
(2017) 02 MEG CK 0016
In the Meghalaya High Court
Case No : 199 of 2015

Vikash Construction, Assam

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Citation : 2017 0 AIR(Megh) 17

Hon'ble Judges : Ved Prakash Vaish

Bench : Single Bench

Judgement

1. By way of the present petition, the petitioner seeks for setting aside and quashing of the Tender Notice dated 17th July, 2015 and for a direction

to the respondents to allot work to the petitioner pursuant to appointment letter dated 30th June, 2015.

2. Briefly recapturing the facts as stated in the petition are that, the respondent Food Corporation of India (FCI) floated a tender dated 3rd March,

2015 inviting eligible bidders for appointment as Road Transport Contractor for transportation of the foodgrains/allied materials in the route from

Railhead Baihata/FCI Godown Baihata, Assam to FSD Lunglei, Mizoram for a period of six months on regular basis (extendable by three months).

3. The petitioner participated in the aforesaid tender process. It is stated that the petitioner quoted very competitive rate and was appointed as a

contractor for transportation of foodgrains/allied materials in the route from Railhead Baihata/FCI Godown Baihata, Assam to FSD Lunglei,

Mizoram for a period of six months and accordingly the respondent issued acceptance of tender dated 26th May, 2015 for appointment of

Transport Contractor for a period of six months subject to payment of Rs. 19,35,000/- (Rupees Nineteen Lakhs Thirty Five Thousand only) in the

form of Demand Draft and another sum of Rs. 58,05,000/- (Rupees Fifty Eight Lakhs Five Thousand only) as 15% of Bank Guarantee and

another sum of Rs. 38,70,000/- (Rupees Thirty Eight Lakhs Seventy Thousand only) as additional Bank Guarantee.

4. It is also stated that the petitioner fulfilled all the formalities and deposited the security money and bank guarantee. The respondent vide

communication dated 30th June, 2015 appointed the petitioner as a Transport Contractor for transportation of the foodgrains/allied material in the

route from Railhead Baihata/FCI Godown Baihata, Assam to FSD Lunglei, Mizoram.

5. The petitioner has alleged that despite appointing the petitioner as Transport Contractor, the respondent had not given/allotted even a single

worklike carrying of goods for the concerned route in spite of the petitioner having invested huge amounts.

6. Being aggrieved by the action of the respondents for not giving/allotting him the work despite various communications, the petitioner approached

the Grievance Redressal Committee, Zonal Office of the respondent at Guwahati. The said Committee also not responded to the grievance of the

petitioner. Hence, the petitioner chose to file the present petition.

7. The petition has been opposed by the respondents and counter-affidavit has been filed on behalf of respondent Nos. 2 to 4. The respondents, in

the affidavit-in-reply have denied the allegations levelled by the petitioner. It is admitted by the respondent that no work has been allotted to the

petitioner pursuant to the contract awarded to him. It is also stated that the contract was awarded to the petitioner vide communication dated 30th

June, 2015 and the petitioner submitted the joining report on 7th July, 2015. The present petition has been filed on 6th August, 2015 after one

month of submitting the joining report. While drawing attention of Clause-C (1) of the " GENERAL INSTRUCTION TO THE TENDERERS" ,

the respondent stated that no definite volume of work to be performed can be guaranteed during the currency of the contract.

8. The respondents have further stated that in terms of Clause XVI (a) of the tender agreement, the respondent does not guarantee any definite

volume of work or any particular pattern of service at any time or throughout the period of contract. It is stated that the petitioner signed the

contract with open eyes and forfeited their right to demand work from the respondent.

9. It is contended by the petitioner that despite being successful in the tender process and fulfilling all the requirements pursuant to the tender notice,

the respondents have not allotted any work to the petitioner. It is also stated that the petitioner made huge investments for the said tender to gain

profit, but despite that the respondent had not allotted even a single consignment pursuant to the tender.

10. It is further contended on behalf of the petitioner that the revocation and cancellation of the contract without following the due process of law

by the respondent is illegal and not sustainable in law. The petitioner has suffered huge financial loss and incurred extra expenditure for purchase of

the tender, arranging bank guarantee and keeping a fixed number of trucks ready for replacement immediately on receipt of indent from the

respondent.

