
(2006) 01 GAU CK 0028
In the Gauhati High Court
Case No : W.A. No. 645 of 2005

Soran Sing Bey

APPELLANT

Vs

Karbi Anglong Autonomous Council and Others

RESPONDENT

Date of Decision : 23-01-2006

Acts Referred:

Citation : (2006) 2 GLR 483 : (2006) 1 GLT 217

Hon'ble Judges : B. Sudershan Reddy, C.J.;H.N. Sharma, J

Bench : Division Bench

Advocate : U.J. Saikia and U.K. Dutta, for the Appellant; D.K. Das, M. Bora, A.K. Goswami and B. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, C.J.—The unsuccessful writ petitioner in WP(C) No. 5036/2005 is the appellant in this writ appeal.

2. The Karbi Anglong Autonomous District Council (hereinafter referred to as "the Council") vide its notification dated 14.2.2005 issued Notice Inviting Tender (NIT) for settlement of, inter alia, the Entry Tax Gate in question. That, in response to the NIT altogether five tenders were submitted including the one submitted by the appellant and as well as the 5th respondent. The appellant offered a sum of Rs. 27,15,480.00 as against the sum of Rs. 25,00,000.00 offered by the 5th respondent. The offer of the appellant admittedly is the highest. It appears the Council instead of accepting the highest bid amount of the appellant entered into negotiations with the 5th respondent alone who increased the offer to that of Rs. 30,00,000.00, settled the said Entry Tax Gate in favour of the 5th respondent vide its order dated 8.4.2005. The appellant herein challenged the decision, so taken by the Council, in WP(C) No. 2884/2005. This Court having found the action of the Council of its entering into negotiations with the 5th respondent alone in an arbitrary and unilateral manner, interfered with the decision making process and accordingly set aside the settlement order dated 8.4.2005 insofar as Garampani NH 37 Entry Tax Gate is concerned. The learned Single Judge

observed that"...no unilateral opportunity to one single tenderer can be offered so as to enable such tenderer to improve upon his offer to the exclusion of others. The said authorities could have re-tendered the Entry Tax Gate or could have even invited all the tenderers for negotiation. Either of the aforesaid courses of action would have been consistent with the rights of the tenderers and the requirement of fair play in action". The order of the learned Single Judge attained its finality.

3. The Council, in order to give effect to the directions issued by this court, issued notices dated 4.7.2005 to all the bidders including the appellant and as well as the respondents requesting them to attend for negotiations on 6.7.2005 at 11.00 AM in the office chambers of the Deputy Secretary, Department of Taxation. The appellant herein vide its reply dated 4.7.2005 objected to the procedure adopted by the Council, inter alia, contended that the Council wants "more amount than the offered by me. I being the highest offerer should alone be invited to offer the amount which may be just and adequate for Karbi Anglong Autonomous Council and for that purpose other cannot be given any opportunities to improve their offer and if the offer made by is adequate the settlement should be made in my favour." The appellant also stated that he has a strong objection to the procedure adopted by the Council vide its letter dated 4.7.2005 and contended that under no circumstances the tender system adopted, as is evident from NIT, could be converted into settlement by auction. Thus, the appellant raised two-fold objections to the proposal sought to be adopted by the Council.

4. The Council having ignored the objections raised by the appellant proceeded with the negotiations and accepted the offer of the 51st respondent at Rs. 30,000,00.00 and accordingly awarded and settled the Garampani NH-39 Entry Tax Gate for the period from July 2005 to March 2006. The appellant admittedly did not participate in the negotiations.

5. The action of the Council in settling the Entry Tax Gate in favour of the 5th respondent vide its order dated 8.7.2005 has been once again put on issue by the appellant in WP(C) No. 5036/05. The decision of the Council has been impugned on various grounds. The appellant pressed both the grounds raised by him in his protest petition dated 4.7.2005 into service. It was mainly contended that the negotiations if at all could have been only with the appellant and with none others. The appellant also pressed the second ground into service that under no circumstances the Council could have given a go bye to the terms and conditions of NIT and resort to further negotiations. Shorn of all the embellishments the case of the appellant was that the highest offer made by him ought to have been accepted by the Council without further entering into any negotiations whatsoever with the bidders.

