(2001) 03 MP CK 0034

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1443 of 2001

Umesh Kumar Tiwari APPELLANT

Vs

Union of India and another RESPONDENT

Date of Decision : 27-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2001) 3 MPHT 380 : (2001) 2 MPLJ 596

Hon'ble Judges : Mr. Dipak Misra, J

Bench : Single Bench

Advocate : Shri Yogesh Dhande, for the Appellant; Shri S.K. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the extra-ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner has prayed for issuance of direction to the respondent No. 2 to call him for the allotment of the STD-PCO on Maihar Railway Station Platform No. 1 and consider his tender form at the time of opening of the tender.

The facts as have been unfolded are that the Divisional Railway Manager, (Commercial) Jabalpur, respondent No. 2 herein, published a notice inviting tender in the daily news paper ''Nav Bharat'' on 20th August, 2000 for Central Railway, Jabalpur Division for the allotment of STD/PCO/Fax/Inter-net booth in Jabalpur, Katni, Satna, Sagar, Damoh, Pipariya, Gadarwara, Narsinghpur and Maihar Railway Stations. A copy of the paper publication has been brought on record as Annexure P-2. The petitioner applied for allotment in respect of Maihar Railway Station Platform No. 1 and submitted his tender Form "A" and Form "B" with all the documents on 21 -9-2000 except the Income Tax Clearance Certificate. He submitted an affidavit mentioning that he had already applied for

Income Tax Clearance Certificate and if his tender is accepted he would produce the said certificate within 48 hours. He received the Income Tax Clearance Certificate on 25-9-2000 and thereafter he immediately sent the same to the respondent No. 2 by registered post with acknowledgment due. The same was received in the office of the respondent No. 2. The receipt in question has been brought on record as Annexure P-7. A covering letter was also sent by the petitioner making a request to attach the Income Tax Clearance Certificate with Form "A" of the tender. It is averred in the petition that the last dale for the allotment of STD/PCO at Maihar Railway Station Platform No.1 has been fixed on 20th March, 2001 but the petitioner has not been called though the other applicants have been invited. It is urged in the petition that there is no justification on the part of the respondent No. 2 in not inviting the petitioner to participate in the tender and such an action of the said respondent is arbitrary and violative of Article 14 of the Constitution. With these averments reliefs, as indicated hereinabove, have been sought.

A return has been filed by the respondents contending, inter alia, that it was clearly mentioned in the advertisement that the tender for allotment of STD/PCO was in two parts namely, tender Form "A" and "B" and as per tender Form "A" the tenderer was required to submit technical information which comprised of residential certificate, educational certificates, Income Tax Clearance Certificate, Financial Status Affidavit, character certificate issued by Superintendent of Police or Thana Prabhari and the earnest money of Rs. 1,000/-. The tenderer was required to submit his financial offer in tender Form "B". It has been setforth in the return that the petitioner did not submit Income Tax Clearance Certificate alongwith his tender Form "A" and that being an essential requirement, his technical offer i.e., tender Form "A" was rejected by the committee and accordingly his financial offer i.e., tender Form "B" was not opened. It has been highlighted that in the advertisement it was clearly stipulated that if there is any defect in the technical offer, financial offer will not be opened and the respondent No. 2 has acted strictly in accordance with the notice inviting tender and, therefore, his action cannot be found fault with. It has been further putforth that the committee which scrutinised the documents could not take into consideration the income tax clearance certificate which was received by the department after date of submission of tender. With these averments justification has been given in not calling the petitioner on the date of opening of the tender.

I have heard Mr. Yogesh Dhande, learned counsel for the petitioner and Mr. S.K. Mukherjee, learned counsel for the respondents.

It is submitted by Mr. Dhande, learned counsel for the petitioner that the petitioner had filed an affidavit clearly indicating that he had applied for income tax clearance certificate and would produce it if his offer is accepted and further that he had sent it later on which was received by the department before the opening of the tender and, therefore, he should have been called on the date of the opening of the tender in regard to the financial offer. It is further canvassed by Mr. Dhande that non-production of the income tax clearance certificate does not affect the essential requirement of tender and, therefore, respondents should have allowed him to rectify the tender Form "A" and should have considered the financial offer in Form "B". In support of his submissions he has placed reliance on the decision rendered in the case of Tata Cellular Vs. Union of India,

Mr. S.K. Mukherjee, learned counsel for the respondents, per contra, has urged that the production of the Income Tax Clearance Certificate was a pre requisite and as the same was not produced within the stipulated time, petitioner''s financial offer was rightly not considered. Learned counsel has referred to conditions incorporated in the advertisement inviting tender and submitted that the respondent No. 2 was bound in law to follow the terms and conditions stipulated in the notice inviting tender in letter and sprit and as same has been done his action cannot be faulted. It is further proposed by him that if leverage is granted to the tenderer to file this kind of document after expiry of the due date it would create a situation of anarchy and the public authority would not be in a position to show fairness in action.