11. It is further contended on behalf of the petitioner that though there was no fault on the part of the petitioner, the respondent cancelled the

contract without following any procedure which is against the law of contract. Learned counsel for petitioner contended that the action of the

respondents is arbitrary and liable to be set aside. The petitioner also claims some amount as compensation for extra expenditure incurred/invested

by the petitioner for the said contract which was revoked and cancelled by the respondent.

12. Mr. K.S. Kynjing, learned senior counsel for the respondents contended that non-allotment of work to the petitioner is as per the instructions

received from their Zonal Office at Guwahati vide letter dated 17th June, 2015 wherein it was decided to stop the road movement of foodgrains

from Baihata, Assam to Tripura and Mizoram with immediate effect. It is further stated that with the opening of the new Broad-Gauge Railway

Siding, Salchapra, Assam, the stock required for P.D.S. in the State of Mizoram and Tripura are being currently met from the Broad-Gauge

Railway Siding, Salchapra, Assam since Broad-Gauge Railway Siding at Salchapra is near to the Food Storage Depot in Mizoram and Tripura

and hence cost effective as the rate of transportation from Railhead Baihata, Assam to FSD Lunglei is Rs. 5,887/- (Rupees Five Thousand Eight

Hundred Eighty Seven only) per MT for the entire distance while the rate of transportation from Railway Siding, Salchapra to FSD Lunglei is Rs.

4,055/- (Rupees Four Thousand Fifty Five only) per MT for the entire distance.

13. The respondents have further contended that stoppage of movement of stocks to FSD Lunglei amongst other FSDs in Mizoram and Tripura

and invitation of fresh tender dated 17th July, 2015 for positioning of carriage contractors from Railhead Baihata/FCI Godown (Hired) Baihata to

FSDs in Meghalaya is done in good faith and in public interest to save public money and thus the action of the respondent is not arbitrary and

illegal.

14. I have heard Mr. P.T. Sangma, learned counsel for petitioner and Mr. K.S. Kynjing, learned senior counsel for the respondents. I have also

carefully perused material placed on record.

15. The petitioner being the lowest tenderer was awarded the contract for transportation of goods pursuant to the tender floated on 3rd March,

2015. The petitioner and the respondents have also signed the contract which, inter alia, includes General Information to the Tenderers and the

Terms and Conditions governing contracts for transportation of foodgrains from Railhead Baihata/FCI Godown (Hired) Baihata, Assam to FSDs

Lunglei, Mizoram.

16. It is relevant to reproduce some of the relevant clauses of the contract. Clause (C) 1. of the General Information to the Tenderers reads as

under:

" (C) Volume of work

1. No definite volume of work to be performed can be guaranteed during the currency of the contract. However, some items of general

information are given in Appendix-I to the tender. The particulars given in the Appendix-I are intended merely to give the tenderer an idea of the

approximate quantum of work so as to help in making their own assessment for quoting the rates in accordance with the conditions of the contract.

It should be clearly understood that no guarantee is given that all the items of work as shown in the Annexure to tender will be required to be

performed."

Sub-clause (a) Clause XVI of the Terms and Conditions Governing Contracts for Transportation of Foodgrains from Railhead Baihata/FCI

Godown (Hired), Baihata, Assam to FSD Lunglei, Mizoram (Annexure-1) reads as under:

" XVI. Volume of Work

a) Subject as hereinafter mentioned, the Corporation does not guarantee any definite volume of work or any particular pattern of service, at any

time, or throughout the period of the contract. The mere mention of any item of work in this contract does not by itself confer a right and/ or

confirm any right to the contractor to demand that work relating to all or any item thereof should necessarily or exclusively be entrusted to him."