6. The learned Single Judge after an elaborate consideration of the matter with reference to various authoritative pronouncements of the Apex Court came to the conclusion that the decision making process in settling the Entry Tax Gate in

favour of the 5th respondent is not vitiated for any reason whatsoever. The learned Judge accordingly upheld the order dated 8.7.2005 issued by the Council settling the Entry Tax Gate in favour of the 5th respondent.

7. In this appeal the learned Counsel for the appellant Mr. U.J. Saikia submits that the impugned judgment under appeal suffers from incurable infirmities requiring interference of this court. Learned Counsel reiterated the two objections raised in the protest petition and contended that negotiations if at all could have been entered into only with the appellant or for that matter there could have been no negotiation at all. The learned Counsel mainly relied upon the decision of the Apex Court in Harinder Singh Arora Vs. Union of India (UOI) and Others, . Per contra, Mr. A.K. Goswami, learned senior Counsel appearing for the respondents submits that the procedure adopted by the Council in requiring the parties to participate in the negotiations is perfectly in conformity with the decisions rendered by this Court in WP(C) No. 2884/2005. The learned senior counsel submits that the order passed by the learned Single Judge attained its finality and none of the parties to the said order can be permitted to give a go bye and raise objections which were not raised in the said writ petition. It is urged that the appellant having accepted the verdict rendered by this Court cannot be permitted to blow hot and cold and raise issues contrary to the judgment. Learned senior counsel also submitted that public interest is the paramount consideration in judicially reviewing the actions of the State or its authorities in the matter of awarding the Contract and if the decision is found to be not detrimental to any public interest this Court should not interfere in exercise of its judicial review jurisdiction even if there is an error in the decision making process unless such error goes to the root of the matter and vitiate the proceedings. Mr. D.K. Das, learned senior counsel appearing on behalf of the 5th respondent while adopting the submissions made by Mr. A.K. Goswami, learned senior counsel, submits that the Council did not suffer any financial loss since it had accepted the highest offer made by the 5th respondent. It is submitted that no other consideration should arise since it is a claim between two parties seeking settlement of the contract in question. Learned senior counsel also submits that the appellant herein did not even participate in negotiations and, therefore, not open for him to file the present writ petition and seek any relief.

8. We have given our anxious consideration to the rival submissions made during the course of hearing of this appeal.

9. The learned Single Judge while disposing of the WP(C) No. 2884/2005 vide order dated 22.6.2005 found fault with the action of the Council in providing opportunity to only one of the tenderers, namely, the 5th respondent herein, so as to enable him to improve upon his offer to the exclusion of others being contrary to law. The learned Judge held that such a course is impermissible as it runs counter to the law laid down by the constitutional courts. The learned Judge in clear and categorical terms held that the authorities could have either re-tendered the Entry Tax Gate or could have even invited all the tenderers for

negotiations. It is not open for the appellant to challenge the verdict of the learned Judge in any collateral manner since no appeal has been preferred against the order. It is unnecessary, to go into the question as to the correctness of the principle enunciated in the said order since the order has attained finality. That, at any rate the verdict of this Court could not have been challenged by the appellant in his protest petition filed before the Council. It is required to note that even the Council had also accepted the verdict rendered by the learned Judge. In such view of the matter the procedure adopted by the Council, in inviting all the tenderers for negotiations cannot be found fault and in fact the Council had no option except complying with the directions issued by this Court while disposing of the application.

