned in Annexure-B. In Annexure-B item No. 42 mentioned the Steel Pipes and fittings and item No. 115 mentioned Mild Steel Pipes. Therefore, the petitioners were assured of purchase of its product by the Government Departments including the Public Health Engineering Department. There has been a long standing practice of the government to make purchases from Small, Medium and Large Scale Industries as clarified in Annexure-B to the Rules through MPLUN, which is a Government Company. The MPLUN accordingly invited tenders by Annexure P-3 wherein first priority was to be given to the small scale manufacturers of Madhya Pradesh and the second, priority to be given to medium and large scale industries of the Madhya Pradesh. The tenders were considered by the Committee of seven persons wherein M. D., MPLUN, Bhopal, E in C PHED, Bhopal, two CE, PHED, OGM (Mkt.) MPLUN, SE, Tube Well Bhopal and GM (Tech.) MPLUN participated. The Committee fixed the rates of mild steel GI Pipes and tubes which were circulated vide its circular Annexure P-4. The petitioners were also invited by MPLUN to enter into contract vide telegram dated 8-12-1989. These rates were finalised pertaining to GI pipes. But the petitioners apprehended that the State Government was trying to purchase the same item on higher rate from outside manufacturers

The grievance of the petitioners is that the Public Health Engineering Department was acting against the general policy of the State and is also flouting a specific decision of the Cabinet Sub-Committee, wherein it was decided to purchase GI pipes for drought relief work till June 1990 through the MPLUN. A copy of the circular dated 18-14990 is Annexure P-6. As such, the Department of PHE was not free to act contrary to the policy formulated by the Committee and there is every attempt to purchase the GI pipes from outside the State, and an order has already been placed by the Chief Engineer, Zone No. 1 PHE, Raipur to one Company of New Delhi. As such, action of the officers of the PHE is extremely arbitrary, unjust and improper and they are acting against the policy of the State in not placing the order through MPLUN to manufacturers according to the priority fixed by the rules. The State is also barred by the principles of promissory estoppel in deviating from the policy decision. When the representations to the officers of the Government remained futile, the petitioners have filed this petition. Therefore, it has been prayed by the petitioners that the respondents be directed to purchase mild steel GI pipes items from the small scale industries and medium and large scale industries in Madhya Pradesh through MPLUN as per the Government policy.

The petition was considered for admission on 28-2-1990, wherein a show cause notice was issued to the respondents to show cause against the admission and ad interim writ was issued restraining the Government from making purchase from outside the State. On 26-3-1990 six interveners sought permission to intervene by filing an application wherein they averred that as the manufacturers represented by the petitioners are located outside the State of Madhya Pradesh and they have been affected by the stay order granted on 19-2-1990; they sought permission to intervene on the ground that the petitioners are on approved rate contract from the Director General, Supplies and Disposal, Government of India (hereinafter referred to as DGSD) which is a Apex body for purchasing all materials for the Central and State Governments. The rates are fixed by the DGSD after inviting tenders and according to the interveners the only course open to the State Government is to purchase the goods through the DGSD. It has also been pleaded that purchase from MPLUN is highly inconvenient and bound to cause delay in supply of goods. The GI pipes are not manufactured by small scale industry and are not covered by serial No. 42 of Annexure-B. As a long standing practice, the purchases were only made through the DGSD. It has also been pleaded that the decision of the Cabinet dated 18-1-1990 is of no avail to the petitioners. Actually on 26-2-1990 the Government has taken decision that the GI pipes be purchased through DGSD both from inside and outside the State. They also prayed for the vacation of the stay order. Actually if MPLUN is held to be the sole body authorised to sell the GI pipes then it will benefit only two Companies in the State and these Companies cannot meet the demand of the Government.

