
(1994) 05 DEL CK 0092
In the Delhi High Court
Case No : C.W.P. No. 772 of 1994

Subhash and Co.

APPELLANT

Vs

Kribhco and Others

RESPONDENT

Date of Decision : 11-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 3 AD 221 : (1994) 56 DLT 285

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Shivshankar Bhat, J

Bench : Division Bench

Advocate : Swatanter Kumar and Ritu Bhalla, for the Appellant; V.P. Singh and Manoj Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Mr. K. Shivashankar Bhat, J.—Petitioner challenges the action of the 1st respondent forwarding fresh tender forms for the work of Handling and Transportation work (referred as H & T work) of fertilizer at rail head Moradabad; Petitioner was asked to submit fresh tender forms duly filled on or before 10th February, 1994 (as per letter Annexure D). Similar is the letter dated 7.2.1994 (Annexure E), which is also sought to be set aside. Petitioner, further seeks a Mandamus to the respondents reeling them to fulfill their part of the contract, (on the basis that there has already been a concluded contract between the petitioner and the respondents under which the contract to perform the work had been awarded to the petitioner); other reliefs sought in this writ petition are incidental to these reliefs.

2. According to the petitioner, it is a proprietorship concern and 1st respondent is a Multi Unit Cooperative Society incorporated under the provisions of the Multi State Cooperative Societies Act, 1984. The second respondent an officer of the 1st respondent issued a notice inviting tenders for appointment of H & T works in U.P., on 12th October, 1993. According to the petitioner, his tender was accepted; inspire of such acceptance, fresh tenders were invited under the impugned

letters.

3. It is the case of the petitioner that the intending bidders were asked to apply for tender forms up to 5 p.m. of 1.11.1993 Along with certain documents and tender was to be accepted till 11 a.m. of 11.2.1993 and to be opened at 12 Noon on the same day in the presence of the tenderers who wish to be present. Petitioner relies on the advertisement in Hindustan Times dated 12.10.1993 (Annexure "A"). The dates were, subsequently extended and the last date for submitting the tender documents was extended to 16.11.1993, time for opening the tender was extended to 17.11.1993. Petitioner submits that he submitted his tender on 16.11.1993, and complied with all the requirements such as payment of earnest money. Petitioner states that tenders were opened on 17.11.1993 by the 2nd respondent in the presence of the tenderers and the tender submitted by the petitioner was found to be most suitable. As per a letter dated 20.12.1993, the petitioner was informed that he was appointed as a contractor for H & T work, and the 3rd respondent enclosed the contract document for the execution of the same by the petitioner and to forward the same thereafter to the 2nd respondent within a week. Petitioner, asserts that he forwarded the contract documents duly executed by him with a Demand Draft of Rs. 25,000/- within the stipulated time. Petitioner also asserts that he made all the requisite preparations to carry on the work, including employing skilled workmen. The contract, it is stated, was to be effective from 1.12.1993. However, instead of actually placing orders with the petitioner, he received the impugned letters, inviting fresh tenders.

4. The action of the respondent is challenged as arbitrary and being violative of Articles 14 & 19 of the Constitution. It is also contended that (i) "tender of the petitioner having been accepted and the contract having been forwarded for the signatures of the petitioner which the petitioner had duly signed and sent back to the respondent within the time stipulated created a legitimate expectation in the mind of the petitioner to be awarded the work under the contract" ; (ii) Petitioner, has naturally altered his position, on the basis of the letter dated 20.12.1993 and Therefore, respondents are estopped from going back on the said representation.

5. The respondents contend that the alleged cause of action for filing the writ petition arose outside the territorial jurisdiction of Delhi and that 1st respondent was neither a "State" nor "authority" and as such its action cannot be challenged by recourse to Article 226 of the Constitution of India. It further contends that the remedy of the petitioner is to invoke arbitration clause in the tender notification as well as in the contract and seek damages for the alleged breach of the terms of the tender notification or of the contract. Respondents further contend that since specific performance of such a contract as this is not enforceable and the remedy lies in seeking damages, the former relief cannot be granted at all. Respondent pointed out that affairs of the 1st respondent society are managed as per its Bye-Laws and no Government or any outside agency has

control over the administrative or financial affairs of this society. The share holding of the Government of India was 72.34%; that of IFFCO 21.39% and of other societies 6.27%. The percentage of shareholding in no way gives any extra voting rights, because each member has only one vote. Membership of the 1st respondent is open to all the Cooperative Societies as per Bye-Law No. 6, apart from Government of India and other Government organisations. Out of 25 Directors, only five persons are to be the nominees of the Government of India. Bye-Law No. 49, governing "functional directors" require the approval of Government of India for the appointment of these Directors and their terms and conditions of service, so long as the Government and IFFCO continue to hold 51% of share holding or more,

6. Respondents, also assert that petitioner was intimated by a letter dated 17.1.1994 regarding the cancellation of the contract, stating the reasons for the same. In this letter it was stated that the tender of the petitioner was accepted on 17.11.1993 beyond the stipulated time of 16.11.1993. The legal adviser advised the holding of fresh tender proceedings; hence the letter stated that the work order may be treated as having been cancelled and asked the petitioner to quote afresh. Letter expresses regret for the inconvenience caused to the petitioner. Respondents rely on the corrigendum issued on 31.10.1993, whereby earlier notification as to the date to accept the tender and opening of the same were corrected. This correction inter alia, reads that "date for collection of tenders has been extended till 16.11.1993 and tenders shall be opened on 17.11.1993". Therefore, the respondents contend that tenders should have been submitted by 16.11.1993, but, the tender of the petitioner was submitted on 17.11.1993, the date on which the tenders were to be opened and since other tenderers objected to the belated tender of the petitioner, the Legal Adviser of the respondents opined that fresh tenders be invited.

