(2001) 06 KL CK 0005

In the High Court Of Kerala

Case No : O.P. No. 15403 of 2001

Sivanandan APPELLANT

Vs

Divisional Railway Manager (Commercial) RESPONDENT

Date of Decision : 12-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 06 KL CK 0005

Hon'ble Judges : G. Sivarajan, J

Bench : Single Bench

Advocate : V.V. Ashokan and K.I. Mayankutty Mather, for the Appellant; M.C. Cherian, K.M. Joseph and Sabu George, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—The first respondent issued tender notice (Ext. R1(a)) calling for tenders for exhibiting hoardings at Calicut Railway Station. Pursuant to the said tender notice the petitioner submitted his tender. According to the petitioner he satisfied all the requirements of the tender and that the rate quoted by the petitioner is the highest. The complaint of the petitioner is that respondent 1 to 3 rejected the claim of the petitioner to get the contract and had awarded the said contract to the 4th respondent who has quoted only a lesser amount.

2. A counter affidavit is filed on behalf of respondents 1 to 3. It is stated therein that the tender conditions, inter alia, require the tenderer to enclose along with the tender form a guarantee bond a bank for not less than the amount of 6 months rent, that it also requires production of income tax clearance certificate and solvency certificate in original along with the tender, that the petitioner and 3 others including the 4th respondent have submitted tenders, that the tenders were opened on 28.11.2000, that after disclosing the amount quoted y each tenderer the matter was left for scrutiny and verification of the credentials, certificates, etc., that at the time of opening of the tender the eligibility of the tenderers and compliance of tender conditions, etc. are not considered or

adverted to, that they are all matters to be decided by the tender committee on the basis of the documents produced and the result of verification of the credentials, etc. by the staff concerned and that the only verification made at the opening of the tender is regarding the payment of earnest money deposit. It is also stated that a tender committee consisting of a Divisional Engineer, Divisional Commercial Manager-I and Asst. Divisional Accounts Officer have been constituted on 20.12.2000, that they met on 8.5.2001 for scrutiny and awarding of the contract, that as per the tender conditions contained in Ext. P1 a tender will remain valid only for 3 months, that the Railway by letter dated 23.4.2001 asked all the tenderers to submit a letter agreeing to extend the validity period, that 3 tenderers including the petitioner and the 4th respondent have communicated agreeing to extend the validity period and that at the time of sending Ext.R1(b) better the eligibility of tenders have not been subjected to verification in full. It is further stated that the petitioner has not produced the solvency certificate and income tax clearance certificate along with the tender submitted by him and that the petitioner has also failed to produce guarantee bond equivalent to 6 months quoted rent as required in Ext. P1. The 4th respondent suspecting some foul play in the matter had sent a letter dated 31.3.2001 (Ext. R1(C)). The tender committee, it is stated, met on 8.5.2001 and recommended to award the contract to the 4th respondent, copy of the proceedings (Ext. R1(d)) of the tender committee is also produced which contains the details of verification results in respect of each tender. The 4th respondent, it is stated, has offered to pay an amount of Rs. 3,86,540/- as rent for the first year as against the amount of Rs. 3,00,000/- quoted by at the first instance. The work has been awarded to the 4th respondent on 11.5.2001.

3. Counter affidavit and addl. counter affidavit are filed by the 4th respondent. It is, inter alia, stated therein that the 4th respondent at the time of opening the tender itself had objected to the entertainment of the tender submitted by the petitioner since the petitioner''s tender did not accompany the solvency certificate and that he had signed the proceedings signifying his protest. It is also stated that the petitioner has filed a false affidavit Ext. P2. Various over averments contained in the O.P. were denied. The 4th respondent has stated that he is fully qualified and eligible for getting the work in question. Regarding the averment of the petitioner that the 4th respondent did not produce evidence regarding proof of his age it is stated that the requirement of production of evidence regarding the age of the tenderer is only for the purpose of ascertaining as to whether the tenderer is a major and that since the 4th respondent is an existing contractor of the first respondent there was no need for production of proof of age.

