

(2015) 10 SC CK 0064

In the Supreme Court Of India

Case No : Civil Appeal No. 8314 of 2015 (Arising out of S.L.P. (C) No. 23038 of 2013)

South Delhi Municipal Corporation

APPELLANT

Vs

Ravinder Kumar and others

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 6 ALLMR 946 : (2015) 10 SCALE 362

Hon'ble Judges : T.S. Thakur and V. Gopala Gowda, JJ.

Bench : Division Bench

Advocate : Gaurang Kanth, Rajeev Yada and P. Parmeswaran, Advocates, for the Appellant; Anusuya Salwan, S. Janani, Kunal Kohli and Sunando Raha, Advocates, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J—Leave granted.

2. This Civil Appeal is directed against the impugned judgment and order dated 14.02.2013 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No. 7993/2012 whereby it has set aside the decision of the Appellant-Corporation, dated 30.11.2012, regarding cancellation of the earlier tender notice whereunder both the Respondents were declared successful and it has also quashed the Appellant-Corporation's subsequent e-tender process carried out in pursuance of tender notice No. 24 dated 13.12.2012. Further, the High Court has directed the Appellant-Corporation to process the bids submitted by both the Respondents in accordance with law in pursuance of the Notice Inviting Tender No. 21 dated 15.11.2012. The correctness of impugned judgment and order is challenged in this appeal as the Appellant-Corporation is aggrieved of the said judgment and order of the High Court.

3. The necessary brief facts are stated hereunder to appreciate the rival legal contentions urged on behalf of the parties:

The Appellant is South Delhi Municipal Corporation and Respondents are registered civil contractors with the Appellant authorities and stated to have executed several works of the Corporation in the past. The Appellant-Corporation in its area invited tenders relating to 26 works to be executed against NIT No. 21/EE(MZ-WZ)-II/TC/2012-2013 dated 15.11.2012. The last date for bid preparation and its submission was 26.11.2012 upto 3.00 PM and the opening of the financial bids was scheduled on 28.11.2012, but the date was extended to 29.11.2012 as 28.11.2012 was declared holiday on account of "Guru Nanak Birthday".

4. On 29.11.2012, when the financial bids were opened, both the Respondents were declared successful being the lowest bidder in respect of 16 works. There were only five bidders who participated in the tender process. Both the Respondents being successful bidders approached the Appellant-Corporation for issuance of work order against the works for which they were declared successful. The Executive Engineer of the Appellant-Corporation orally informed the Respondents about the cancellation of entire tender due to non-submission of draft by some of the bidders (containing the tender cost and earnest money) required to be filed along with the tender. Dissatisfied with the oral information about the cancellation process the Respondents insisted for written intimation regarding the same.

5. On Respondents' insistence the Appellant-Corporation issued a corrigendum dated 30.11.2012 which stated that the tender was being cancelled due to Administrative Reasons.

6. The Respondents then sent a legal notice dated 13.12.2012 to the Appellant-Corporation but they did not receive any reply to the same. However, on the same day Appellant-Corporation issued a fresh NIT No. 24 EE-(M-WZ)-U/TC/2012-2013 dated 13.12.2012 inviting fresh bids from the eligible persons.

7. Being aggrieved by the cancellation of earlier tender i.e., NIT No. 21 dated 15.11.2012 vide corrigendum dated 30.11.2012, both the Respondents filed a writ petition before the High Court of Delhi.

8. The High Court allowed the Respondents' writ petition holding that the process adopted by the Appellant-Corporation in coming to the conclusion that the rates offered were high was faulty. The High Court on that basis set aside and quashed the decision of the Appellant-Corporation dated 30.11.2012, regarding cancellation of its earlier tender and directed the Appellant-Corporation to process the bids submitted by both the Respondents in accordance with law in pursuance of the NIT No. 21 dated 15.11.2012. It also quashed the subsequent tender process pursuant to NIT No. 24 dated 13.12.2012. Hence, this appeal is filed by the Appellant-Corporation challenging the said order on several grounds.

9. Mr. Gaurang Kanth, learned Counsel for the Appellant-Corporation contended that the High Court has erred in quashing the decision of the Appellant-Corporation regarding cancellation of earlier tender even when it did not find any malafide intention on the part of the Appellant to favour someone. He urged that

the High Court has failed to appreciate the fact that the said decision was taken by the Appellant-Corporation to serve the best interest of the Corporation with a bonafide intention.

10. He further contended that the High Court has erroneously ignored the fact that in the same financial year i.e. 2012-2013, the Appellant-Corporation issued 72 other work orders for similar works in the adjacent areas of the Corporation and all of them were issued at much lower rates than the rates quoted by both the Respondents. He urged that before the issuance of a particular contract, the internal system for financial check by the concerned department of the Appellant-Corporation has to justify the reasonableness of the rates quoted by the bidders by comparing the same with rates of other similar works awarded in the recent past by the Appellant-Corporation.