Appendix-1 of the contract which contains the General Information reads as under:

" GENERAL INFORMATION

The Food Corporation depots/ mandi/ rail heads at Railhead Baihata /FCI Godown (hired) Baihata/Lunglei consist of Railhead Baihata, FCI

Godown (hired), Baihata and FSD Lunglei

The contractors shall have to transport food grains from Depots/ Mandis/ Railhead to various destinations as per details given below:

1. Railhead Baihata, Assam to FSD Lunglei, Mizoram (718.8 km)
2. FCI Godown (hired) Baihata, Assam to FSD Lunglei, Mizoram (719.4 km)

Capacity of FSD Lunglei-2920 MT

The particulars given above are intended merely to help the tenderer to form his own idea of the approximate quantum of work involved in this

contract. The tenderer must acquaint himself fully with the size and location of godown/mandis including the condition of the route to be taken by

him for transportation of the food grains. No guarantee is given that all the items of work shown above will be required to be performed. The

successful tenderer shall be bound to execute all works as required under the terms of contract and shall not be entitled to make any claim

whatsoever against the Corporation for compensation/ revision of rates or otherwise on the basis of particulars referred to above."

17. The signing of the tender document and contract is not disputed by the

petitioner. The contract was signed by the petitioner which contained the clauses as referred to hereinabove and the petitioner must have understood the implications thereof. A perusal of the aforesaid clauses clearly reveal that the petitioner cannot claim non-award of work by the respondent. Moreover, the non-award of the work was due to the opening of the Broad-Gauge Railway Siding, Salchapra, Assam since it is near to the Food Storage Depot in Mizoram and cost effective. The rate of transportation from Railhead Baihata to FSD Lunglei is Rs. 5,887/- (Rupees Five Thousand Eight Hundred Eighty Seven only) per MT for the entire distance whereas the rate of transportation from Railway Siding, Salchapra to FSD Lunglei is Rs. 4,055/- (Rupees Four Thousand Fifty Five only) per MT. Thus, the decision taken by the respondents is to save public money and in public interest which cannot be said to be arbitrary and illegal.

18. In the instant case, the decision not to dispatch stock from Railhead Baihata, Assam to FSD Lunglei, Mizoram was taken to avoid the incurrence of additional expenditure and prevent loss to the public exchequer thereby saving public money and in public interest.

19. The Hon'ble Supreme Court in the case of " Arun Kumar Agarwal v. Union of India & others, reported as (2013) 7 SCC 1 : (AIR 2013 SC 3127) has clearly held that if a decision is taken bona fide and in public interest, the mere fact that decision ultimately proves to be wrong, would not by itself be a ground to hold that the decision was mala fide or taken with ulterior motives. Matters relating to economic issues have always an element of trial and error, and so long as the trial and error is bona fide and with best intentions, such decisions cannot be questioned as arbitrary, capricious or illegal.

20. At this stage, it is pertinent to mention here that the respondents have already refunded the security deposit to the petitioner along with the two Bank Guarantees furnished by the petitioner and the same is not disputed by learned counsel for the petitioner.

21. In the case of " Fertilizer Corportion Kamgar Union (Regd.), Sindri & others v. Union of India & others- , reported as (1981) 1 SCC 568 : (AIR 1981 SC 344), the Hon'ble Supreme Court observed that when the Government acts fairly, though falters in wisdom, the Courts should

not interfere. In the instant case, the action of the respondents to stop induction of stocks from Railhead Baihata/FCI Godown (Hired) Baihata,

Assam to FSDs Lunglei, Mizoram amongst other depots and the invitation of tender dated 17th July, 2015 for positioning of carriage contractor

from Railhead Baihata/FCI Godown (Hired) Baihata to FSDs in Meghalaya is in no way arbitrary or irrational as it has been done in public interest

to save public money and the private interest can in no way be higher than the public interest.

22. It is a settled principle of law that where it is in public interest, the court will not interfere because public interest must override any

consideration of private loss or gain. This is so held by Hon"ble Supreme Court in the case of " Kasinka Trading and another v. Union of India &

others- , reported as (1995) 1 SCC 274 : (AIR 1995 SC 874).

23. In another case of " Shrijee Sales Corporation and another v. Union of India & others, reported as (1997) 3 SCC 398, it was observed that

where there was supervening public interest, the Government is free to change its stand and withdraw the exemption already granted.

24. In the light of aforesaid discussion, I do not find any ground to entertain the present writ petition and, accordingly, the writ petition is dismissed.

25. No cost. MC[WP(C)] No. 142 of 2016 In view of the above, the application is dismissed.

MC[WP(C)] No. 154 of 2015

The application is dismissed as the same has been rendered infructuous. Petition dismissed.