10. We do not, however, find any error to have been committed by the Council even of any principle as such.

11. In *Ram and Shyam Company Vs. State of Haryana and Others*, the Supreme Court observed - disposal of public property partakes the character of a trust. So disposal of the State property in public interest must be by such method as would grant an opportunity to the public at large to participate in it, the State reserving to itself the right to dispose it of as best subserve the public weal. "...Where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy so that larger revenue coming into the coffers of the State administration would serve public purpose. That is precisely what has been done by the Council in the instant case. It is so well settled and needs no restatement at our hands that the Government or its authorities have the right not to accept the highest bid and even prefer a tenderer other than the highest bidder, provided there exists good and sufficient reasons. The State's property can be disposed of even at a price lower than market price or even for a token price to achieve some constitutionally defined objectives. In the instant case there was no such constitutionally defined objectives before the Council and all its intention was to raise its revenue. In the circumstances the action of the Council in awarding/settling Garampani NH-39 Entry Tax Gate in favour of the 5th respondent at the highest offer cannot be said to be vitiated on any ground whatsoever.

12. Whether the procedure adopted in entering into further negotiations with the bidders is so patently erroneous violating the decision making process for any reason? It is true, as rightly contended by the learned Counsel for the appellant, that the terms and conditions of the NIT did not in specific terms provided for any further negotiations. But for whatever reason the Council entered into negotiations with only one of the bidders which was found fault by this Court and required it to enter into negotiations with all the intervening bidders. Admittedly, even according to the submissions made by the learned Counsel for the appellant, the only objective sought to be achieved by the Council was to augment its resources. In the circumstances the appellant cannot insist that the

Council should not enter into any negotiations. That a feeble attempt was made by the learned Counsel for, the appellant to contend that the procedure adopted by the Council is not transparent since it did not provide equal opportunities to all the bidders. This submission cannot be examined at the instance of the appellant for the simple reason that the appellant was obviously not informed as to what transpired during the course of negotiations since he did not participate in the negotiations. There is nothing on record suggesting that no opportunity has been given to the bidders to participate in the negotiations. The ground urged is obviously an imaginary one.

13. In *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*, the Apex Court held-

15. Where the decision-making process has been structured and the tender conditions set out the requirements, the court is entitled to examine whether these requirements have been considered. However, if any relaxation is granted for bona fide reasons, the tender conditions permit such relaxation and the decision is arrived at for legitimate reasons after a fair consideration of all offers, the court should hesitate to intervene.

14. This decision of the Apex Court should put an end to the controversy on hand. That, even if it is to be accepted that the tender conditions have been relaxed, it was done so for a bona fide purpose of augmenting public revenue.

15. It is equally well settled that interference by this Court in exercise of judicial review jurisdiction in the matter of awarding of contracts by the State or its instrumentalities is not a matter of course. Judicial review would be permissible only on established grounds for such review including mala fides, arbitrariness, unreasonableness of the *Wednesbury* variety. In the instant case there is no such suggestion of any mala fides as against the Council. The procedure adopted for entering into negotiations with all the intending bidders is in conformity with the directions issued by this Court and such procedure which is in accordance with the directions issued by this Court can never be characterized as arbitrary.

16. The learned Counsel for the appellant, however, relied upon the decision of the Supreme Court in *Harjinder Singh Arora v. Union of India and Ors.* (supra) in which the Apex Court reiterated the well known principle that the State and its instrumentalities entering into a contract cannot act arbitrarily. In absence of any specific policy of the Government it is open to the State to adopt any policy. But if the authority or the State chooses to invite tenders "then it must abide by the conditions laid down in the tender notice and the result of the tender and cannot arbitrarily and capriciously accept a much higher tender to the detriment of the State." It was a case where the respondents ignored the highest offer made by the appellant therein at the rate of Rs. 4.21 per litre having 6% fat as required in the tender and proceeded to accept the offer of the 4th respondent, the General Manager, Government Milk Scheme which submitted tender for supply of pasteurized milk instead of the item asked for. This was contrary to the terms

and conditions of the tender which in no way helped the Union of India in accepting such offer. The Court took the view that such a favouritism could not have been shown even in favour of the General Manager, Government Milk Scheme since there was no such policy evolved by the Government for offering such favouritism. It was a case where the highest offer was not accepted without assigning any reason. We fail to appreciate as to how the ratio of the said judgment is applicable and support the case of the appellant in any manner whatsoever.

17. No other point is urged.

18. For the aforesaid reasons we find no merit in the appeal and the same shall accordingly stand dismissed without any order as to cost.