During the pendency of this petition on 19-3-1990 the State Government took a decision that the GI pipes should be purchased only through the MPLUN so that there may not be impediment in the drought relief work. The order of the Government dated 26-2-1990 was cancelled. The stand of the State Government therefore, in its return dated 23-3-1990 was that in view of the aforesaid decision of the Government the cause of action to the petitioner does not survive and, therefore, the petition be dismissed. However, the Government should be given a free hand to make purchases in view of the actual water scarcity problem and drought condition prevailing in the State and in the circumstances the Government can decide as to what is the best in the public interest in respect of purchases. In the reply the prayer for vacating the stay order was also made. The MPLUN has filed the reply wherein it has been stated that under, the Store Purchase Rule 14 mild steel pipe is a reserved item at item No. 115 for exclusive purchase through Respondent No. 5 MPLUN. It has been clarified that GI pipe is galvanised mild steel pipe and, therefore, it is a reserved item vide Industrial Department letter dated 13/14-2-1990. Respondent No. 5 has taken this item on rate contract since February, 1990. Before that date, however, this item was not available on rate contract and, therefore, the Public Health Engineering Department was procuring the same directly on DGSD rate contract. There is a clear provision in the Store Purchase Rules that in case of non-availability of goods through Respondent No. 5 the Department would be free to procure reserved items from anywhere else. As at present the State is reeling under drought situation, it might prove disastrous to limit the purchase of GI pipes from M.P. based units only, which have a limited capacity. Respondent No. 5 has already received orders from the Government for supplying of pipes. Therefore, it appears that Respondents Nos. 1 and 2 intend to follow the store purchase rules in future also. Reply has also been filed to the application of the interveners and the petitioners have filed a rejoinder to the reply of Respondent No. 5, wherein it has been alleged that the Department was not following the store purchase rules, therefore, this petition was filed. The undertaking given by Respondent No. 5 should actually come from Respondents Nos. 1 and 2 that in future Store Purchase Rules shall be followed. The rejoinder has also been filed to the reply of the State Government. Thereafter an affidavit was filed by the Officer-in-charge, whereby it was stated that the letter of the MPLUN leads the Government to infer that the MPLUN is not in a position to supply the GI pipes in respect of which the orders are placed. This affidavit has been explained by the counter affidavit filed by the MPLUN.

The second petition No. 366 of 1990 has been filed by Shri Shivshankar Daga and Shri Kumud Kumar Mishra against the State Government, and MPLUN. These petitioners claim to be the authorised representatives of M/s. Swastik Tubes Ltd., New Delhi and M/s. Advance Steel Tubes Ltd., Ghaziabad, the companies which are manufacturing GI pipes. According to this petition, the GI pipes can be purchased only through the agency of DGSD and not MPLUN in accordance with the Store Purchase Rules because the GI pipes are not included in Annexure-B Under Rule 14 of the State Purchase Rules. As such, according to Rule 7 of the Store Purchase Rules the GI pipes have to be purchased through DGSD rate contract both from inside and outside the State.

All the parties in both the two petitions requested that these petitions should be decided before 31st March 1990. In view of the urgency of the matter pertaining to water scarcity problem in the State, therefore, with the consent of the parties the matter was finally heard on 29-3-1990. However, the learned counsel sought permission to file affidavits which were filed today i.e. 30-3-1990.

6-A. Shri G. M. Chaphekar, learned counsel for the petitioner in M. P. No. 268 of 90 strenuously argues that the State Government being bound by the Rules of the Store Purchase Rules and its commitment to the local manufacturers cannot by any order depart from the well settled norms. Therefore, the order of the Government dated 26-2-1990 was clearly contrary to the Rules for Store Purchase. He further argues that the purchases have to be made through MPLUN and the steel pipes and fittings and MS pipes/flat appearing in Annexure-B to Rule 14 of the M. P. Financial Code, page 2, clearly indicates that the MPLUN has the sole monopoly in the matter of purchase by the State Government of the articles mentioned at serial No. 42 and serial No. 115. He further argues that the MPLUN is also enjoined by the Rules to give first preference to the local manufacturers than the manufacturers outside the State provided the quality is of the standard prescribed by the Government and the prices are not unreasonable.

