
(2011) 07 DEL CK 0358

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3923 of 2011

S.K. Chatterjee

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2011) 07 DEL CK 0358

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Anisha Upadhyay, for the Appellant; A.S. Chandhiok, ASG, Sonia Sharma, Mirza Aslam Beg, Bhagat Singh and Yash Wardhan Tiwari for the Respondent Nos. 1 and 2, Amarendra Sharan Amit Kumar and Ashish Kumar for Respondent No. 5, Vijay Nair and Rajat Juneja, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—The Petitioner, Mr. S.K. Chatterjee, describing himself as a real estate consultant and a peace loving person, has prayed for the following reliefs:

(i) Issue Rule Nisi calling upon the Respondents as to why the compliance of CVC Guidelines while awarding the Civil Contract by the Government Department/ PSUs/State Government/Semi-Government Agencies shall be made mandatory and in return of the Rule and after hearing the Parties make the Rule absolute; and

(ii) May further be please to direct the Respondents to provide specific provision/ criteria in the terms and conditions of the tender in view of the CVC Guidelines for awarding of Civil Contract especially for the Lead Members in case bidder is a Joint Venture or Consortium; and

(iii) May pass an order/direction for free, fair and impartial enquiry into the matter of grant of lease of Railway Land situated in Sarai rohilla-Kishanganj, New Delhi to M/s. Paresnath Developers Ltd. and on submission of report and on

perusal may pass necessary and appropriate direction.

(iv) May further be please to direct the Respondents to cancel the contract awarded without following the CVC Guidelines; and

(v) May further be pleased to pass such other and further order as may be deemed just and proper in the premises of this case.

2. It is submitted by Ms. Anisha Upadhyay, learned Counsel for the Petitioner, that the Respondents are under legal obligation to comply with the CVC guidelines while awarding the civil contracts but there has been a constant and consistent departure from the same for unfathomable reasons as a consequence of which the contracts are awarded in violation of the guidelines. It is urged that non-following of the CVC guidelines has resulted in award of civil contract in favour of the Respondent No. 6, M/s Parsvnath Developers Limited.

3. Mr. Amarendra Sharan, learned senior counsel, and Mr. Amit Kumar, learned Counsel who has entered appearance on behalf of the Respondent No. 5, the Rail Land Development Authority, has submitted that the present Public Interest Litigation does not even remotely pertain to any public interest inasmuch as the Petitioner, though has described himself as a public spirited person, his personal interest is absolutely ingrained and further the present case is an epitome of shadow litigation. To substantiate the said submission, he has invited our attention to the communication made by the Petitioner to various authorities, at pages 132-133 of the paper book. For the sake of proper appreciation of the factual scenario, we think it appropriate to reproduce the same in entirety:

With reference to the above it has been observed in the RLDA Tenders opened on 11th November, 2010 which M/s Pareshnath Developer, New Delhi has been awarded the above Land at a price of Rs. 1652 crores but very motivatedly the above Government Authority has dishonoured the major CVC guidelines Number 12-02-1-CTE-6 dated the 17th December, 2002 where clearly mentioned that the bidder should have a completion certificate of one similar completed work costing not less than the amount equal to 80% of the estimated cost in addition to the above, the criteria regarding satisfactory performance of work, personnel, establishment, plant, equipment, etc. may be incorporated according to the requirement of the project and it is for your information that the awarded company M/s Pareshnath Developers are not having the above credentials in their last year Annual Audited Balance Sheet.

On the other hand, the said Government Authority had awarded the said land to M/s ABW Infrastructure Ltd., Delhi in a open tender in the year 2007 where the company had paid Rs. 39 crores to RLDA on Interest, Bank Guarantee and Other Fees accounts and had deposited Rs. 75 crores to the Hon"ble Delhi High Court under the instruction of the Hon"ble Chief Justice to Delhi High Court dated 22nd July, 2010 where both the Councils were agreed and promised to stop the above Financial Bid which was executed on 11th November, 2010 even the Hon"ble Chief Justice had suggested to both the Councils to go for a mutual

understanding to pay the Bidding amount of Rs. 1026 crores and accordingly M/s ABW Infrastructure Ltd. submitted a revised Financial Proposal to pay the Principal amount to the Vice President of RLDA Mr. Pankaj Jain on 16th August, 2010. On execution of earlier award for the said land in favour of ABW Infrastructure Ltd. Suddenly the Real Estate Price had come down 40% throughout the World and No. financial institutions were prepared to finance on the Real Estate segment for the last two and half years and councils of ABW Infrastructure Ltd. were pleased to convince the above fact to the Hon'ble Chief Justice of Delhi High Court for the reason of non-payment of principal amount of Financial bid of Rs. 1026 crores to RLDA in time but with a very malafide intention on the next hearing date the RLDA Councils were refuse to accept the agreed and deposited amount of Rs. 75 crores and cancelled the revised Financial Proposal which was submitted on 16th August, 2010 to RLDA.