11. He further submitted that CVC Guidelines on the subject ensure that the Corporation gets the best price for execution of works at the same time ensuring transparency in awarding contracts in favour of successful bidders. It was further urged by him that the Appellant-Corporation had acted bonafide to get the best price for execution of works and to protect the public money, by cancelling the entire tender process and inviting fresh bids by another tender notice dated 13.12.2012.

12. It was further contended by him that the High Court has proceeded on the wrong assumption that the Appellant-Corporation had prepared a justification of rates in connection with the said tender. As no such justification of rates was prepared by the Appellant-Corporation reason being the rates received from both the Respondents were much higher than the rates at which similar works were awarded in favour of successful bidders by the Appellant-Corporation in the recent past. The High Court has thus proceeded on a wrong basis to quash the decision of the Appellant-Corporation regarding the cancellation of its earlier tender and also the subsequent tender dated 13.12.2012 issued afresh for the same works. This decision of the High Court is erroneous in law and is liable to be set aside in this Appeal.

13. It was further argued by him that the High Court while passing the judgment and order has erroneously ignored the fact that the State Government is the guardian of public finance and the right to refuse the lowest or any other tender submitted to it is vested with the State Government, provided Article 14 of the Constitution of India is not violated in that process. He urged that the Appellant-Corporation had not violated the said provision of the Constitution of India by cancelling its earlier tender vide corrigendum dated 30.11.2012 and issuing tender notice dated 13.12.2012 for the same works in the public interest. The Appellant-Corporation had taken the decision regarding cancellation of the tender in the best interest of the Corporation to get the best price and also to save public money. Therefore, the same could not be termed as an arbitrary decision of the Appellant-Corporation.

14. It was further contended by the learned Counsel that the High Court has failed to appreciate the fact that the Courts do not sit in appeal over the commercial decisions taken by the statutory local self government in the best interest of public.

15. On the other hand, Ms. Anusuya Salwan, learned Counsel appearing on behalf of both the Respondents contended that the Appellant-Corporation's stand that the earlier tender was cancelled as the rates received by them pursuant to the said tender were found to be higher than the rates at which similar works were awarded by Appellant-Corporation in the Corporation Area in the recent past is absolutely false and misleading. In this regard, she submitted that bids were invited by the Appellant-Corporation on the basis of tender rates fixed and the contractors are required to quote their rates below or above on percentage basis. After a bid is made by the contractor, the tender accepting Authority satisfies itself about the reasonableness of the rates offered by the contractor in his bid before acceptance of the tender in his name. At this stage the reasonableness of the rates are assessed on the basis of justified rates. Justification of rates offered by the bidders is prepared by the Appellant-Corporation on the basis of Delhi Schedule of Rates, 2007 and Delhi Schedule of Rates, 2012. In connection with the above she pointed out that Delhi Schedule of Rates, for each item of work prepared on the basis of CPWD rates on the basis of which works can be executed by the contractor and in case the rates on which works are allotted are very much below the said Delhi Schedule of Rates, there are chances of the quality of the work to be executed by the contractor getting compromised. She further submitted that the Appellant-Corporation itself has issued two circulars dated 30.08.2012 and 02.01.2013. The first circular dated 30.08.2012 provides for adoption of an escalation @ 61% qua 2007 rates and 8% qua 2012 rates, whereas the second circular dated 02.01.2013 provides for the adoption of escalation @ 70% qua 2007 rates and 14% qua 2012 rates. She further urged that the rates quoted by both the Respondents were much below the rates in the said circulars and therefore, the contention of the Appellant-Corporation that they cancelled the said tender on the ground of rates offered by both the Respondents being high is absolutely misconceived and liable to be outrightly rejected.

16. She further contended that the plea of the Appellant-Corporation that the rates quoted by the Respondents were much higher than the rates at which similar works were awarded in favour of successful bidders in the recent past is also not tenable in law as the tenders issued for similar works were issued at abnormally low rates and the same could not be a bench mark for comparison with the rates offered by both the Respondents in relation to the tender for the works which have been cancelled by the Appellant-Corporation. She urged that the High Court was right in passing the judgment in favour of the Respondents for reasons that were valid and cogent. Hence, this Court need not exercise its appellate jurisdiction to annul the impugned order as there is no miscarriage of justice in the case on hand. She therefore, prayed for dismissal of this appeal.

17. With reference to the above rival legal contentions urged on behalf of the parties, this Court has carefully examined the correctness of the findings and reasons recorded in the impugned judgment and order passed by the High Court. The High Court has quashed the decision of the Appellant-Corporation dated 30.11.2012, regarding cancellation of its earlier tender without there being any finding to the effect of any malafide intention on the part of the Appellant in taking decision to cancel its earlier tender notice with a view to favour someone.