On the other hand Shri A. M. Mathur, learned counsel for the intervener in this petition and counsel for the petitioner in M. P. No. 366 of 90 strenuously argues that in view of Rule 7 and Rule 14 of the Store Purchase Rules the State Government cannot be compelled to purchase the GI pipes only through the agency of MPLUN because Rule 7 clearly says that the indenting officers in the case of purchase in India above Rs. 50,000/- each in value must use the agency of the Director General of Supplies and Disposals (DGSD) unless they can show that they can themselves purchase the material more cheaply or in a case of urgency more expeditiously. Shri Mathur has also placed reliance on Rule 14 on which Shri Chitale has also placed reliance and according to Shri Mathur the GI pipes are not included in Annexure-B of the Rules. Therefore, the GI pipes could not be purchased through the agency of MPLUN. According to Shri Mathur, the MPLUN is authorised to supply the articles only produced by the Small Scale Industries and the GI Pipes are manufactured by the Medium Scale and Large Scale Industries. The argument that the pipes have to be purchased only through MPLUN is without any merit. According to Shri Mathur if the pipes are purchased through MPLUN, then it will benefit only two industries in the State which are manufacturing the GI pipes and who are not in a position to fulfil the demand of the State. There being a great water scarcity, the work of the water supply has to be completed expeditiously and if the State Government is left at the mercy of these two industries there will be a total disaster.

Shri Chitale, learned counsel appearing on behalf of the MPLUN on the other hand argues that the GI pipes and the steel pipes are the same and entries Nos. 42 and 115 in Annexure-B to the Store Purchase Rules clearly cover the GI pipes. This is evident from the letter making elucidation in this behalf issued by the Industries Department which has been filed with the petition as Annexure-P-5A wherein it has been clearly stated by the Department of Industries that the GI pipes are under the head ''steel pipes''. Therefore, according to Shri Chitale the entries in Annexure-B to the Rules at serial Nos. 42 and 115 clearly cover the GI pipes.

Shri Surjeet Singh, learned Government Advocate has stated that although earlier the policy of the Government, vide order dated 26-2-1990 was to purchase the GI pipes on the DGSD contracts, but the Government superseding the aforesaid order has issued order dated 19-3-1990 wherein a direction has been given that to avoid any obstruction in the smooth practice of the drought relief work the purchases, have to be made through the agency of MPLUN. However, according to Shri Surjeet Singh the Government should be given a free hand in the matter and it should be free to purchase the GI pipes from whatever agency they may be available subject to the store purchase rules.

In our opinion, none of the learned counsel has in His arguments pleaded for the departure from the Store Purchase Rules. However, the interpretation of Shri Mathur on one hand and that of Shri Chaphekar and Shri Chitale on the other to the Rules is different, and furthermore Shri Mathur also challenges the order of the State Government dated 19-3-1990 being in violation of the Store Purchase Rules. There is no dispute before us that in the matter of grant of contracts or purchases by the State Government the discretion of the State Government is not unlimited, it should always satisfy the test of reasonableness and public interest. In Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, the Supreme Court has held that when governmental action fails to satisfy the test of reasonableness and is found wanting in quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. As a necessary corollary it must follow that the Government cannot act in a manner which would benefit a private party at the cost of the State. There may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Government is reasonable and in public interest. However, there is one basic principle for the guidance of the Court that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest.

Similarly in the case of Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, the Supreme Court has said that in the matter of public auctions and contracts the State or the instrumentality of the State should abide by the general rules in that respect. If a departure from the rule is made in a particular case it must be justified by the State by compulsions. Such departure is not permissible by compromise.

In the light of the aforesaid principles enunciated by the Supreme Court, there can be no dispute that the State has to act in a reasonable manner and in the public interest and when rules have been framed such Rules have to be followed by the State while inviting tenders or giving contracts. However, a departure of the Rules is permissible only when there is an element of compulsion leading to such a departure. In the instant case none of the petitioners has challenged the Rules before us and the contention of all the parties before us is that the Rules should be strictly followed. It is only the question of interpretation of the Rules which is in controversy.