To appreciate the rival submissions raised at the Bar I have carefully perused the notice inviting tender. On a scrutiny of the same it is absolutely perceptible that the tenderer was required to fill up Forms "A" and "B" in two separate envelopes. Form "A" relates to technical informations and Form "B" relates to financial offer. It has been stipulated therein that if the informations required in Form "A" is complete then only the financial offer of the tenderer would be opened. It is not in dispute that one of the requirement in tender Form "A" was filing of Income Tax Clearance Certificate. The advertisement was published on 20th August, 2000 and last date of submitting the tender was 21-9-2000. Thus there was ample time for any tenderer to file the requisite documents. There is also a stipulation that any tender received after 5 p.m. on 21-9-2000 shall not be considered. The question that falls for consideration is whether submission of Income Tax Clearance Certificate was an essential condition or the same could have been submitted later on by an offeree. It is submitted by Mr. Dhande that non-compliance in question relates to realm of clerical error and in fact the same was complied with before the date of opening. In this context it is apposite to refer to Paragraphs 201 to 203 of Tata Cellular (supra).

"201. The proper Compliance Statement came to be filed later. Since it had not filed a proper Compliance Statement it had come to be excluded (which knowledge was gained by it) it made representations to the Chairman, Telecom Commission and the Prime Minister. According to Mr. K.K. Venugopal it is an accidental omission amounting to a clerical error. In support of this he cites Moffett, Hodgkins and Clarke Company Vs. City of Rochester (1899) 178 US 373. The headnote reads :

"A mistake in the proposals by a bidder for a contract with a city, which is promptly declared by an agent of the bidder as soon as it is discovered and before the city has done anything to alter its condition, will not bind the bidder by reason of a provision in the city charter that if a bid shall not be withdrawn or cancelled until the board shall have let the contract." 202. At page 386 it reads :

"The complainant is not endeavouring ''to withdraw or cancel a bid or bond''. The bill proceeds'' upon the theory that the bid upon which the defendants acted was not the complainant''s bid; that the complainant was no more responsible for it than if it had been the result of agraphia or the mistake of a copyist or printer. In other words, that the proposal read at the meeting of the board was one which the complainant never intended to make, and that the minds of the parties never met upon a contract based thereon. If the defendants are correct in their contention there is absolutely no redress for a bidder for pubic work, no matter how aggravated or palpable his blunder. The moment his proposal is opened by the executive board he is held as in a grasp of steel. There is no remedy, no escape. If, through an error of his clerk, he has agreed to do work worth $ 1,000,000 for $ 10, he must be held to the strict letter of his contract, while equity stands by with folded hands and sees him driven into bankruptcy. The defendants'' position admits of no compromise, no exception, no middle ground.

The alternate submission is the question of even clerical error does not arise here because one month before acceptance Hutchison Max had sent the compliance form. Where the matter is purely technical the Court should not exercise the power of judicial review. We find great force in this submission. We are clearly of the opinion that the mistake is in relation to a non-essential matter that is in relation to peripheral or collateral matter. There has been every intention to comply with the terms of the bid for an accidental omission it cannot be punished. We concur with the High Court."

On a careful reading of the aforesaid dictum of the Apex Court I am of the considered opinion that their Lordships were referring to a different situation altogether but not a situation of the present nature. In the case at hand there was clear mention in the advertisement that an incomplete tender in Form "A" would disentitle the tenderer for getting his financial offer to be considered. Filing of income tax clearance certificate can not be regarded as a minor mistake which could have been rectified. This is not a clerical or arithmetical error. It was a condition precedent as per the notice inviting tender for consideration of the offer of an offeree. The condition being essential and stipulation being expressed in the advertisement the authorities could not have transgressed the same and entertain the tender which was incomplete. It is to be noted hear that the instructions which are given in the notice inviting tender are to be followed scrupulously for the simple reason following of such instructions does ensure prevalence of rule of law. If the employer or owner is allowed to condone and travel beyond the conditions of the tender the possibility of arbitrariness can not be ruled out. The matter would be different where a power to relax or waive the conditions exist in the notice inviting tender itself. The matter would also be different if a mere clerical error has crept in but when certain conditions precedent are imposed and there is non-compliance an offeree cannot claim that his offer should be considered and owner should not be hyper technical in not considering his offer. It cannot be lost sight of that a State action has to be transparent and cannot brook any unfairness, unreasonableness or unarbitrariness. Judged from these angles I am of the considered view that action of the respondent No. 2 cannot be faulted.

The factual scenario of the present case can also be viewed from another spectrum. The petitioner did not produce the Income Tax Clearance Certificate and filed an affidavit as contained in Annexure P-4 wherein it has been mentioned that if the offer of the petitioner is accepted he would produce the requisite certificate within 48 hours. Thus, the petitioner had superimposed a condition of his own which was not permissible. Considering from this angle also the action of the respondent No. 2 is beyond reproach.

Resultantly, the writ application, being sans merit, is dismissed. However, in the peculiar facts and circumstances of the case there shall be no order as to costs.

Writ Petition dismissed.