7. In addition to the above, the learned Counsel for the respondents, very fairly submitted that in case the petitioner has actually suffered any loss by acting upon the letter of the respondent dated 20.12.1993, the 1st respondent would compensate the petitioner, to the extent that may be awarded by the Arbitrator. We record this submission and hold that the respondents are bound by this statement. If the petitioner, makes a claim for damages, by virtue of the withdrawal of the contract referred in the letter dated 20.12.1993, and lodges the claim with the 1st respondent within three months from today, steps be taken to appoint an Arbitrator to consider the claim and parties herein shall be bound by the award of the Arbitrator (subject to any objections to the award, available under law).

8. First question is whether any part of the cause of action arose within the territorial jurisdiction of this Court. It is clear that the tender notification and other material documents were either finalised or emanated from the registered office of the 1st respondent in Delhi. It has to be held that this Court has jurisdiction to entertain this writ petition.

9. The second question involves an investigation as to whether the 1st respondent is a "State" or "an authority". Several decisions were referred by the learned Counsel for both the sides on this question. But, we consider it unnecessary to go into the said question, having regard to the view we have taken, on the merits of the case.

10. A reading of the writ petition leads to an inference that, according to the petitioner there was, a concluded contract in his favor; Petitioner seeks enforcement of the obligations on the part of the respondents under the Contract. In other words, petitioner seeks specific performance of a contract by resort to the writ jurisdiction.

11. If under the ordinary law a suit for specific performance of such a contract as this, is not enforceable, it cannot be said that the same relief can be obtained by recourse to writ jurisdiction. To the same effect is the view taken by one of us (K. Shivashankar Bhat, J.) in Karnataka High Court in Nagappa Vs. State of Karnataka and others, .

12. This apart, on facts we find that the cancellation of the order placed with the petitioner, was not without a valid reason. If the last date to submit the tender was 16.11.1993, the tender received by the respondents on 17.11.1993 could not have been considered. Mr. Swatanter Kumar, the learned Counsel for the petitioner, contended that the last date to submit the earlier tender was 17.11.1993, because the corrigendum (Annexure R-3) gave the date 16.11.1993 for "collection " of tenders and the word "collection" is referable to the collection to be made by the bidders of the tender forms; the learned Counsel relied on the normal practice of opening the tenders on the very last date fixed for receiving the tenders. It was argued that 17.11.1993 was fixed for opening the tenders, Therefore the last date to submit the tenders also will be 17.11.1993.

13. This contention overlooks the difference between the issuance of tender forms by the respondents and receipt of the tenders by them. The original advertisement (Annexure "A") stated that ".....contractors with proven capability may apply in person on all working days up to 5.00 p.m. of 1.11.1993 for issuance of tender documents.....". Thereafter, the advertisement said, "Tenders shall be accepted till 11.00 a.m. on 2.11.1993 and opened at 12.00 Noon on the same day". A distinction is made between the "tender documents" and the tenders; rightly so, because, "tender documents" duly filled up and signed for submitting to the person inviting the tenders, become a "tender". Blank forms cannot be called "tenders". The corrigendum, refers to the "collection of tenders" and not to the "issuance of tender documents". Further, if the date to issue tender documents also had been changed the corrigendum would have become a fresh invitation for tenders. "Collection of tenders" can only be done by the person who invited the tenders; the person offering the tender, does not collect the tender. In fact in para 8 of the writ petition, the petitioner has stated "the dates for submitting and opening of the tenders were subsequently extended by respondent No. 2. The last date for submitting the

tender documents was extended to 16th November, 1993 and for opening the tender was extended to 17th November, 1993." In the next para the petitioner asserted that he submitted the tender on 16.11.1993. In the counter affidavit of the respondent the respondents averred that ".....the respondent realised that the petitioner's quotation which was submitted after the closing date i.e. 16.11.1993 at 5.30 p.m. had been accepted by their branch office after seeking a legal opinion in order to be just and fair to the represented parties as well as to keep to the spirit of the corrigendum issued on 31.10.1993 decided to cancel the entire contract and to call for fresh quotations". Thereafter in the subsequent paragraph the counter affidavit states that "contract had been even though in advertently awarded to the petitioner by the respondents". In para 9 of the counter affidavit there is an assertion that the petitioner submitted the tender only on 17.11.1993 and not on 16.11.1993. Advertisement (Annexure "A") requires the tenderers to submit the tenders at the office of the 1st respondent in Lucknow (2nd respondent). In the reply to the application for stay, the respondents again asserted that, "the tender has been submitted by him (i.e. the petitioner) on 17.11.1993 i.e. after the close of submission of tender on 16.11.1993.

14. Petitioner has not filed any document to show that tender was submitted by him on 16.11.1993 itself, before the expiry of office hours. There is no reason for us to reject the statement of fact made by the respondents on this aspect of the case.

15. In these circumstances, we are constrained to uphold the action taken by the respondents, though, the said action may have resulted in causing some inconvenience or loss to the petitioner. Respondents have agreed to compensate the petitioner for the loss caused to the petitioner and to that extent petitioner cannot have any legal grievance.

16. In the result this writ petition is dismissed, subject to the observations made by us as to the compensation agreed to be paid to the petitioner by the 1st respondent as per the award of the Arbitrator. No order as to costs.