Rule 7 of the Rules for supply of articles for the public service, which are known as Store Purchase Rules provides that in case of purchase in India above Rs. 50,000/- each in value, the purchases have to be made through the agency of DGSD unless it can be shown that the department can itself purchase the materials more cheaply or in case of urgency more expeditiously. As such as a general rule the purchases of above Rs. 50,000/- each have to be made by using the agency of DGSD unless the cost element or time element is involved and favours the departure from the rule. However, the proviso to Rule 7 clearly shows that if the purchases are made through MPLUN the above restriction does not apply. As such it is manifest that whenever the purchases have to be made they have to be made in accordance with Rule 7, but in case the purchases are to be made through the agency of MPLUN this restriction of Rule 7 shall not be applicable.

In the instant case undisputedly the State has decided, vide its order dated 19-3-1990 to make purchases through MPLUN. Therefore, the restrictions contained in Rule 7 are not applicable to the purchases to be made through the MPLUN. Now according to Rule 14 of the Store Purchase Rules the articles which are included in Annexure-B are the articles produced or manufactured by Small Scale Industries, have to be purchased through the MPLUN Limited only, at the rates fixed by them and the entries in Annexure-B to the Rules mentions of the steel pipes and fittings at serial No. 42 and MS pipes/flat at serial No. 115. However, reading Rule 14 as it is. it cannot be debated that the Rules shall be attracted only in respect of the articles listed in Annexure-B which are produced/ or manufactured by Small Scale Industries of M. P. and which are registered with the Director of Industries for concerned articles.

On the basis of the above Rules Shri Mathur has strenuously argued that the articles contained in Annexure-B can be purchased through the agency of MPLUN only, if they are produced by the Small Scale Industries. However, the GI pipes are manufactured by the Medium Scale Industries and Large Scale Industries. Therefore, the orders could not be placed through the MPLUN. We are in agreement with the aforesaid argument only in part, in so far as it relates to the compulsion of purchasing the articles through the MPLUN only. In view of the clear language of Rule 14 the articles which have been produced by the Small Scale Industries and registered with the Director of Industries and which are enumerated in Annexure-B have to be purchased through the MPLUN only and no other agency. But this would not be construed to mean that the MPLUN cannot be entrusted with the work of supplying the GI pipes to the Government. The MPLUN is a Government corporation and in view of Rule 7 when the Government decides to make purchases through the MPLUN the restriction of purchasing the articles of above Rs. 50,000/- through the rate contract of DGSD is not attracted. Shri Chitale has rightly said that according to the Articles of Association and Memorandum of Association of the Nigam the Nigam can undertake the job of supplying any article to the Government, including the GI pipes. We have also perused the confidential minutes of the Government functionaries to satisfy ourselves whether the decision dated 19-3-1990 is reasonable and in public interest. We find that the decision has been taken in view of the drought situation in the State and the Government is of the opinion that the GI Pipes will be readily available at a lesser rate if they are purchased through the MPLUN. Shri Surjeet Singh has, of course, filed a letter from the MPLUN sent to the

Government in respect of rates, but in view of the affidavit filed on behalf of the MPLUN wherein it has been clearly stated that the MPLUN does not want to enhance the rate, we do not agree with the contention that the MPLUN is not in a position to supply the pipes. This fact also cannot be lost sight of, that when a Government takes a decision to make purchases through the MPLUN it is not bound by that decision to this extent that even if the MPLUN is not in a position to supply the required goods or is not in a position to maintain the quality or its prices are excessive and unreasonable, then also the Government should make the purchases from the MPLUN. Therefore, despite the decision dated 19-3-1990, if there may arise a situation wherein the MPLUN is not in a position to supply the GI pipes according to the requirements or the pipes which may be supplied are of an inferior quality or the prices are unreasonable, then the Government is always free to make purchases from other manufacturers through DGSD contracts. Such a power is inherent in the Government and an analogous position in this respect Under Clause 50, explaining the scope and ambit of Rule 14 can be cited wherein it has been stated that if the MPLUN certifies its inability to make the supply the purchase should be made from other sources in accordance with the Rules.