4. Sri V.V. Asokan, learned counsel for the petitioner submitted that the petitioner had complied with all the terms and conditions contained in Ext. P1 tender conditions and that the petitioner is the highest tenderer, who offered Rs. 3.86.540/-. The counsel submits that respondents have arbitrarily rejected the petitioner''s tender and had given the right to the 4th respondent who has

offered only Rs. 3,00,000/-. He further submitted that the tender conditions specifically provide for production of certificate regarding age of the tenderer and that Ext. R1(a) tender notice clearly stated that the tenders which do not accompany the said certificate will be rejected. He submitted that the 4th respondent admittedly did not produce any certificate in proof of his age along with the tender notice and therefore he was also disqualified from being considered for selection.

5. Sri M.C. Cherian, senior standing counsel for the Railways submitted that the tender submitted by the petitioner did not accompany the solvency certificate and the income tax clearance certificate and further the bank guarantee furnished was not in accordance with the terms of the tender conditions. He also submitted that the tender committee had rejected the tender of the petitioner in the above circumstances. Regarding the tender of the 4th respondent, it is stated that the 4th respondent has satisfied all the requirements of the tender notification and the tender conditions. He submitted that the certificate in proof of age of the tenderer was required only to verify as to whether the tender is a minor or a major and that since the 4th respondent is an existing contractor of the Railways it was not necessary for the 4th respondent to produce evidence regarding the age and what was required in the tender conditions was only the satisfaction of the railway administration that the tenderer is a major which is clearly established by the fact that he is an existing contractor. He further submitted that of the 4 tenders submitted pursuant to Ext. R.1(a) tender notification the tender submitted by the 4th respondent alone satisfied all the requirements of the tender notification and the tender conditions and that the 4th respondent has voluntarily agreed in a letter dated 31.3.2001 (Ext. R1(c)) submitted by him that he is prepared to execute the contract for Rs. 3,86,540/- which is the amount offered by the petitioner to avoid any loss to the Railways. The counsel also submitted that the petitioner has not alleged or established any mala fides or foul play in the matter of the award of contract in favour of the 4th respondent.

6. Sri K.M. Joseph, learned counsel for the 4th respondent made submissions on the lines made by he senior standing counsel for the Railway and further submitted that the petitioner has no locus standi to challenge the grant made to the 4th respondent since the petitioner did not admittedly satisfy the requirements of the tender notification. He further submitted that the petitioner has also filed a false affidavit along with the tender notification stating that he is enclosing a guarantee bond of Rs. 2,00,000/- instead of Rs. 1,00,000/- required and that he has already applied for solvency certificate (Ext. P3) produced by the petitioner would show that the application was mae by the petitioner only on 7.12.2000 subsequent to the affidavit dated 27.11.2000 (Ext. P2). The counsel submitted that the petitioner has approached this court with unclean hands and this Court will not exercise the extra-ordinary jurisdiction of this Court under Art. 226 of the Constitution of India in favour of the petitioner.

7. Ext. R1(a) produced along with the counter affidavit of respondents 1 to 3 is the tender notification and Ext. P1 is the tender conditions. Ext. P1 tender conditions specifically provide for the enclosures to accompany the tender. It provides for (i) Earnest Money Deposit of Rs. 10,000/- and production of evidence regarding the same; (ii) a guarantee bond from a scheduled or nationalised bank for a sum not less than Rs. 50,000/- or six months rent as quoted by him in the tender; (iii) a current and valid income tax clearance certificate in the prescribed form; (iv) solvency certificate in original issued by an officer of the revenue department not below the rank of Deputy Tahsildar; and (v) in the case of partnership firm, a copy of the partnership deed with a copy of the certificate of registration issued by competent authority and a copy of the Power of Attorney executed by the Managing Partner to sign the tender documents. The tender condition further provides that "tenders received without the proper conditions and without the stipulated documents in original will be disqualified and shall not be considered". So far as the petitioner is concerned, he has not produced the solvency certificate and income tax clearance certificate along with the tender documents.