Sir, it is also mentioned in the CVC guidelines, Order No. OFF-1-CTE-1 (Pt.) V, dated 24th March, 2005 that the Commission has observed that some Notice Inviting Tenders have a clause that the Tender Application could be rejected without assigning any reason. These clauses are apparently incorporated in Tender enquiries to safeguard the interest of the organization in exceptional circumstances and to avoid any Legal dispute, in such cases. The Commission has emphasized that such a clause in the Bid documents does not mean that the Tender Accepting Authority is free to take the decision in an Arbitrary manner. He is bound to record clear, logical reason for any such rejection/recall of tenders on the file.

Sir, being a citizen of India and as well as a Real Estate Consultant it is my request to your goodself to look into the matter to identify the corrupt officers and investigate the above matter and pass an instruction to the Competent Authority to cancel the above Financial Bid instantly which was executed on 11th November, 2010 and give a fresh opportunity to the earlier qualifying bidder ABW Infrastructure Ltd. To complete the above job.

4. It is noteworthy that ABW Infrastructure Limited and another had preferred a writ petition before this Court forming subject matter of W.P. (C) No. 13590/2009, which was dismissed by the learned single Judge. Being dissatisfied, LPA No. 264/2010 was preferred, which also did not meet the success. The order passed in LPA No. 264/2010 was assailed in SLP (Civil) No. 30927/2010 wherein their Lordships have passed the following order:

Upon being mentioned the Court made the following ORDER

We do not find any reason to interfere with the impugned judgment in exercise of our discretion under Article 136 of the Constitution. The SLP is, accordingly, dismissed.

5. Thereafter, Review Petition (Civil) No. 2281/2010 was filed wherein the following order came to be passed:

We have carefully considered the Review Petition. Considering the facts and the legal submissions, we are of the opinion that the Review Petition does not have any merits. The Review Petition is accordingly dismissed.

6. Thereafter, a Curative Petition (Civil) No. 23/2011 was filed wherein their Lordships have passed the following order:

We have gone through the curative petition and the relevant documents. In our opinion, No. case is made out within the parameters indicated in the decision of this Court in the case of Rupa Ashok Hurra Vs. Ashok Hurra and Another, Hence, the curative petition is dismissed.

7. We have narrated the chronology of events and reproduced the communication in entirety to highlight that the Petitioner had expressed immense interest in the case that was decided and, in fact, had referred in his letter in detail about the proceedings in the other case. We really fail to fathom how the present litigation can be put into the compartment of Public Interest Litigation. Indubitably, it has the contours and characteristics of a personal interest litigation. That apart, it seems that the Petitioner is determined to espouse the cause of a singular party. What interest he had/has is not disclosed. In this context, we may refer with profit to a few passages from Ashok Kumar Pandey Vs. The State of West Bengal and Others, which read as follows:

4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant or poke one's nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in J Janata Dal Vs. H.S. Chowdhary and Others, and State of Maharashtra and Others Vs. Uttamrao Rayala Nikam, . A writ Petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ Petitioner but also with a clean heart, clean mind and clean objective. See The Ramjas Foundation and Others Vs. Union of India and

Others, and K.R. Srinivas Vs. R.M. Premchand and Others,

11. It is depressing to note that on account of such trumpety proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Though we spare No. efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death and facing the gallows under untold agony, persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely No. public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for the glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of genuine litigants and resultantly, they lose faith in the administration of our judicial system.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity- seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

We have quoted in extenso from the aforesaid pronouncement as we are inclined to think that the present litigation nomenclature as a public interest litigation has been initiated for personal interest or to project one's individual financial interest in the guise of a public interest.

8. It is apt to note that public interest litigation or the epistolary jurisdiction of the High Court can be invoked if there is a cause which is required to be fought or brought to be adjudicated before a court of law pertaining to the grievance, anguish or agony of people who cannot come to Court or cases where greater public interest relating to environment, pollution, fiscal irregularities, holding of public office without eligibility criteria, protection of democratic values, etc. is involved can be entertained. But, the present litigation has been filed as if the Petitioner has felt what the contesting parties could not achieve by taking recourse to the due process of law, the same is achievable by way of public interest litigation. The learned Counsel for the Petitioner would submit that the instance mentioned in the letter is a singular one as he could lay his hands upon any other but there are many such instances. The verification of antecedents of a person who comes to court in a public interest litigation and his real concern for public interest require keen scrutiny. On a deeper scrutiny and nuanced appreciation of the documents brought on record, the personal interest is writ large. As we find, the Petitioner has felt that one of the parties whose cause he had agitated had lost the battle but he still has the indefatigable potentiality to carry on the battle. The battle between the two private parties has been metamorphosed into a public cause in an extremely maladroit manner.

9. While so stating, we would have proceeded to reproduce the formal part of the order that the writ petition is without any substance, not being in the compartment of public interest litigation and further to state the dismissal of it, but a battle in futility or a battle in egocentric propensity has to have a price. The Petitioner who has thought himself to pave the path of unwarranted heroics should pay a price for waste of the Court's time and accordingly, we dismiss the writ petition with costs of Rs. 75,000/-. The said sum shall be deposited before the Registrar General of this Court within a span of six weeks, failing which proceedings for contempt shall be initiated against the Petitioner.