
(2013) 11 SHI CK 0034
In the High Court Of Himachal Pradesh
Case No : CWP No. 8834 of 2013-D

Verdant Energy Private Ltd. and Another	APPELLANT
Vs	
State of H.P. and Another	RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : AIR 2014 HP 6 : (2014) 2 BC 557

Hon'ble Judges : A.M. Khanwilkar, C.J.;Kuldip Singh, J

Bench : Division Bench

Advocate : Jyotsna Rewal Dua, for the Appellant; Shrawan Dogra, Advocate General, Mr. Anup Rattan, Romesh Verma, Additional Advocate Generals and Mr. J.K. Verma, D.A.G. and Mr. Vijay Arora, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, C.J.—Heard counsel for the parties. The petitioners are challenging the decision of the Appropriate Authority in cancelling the tender process, dated 18th September, 2010. According to the petitioners, this decision has been taken with an intent to non suit the petitioner and to accommodate someone of the choice of the respondents. The argument proceeds that the petitioners had secured highest rating in the aforesaid tender process, as can be discerned from the tabular statement at page 157.

2. There can be no dispute that the petitioners secured highest points during the analysis pursuant to the earlier tender process. That, however, does not mean that the Authority was obliged to accept the said tender and allot contract to the petitioners, as such. Before the tender process was taken to its logical end, it was thought appropriate by the concerned Authorities upon legal advice that the best course would be to cancel the tender process to meet the ends of justice. That is on the basis of the legal opinion given by the Advocate General, as can be discerned from the communication, dated 17th August, 2013, at pages 207 and 208.

3. The relevant extract of the opinion, which is incorporated in the said communication, reads thus:

Keeping in view the fact that about three years have been spent between the time of initiating the tender process and till date when we are not free to finalise the tender process as the writ petition has been admitted. It cannot be speculated as to what time would be taken for finalization of the litigation as any decision taken by the Hon"ble Court would be open to challenge in appeal by either of the party. There is already a clause in the tender notice that government reserves right to reject any or all the applications without any reasons.

So far as projects upto 2 MW which stand processed and finalized as per above referred court orders are concerned, the allotment may not be disturbed and may be taken as finalized. However, those projects upto 2 MW, which are self identified and with respect to which there is no inter-se dispute amongst more than one applicants for the same project, may also be finalized in pursuance to modified interim order dated 16-08-2012, but the other less than 2 MW projects where there are disputed competing claims, the same may not be finalized and the authorities may go for fresh tenders. Similarly, the projects between 2-5 MW may be re-tendered by treating the present tendering process as cancelled. In the fresh notice inviting tenders the terms and conditions should be mentioned clearly and thereafter, there should not be any breach of the same while processing the cases. The decision to go for fresh tenders as advised above would be in public interest and in consonance with the observations of the Hon"ble Court as referred above.

4. In addition, reference can be made to the communication received by the petitioners from the Director of the HIMURJA, dated 12th September, 2013, which reads thus:

(H.P. Govt. Energy Development Agency) HIMURJA, Urja Bhawan, SDA Complex, Kasumpti, Shimla-171 009 PHONE-177-2620365, 2621783, 2625306, 2621623, FAX 177-2622635

No. No. HIMURJA/SHP/Advt-2010/Cancellation/2013-11245 Dated 12-09-2013

To

M/s. Verdant Energy Pvt. Ltd. Intec House 37 Institutional Area Sector-44 Gurgaon-122002

Subject: Applications received against Identified/Self Identified Projects in response to the advertisement issued in September 2010.

Dear Sir,

This has reference to your application received for Bakhli SHEP in District Mandi in response to the advertisement issued in September 2010. The matter became sub-judice as some of the applicants has approached the Hon"ble High Court of

Himachal Pradesh for certain grievances on their part. Subsequently the Government of Himachal Pradesh, on the observations of Hon"ble High Court of Himachal Pradesh, has decided not to proceed with the allotment against the applications invited for allotment of small hydro electric projects during the year 2010, hence the impugned tender process is hereby cancelled and fresh tenders shall be called accordingly.

EMD amounting to Rs. 2,25,000 deposited by you at the time of submission of application is returned herewith through cheque No. 298370 Dated 11-09-2013 amounting to Rs. 2,25,000. You may collect the documents filed by you in this office within a month time, otherwise the same will be disposed.

Enclosed Cheque

Yours faithfully, Sd/- Director HIMURJA, Urja Bhawan, Kasumpti, Shimla-171009

5. The question is-whether the decision taken by the Authorities is irrational or in violation of any statutory provisions and/or arbitrary.

6. From the communication as also the legal opinion extracted in the communication, it is evident that the decision was necessitated in peculiar circumstances. The justness or the sufficiency of the subjective satisfaction recorded by the Authority cannot be the subject matter of judicial review. The fact remains that the decision has been taken after due consideration and is well informed decision. The reason is manifest in the aforesaid extracted communication itself. We are not inclined to take the view that the same is arbitrary or irrational. It is noticed that besides cancelling the tender, the EMD of the concerned applicant has been returned back by the Authority.

7. Counsel for the petitioners has placed reliance on the decision of the Apex Court in the case of Shimnit Utsch India Pvt. Ltd. and Another Vs. West Bengal Transport Infrastructure Development Corporation Ltd. and Others, The same reads thus:

64. It is true that the State or its tendering authority is bound to give effect to essential conditions of eligibility stated in a tender document and is not entitled to waive such conditions but that does not take away its administrative discretion to cancel the entire tender process in public interest provided such action is not actuated with ulterior motive or is otherwise not vitiated by any vice of arbitrariness or irrationality or in violation of some statutory provisions. It is always open to the State to give effect to new policy which it wished to pursue keeping in view "overriding public interest" and subject to principles of Associated Provincial Picture Houses Limited v. Wednesbury Corporation, (1948) 1 K.B. 223 reasonableness.

8. We fail to understand as to how this decision will be of any avail to the petitioners in the backdrop of our finding that the decision per se cannot be said to be irrational or arbitrary as such. Notably, the petitioner has not named any individual or official of the respondent, who has acted against the interest of the

petitioners. The decision taken by the Authority, as aforesaid, is after due deliberation and upon legal advice, which cannot be said to be arbitrary or irrational.

9. Reliance was also placed on the decision of the Division Bench of this Court in the case of Ziquitza Health Care Ltd. Vs. State of HP and Another, Even the exposition in this decision will be of no avail to the petitioners. Accordingly, this petition ought to fail. The same is dismissed, so also the pending application(s), if any.