Now as regards the grievance the petitioners in M. P. No. 268 of 1990 is concerned, wherein they apprehend that the State shall purchase the GI pipes from outside the State ignoring the Industrial policy, we may refer to Rule 3 of the Store Purchase Rules, which specifically says that subject to Rule 14 articles which are produced or manufactured in M. P. should be purchased in preference to articles produced or manufactured in other parts of India provided that the quality is sufficiently good and the price reasonable. As such reading Rule 3 along with Rule 14 of the Rules, it is clear that although there is a restriction of purchasing the commodities from MPLUN only which are produced in the S.S.I. Unit of the State included in Annexure-B and registered with the Director of Industries, however, in respect of other articles which are produced or manufactured by Medium or Large Scale Industries in M. P. should be given a preference in the matter of purchase to the articles produced or manufactured outside the State of M. P. provided that the quality of M. P. products is sufficiently good and the price is reasonable. As such in accordance with Rule 3 of the Store Purchase Rules the petitioners are entitled to get the preference, being the manufacturers in the State of M. P., over those manufacturers who are manufacturing the GI pipes outside the State of M. P.

The industrial policy of the State of M. P. also gives first preference to the Small Scale Industries, second preference to the Medium and Large Scale Industries, and third preference to the Industries outside the State. As such the petitioners are entitled to get the preference over the manufacturers of the same commodity outside the State. The MPLUN has been entrusted with the job of supplying the GI pipes by the State Government and seven industries have been registered with the MPLUN for supply of GI pipes out of which two are from the State of M... P. and five others are from outside the state. As has been given us to understand, there is no restriction on the industries represented by the petitioners, in M. P. No. 366 of 1990, if they wish to get themselves registered with the MPLUN. However, in accordance with Rule 3 the first preference has to be given to the manufacturers of the State of M. P. if the manufacturers of the State of M. P. fail to meet the demands of the State Government in respect of the supply of GI pipes or if the quality is not up to the mark or if the price is unreasonable, then only in accordance with Rule 3 of the Store Purchase Rules the industries outside the State can be considered for supply of the GI pipes to the State. The grievance of the petitioner in M. P. No. 366 of 1990 is that in view of the Government order dated 19-3-1990 there is a total ouster of the industries outside the State. But as discussed above the State Government is always free to purchase the GI pipes at the DGSD rate contract from manufacturers outside the State if the manufacturers in the State or the MPLUN are either not in a position to supply the required quantity of the pipes or the pipes are not upto the standard or the cost of the GI pipes which may be quoted by the MPLUN or the local manufacturers is unreasonable. It will never be in the public interest to stick to the order of purchasing only from the MPLUN even if the MPLUN is not in a position to supply the pipes within a reasonable time or the pipes supplied may be of an inferior quality or the prices may be unreasonable. The public interest is paramount in these matters and every effort has to be made to combat the unfortunate situation arising out of the drought in the State.

Therefore, in view of the aforesaid discussion we direct that the State shall make the purchases in accordance with the Store Purchase Rules which clearly provide that in matter of purchases the preference has to be given to the State manufacturers over those who are manufacturers from outside the State, provided the quality of the product is good and the price is not unreasonable. We are further of the opinion that the MPLUN being a Government agency, there is nothing unreasonable in purchasing the aforesaid goods through the agency of MPLUN, because Rule 7 clearly says that in case where the purchases have to be made through the MPLUN the provisions of Rule 7 enjoining upon the State to make purchases above Rs. 50,000/- through the Agency of DGSD is not attracted. The State shall, however, be free to make the purchases at the DGSD rate contracts from other manufacturers if the MPLUN is not able to meet the demand of the State in view of the urgency of the situation or if the quality of the GI pipes is inferior or the prices are unreasonable.

With the above observations these petitions are disposed of. There shall be no order as to costs.