8. I have verified the files produced by the senior standing counsel for the Railways which contains the tender documents produced by all the tenderers. It is seen that the petitioner has produced a deposit receipt for Rs. 1,00,000/- issued by the Nedungadi Bank Ltd., the relevant page of SSLC book regarding the age of the petitioner and an affidavit dated 27.2.2000 stating that he is enclosing a guarantee bond of Rs. 2,00,000/- Thus, it is seen that the petitioner has not produced the solvency certificate and the income tax certificate along with the tender documents. He has also not enclosed the guarantee bond of Rs. 2,00,000/- as stated in the affidavit. Thus it is clear that the petitioner has not satisfied the tender conditions regarding the documents to be enclosed. Consequently, in view of the clause contained in the tender conditions his application is liable to be rejected. However, the submission made by the counsel is that the 4th respondent has not satisfied the tender conditions, in that, he has not produced the certificate regarding his correct age. In view of the said submission, I referred to the tender conditions. It contains a clause that the tenderer/s is/are required to declare his/their age to the satisfaction of the Railway Administration, that no contract will be allotted to minor/minors under any circumstances, that the applicants should produce confirmatory documentary evidence viz., a matriculation certificate/birth certificate or school leaving certificate or a Baptismal certificate or some other reliable document to the satisfaction of the Railway Administration along with the documents to be enclosed with the tender. It also provides that in the event of any failure to produce documentary evidence for the age declared being found to be false and the tenderer is found to be minor on the date of submitting the tender, such tender is liable to be rejected forfeiting the Earnest Money Deposit.

9. As already noted that the stand of respondents 1 to 3 is that the 4th respondent is an existing contractor of the railway and therefore the Railway

Administration is fully satisfied that he is a major. The Counsel for respondents 1 to 3 have also produced the previous files regarding the contract awarded to the 4th respondent which contains the relevant page of the SSLC book regarding his age. According to respondents 1 to 3 the Railway Administration was fully satisfied about the age of the 4th respondent and therefore the fact that the 4th respondent did not produce certificate regarding his age did not affect the contract.

10. The counsel for the 4th respondent also relied on the decision of the Supreme Court in M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, where the Supreme Court considered a case where the tender notification provided for depositing earnest money either in case or by demand draft drawn on State Bank of India whereas the tenderer had furnished a cheque of the Union Bank. In that context the Supreme Court observed that as a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The Supreme Court in that context observed that the requirements in a tender notice can be classified into two categories-those which lay down the essential conditio of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition and that in the first case the authority issuing the tender may be required to enforce them rigidly and in the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. The Supreme Court relying on the decision in Sita Ram v. Bombay Bullion Association (AIR 1965 SC 1928) held that the certified cheque of the Union Bank of India d r awn on its own branch must be treated as sufficient for the purpose of achieving the object of the condition and the tender committee took the abundant caution by a further verification from the bank. The senior standing counsel for the Railways relied on a decision in Santhosh v. Joint Register (1994 (2) KLT 141) in support of his contention that technical default should not weigh with the authorities for rejecting the application. That was a case where the Returning Officers at elections to co-operative societies rejected nominations submitted by candidates for not containing the name of the society in the affidavit filed in support of the nominations and that the column for signature and date in the attestation of the affidavit left blank and the date of election being not filled up in the affidavit. The Court after referring to the various decisions in the matter observed that it is not each and every omission or mistake in the nomination paper that entails its rejection but only something more which is substantial and goes to the root of the matter. The court directed the respondents to treat the nominations as valid and to include their names in the ballot papers for the election.

11. As already noted, the insistence of production of certificate regarding the age is only for the purpose of verifying as to whether the tenderer is a major. In the instant case the 4th respondent being an existing contractor of the Railway

administration has fully satisfied that the 4th respondent is a major. The tender committee has also taken care to verity the said fact from the previous records. Admittedly the 4th respondent had produced the earnest money deposit, income tax clearance certificate, the solvency certificate, and bank guarantee issued by the Nedungadi Bank Ltd., Calicut along with the tender documents. Though the tender notice provides that the tenders unaccompanied by the certificate regarding the age will be rejected in the circumstances stated above, according to me, respondents were justified in waiving the said condition and in accepting the tender of the 4th respondent. The 4th respondent has also offered an amount of Rs. 3,86,540/- to avoid any loss to the Railways and the contract was awarded to the 4th respondent accepting the above.

I do not find any merit in this Original Petition. It is accordingly dismissed.