18. By a careful examination of the impugned judgment and order of the High Court and the facts of the case on hand, the following aspects would emerge:

a) The High Court has failed to appreciate that the Appellant-Corporation's decision of cancelling its earlier tender notice vide corrigendum dated 30.11.2012 was taken with a bonafide intention to serve the best interest of the Corporation ensuring that only a reasonable price is paid to the successful contractors for the works executed in the area as the money which it spends on getting such works done is public money.

b) The High Court has not appreciated the fact that for the same financial year i.e. 2012-2013 the concerned department of the Appellant-Corporation has issued 72 other work orders for similar works in the adjacent areas of the Corporation and all of them were issued for much lower rates than the rates offered by both the Respondents.

c) Further, the High Court has conveniently ignored the very relevant aspect of the case namely, that the Appellant-Corporation, before issuance of a particular tender notice, is required to satisfy itself about the reasonableness of the rates quoted by the bidders keeping in view the prevalent market rates in the Corporation Area. The internal system for financial check by the concerned department of the Appellant-Corporation justifies the reasonableness of the rates offered by the bidders by comparing them with the rates at which other similar works were awarded by the Appellant-Corporation in the recent past in favour of successful bidders. For the aforesaid valid reason, the Appellant-Corporation being the custodian of public money, with bonafide intention to get the best price, has cancelled its earlier tender notice referred to supra and invited fresh bids by issuing another tender notice dated 13.12.2012.

d) Further, the High Court has not noticed another important aspect of the case namely, that there are CVC guidelines to ensure that the Corporation gets the best price for the execution of the works as per the said guidelines and to ensure the transparency in awarding the contracts in favour of successful bidders in the tender process the Appellant-Corporation decided to cancel its earlier tender notice and a subsequent tender notice dated 13.12.2012 was issued afresh by it for getting the same works done through successful contractors.

e) The High Court has erroneously quashed the Corporation's decision of cancelling its earlier tender notice vide corrigendum dated 30.11.2012 on the wrong assumption that the concerned department of the Appellant-Corporation

has prepared the justification of rates but in reality the same were never prepared by the concerned department of the Appellant-Corporation as the rates received from both the Respondents were much higher than the rates at which similar works were awarded in favour of the successful bidders by it in the recent past.

f) Further, the High Court has failed to consider another important fact that the Government being guardian of public finance it has right to refuse the lowest or any other tender bid or bids submitted by the bidders to it provided its decision is neither arbitrary nor unreasonable as it amounts to violation of Article 14 of the Constitution of India. The Appellant-Corporation's decision in cancelling its earlier tender is not in violation of Article 14 of the Constitution of India, as the High Court did not find any malafide intention on the part of the Appellant-Corporation to favour someone in taking such decision. The Appellant-Corporation's decision in cancelling the earlier tender notice vide corrigendum dated 30.11.2012 and then issuing a subsequent tender notice dated 13.12.2012 inviting fresh bids from eligible persons for the same works was with a bonafide intention to get better and reasonable rates from the bidders for the execution of the works and not to show favouritism in favour of any bidder.

g) The High Court has also failed to appreciate the relevant fact that the officials of the Appellant-Corporation made proper analysis about the rates quoted by both the Respondents as the same were higher than the usual market tendency and accordingly, they decided to cancel the entire tender process.

19. A careful reading of the impugned judgment and order would show that none of the aforesaid aspects have been borne in mind by the High Court and it has failed to appreciate the same in a proper perspective while exercising its judicial review power. The High Court has erred in quashing the decision of the Appellant-Corporation regarding the cancellation of its earlier tender notice and also the subsequent tender notice issued afresh by it on 13.12.2012 for the same works.

20. For the reasons stated above, the High Court has failed to see that the Appellant-Corporation adopted a fair and transparent method by inviting the bids for the re-tender notice issued by it. The High Court has not found any malafide intention on the part of Appellant-Corporation in inviting the fresh bids after taking the decision to cancel its earlier tender notice. The Appellant-Corporation, being the custodian of public finance, took its decision objectively with a bonafide intention to serve the best interest of the public in general. Thus, for the foregoing reasons, the Appellant-Corporation has not committed any wrong in cancelling its earlier tender notice and issuing subsequent tender notice afresh inviting bids from the eligible contractors.

21. The decision of the High Court in quashing the Appellant-Corporation's decision of cancelling the earlier tender vide corrigendum dated 30.11.2012 and also the subsequent e-tender process carried out by it pursuant to notice No. 24 dated 13.12.2012 is vitiated in law and therefore, the same is liable to be set

aside.

22. For the reasons stated supra, the submissions made on behalf of the Appellant-Corporation are well founded and the same must be accepted by this Court. This Civil Appeal of the Appellant-Corporation must succeed and deserves to be allowed. Accordingly, we pass the following order:

a) The Civil Appeal is allowed.

b) We set aside the impugned judgment and order of the High Court passed in W.P. (C) No. 7993 of 2012 quashing the decision of the Corporation to cancel its earlier tender notice vide corrigendum dated 30.11.2012 and re-tender notification dated 13.12.2012 issued by the Appellant-Corporation inviting bids afresh for the works notified therein. We restore the above re-tender notice and opportunity is given to both the Respondents to submit their tender and the tender inviting Authority of the Corporation can proceed further in processing the bids after proper evaluation of the same without any further delay. No order as to costs.