
(1995) 08 DEL CK 0099

In the Delhi High Court

Case No : Civil Writ Petition No. 2522 of 1995

Vinay Kumar

APPELLANT

Vs

Steel Authority of India

RESPONDENT

Date of Decision : 17-08-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1995) 3 AD 814 : (1995) 34 DRJ 595

Hon'ble Judges : Dr. M.K. Sharma, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Arun Jaitley, Vivek Sibbal, Naveen Chhabra and O.K. Banerjee, for the Appellant;

Judgement

M.K. Sharma, J.

(1) This writ petition under Article 226 of the Constitution of India is directed against the decision of the respondents cancelling the notice inviting tender for a handling contract at Kalamboli Stockyard at Bombay, and in re-inviting bids from tenderers in pursuance of a fresh tender notice. On 14.3.1995 the respondent No.3 issued an advertisement inviting tenders for handling iron and steel material at the stockyard of respondent No.1, Central Marketing Organisation at Kalamboli situated at Bombay. In pursuance of the aforesaid invitation to tender the petitioner submitted his tender. Similarly several others also submitted their tenders. The tenders were evaluated in 2 parts namely - technical evaluation about the experience, ownership of equipments etc. as prescribed in the tender document and price bids.

(2) On 11.5.1995 the Tender Committee constituted by the respondents evaluated the technical bids. During the aforesaid process out of the total number of 9 tenderers two were rejected on the grounds that they were not having sufficient experience in owning required equipments as prescribed in the tender documents. The Committee recommended that out of the remaining tenderers certain documents in respect of some of the tenderers were to be

checked. In pursuance of the said recommendation of the Tender Committee the documents enclosed with the tenders were re- checked and on such re-checking out of 7 tenderers one tenderer got eliminated. Accordingly, the Tender Committee decided to open the price bids of six eligible tenderers who qualified after scrutiny of the technical bids. The terms and conditions in the tender were that out of the several scheduled operations the rates quoted by the tenderers for the following operations namely - unloading, transporting, stacking and delivery would only be considered for the purpose of evaluation. In pursuance of the aforesaid clause namely - clause 8.5 of instructions to tenderers the Tender Committee evaluated the tenders of the six tenderers based on only the aforesaid 4 major operations. However, prior to the opening of the bids a letter was issued on or about 3.4.1995 by the respondents amending the terms and conditions of tenders. The said letter was issued only to the tenderers by which a new operation namely - supervision and coordination was added to the schedule of operations and for this new item of operation, the tenderers were asked to quote. However, the said amendment did not indicate as to whether or not the rates quoted by the tenderers for the said item of operation were taken into account for evaluation purposes. The Tender Committee while evaluating the tenders did not take into consideration the supervision and coordination charges. The recommendations of the Tender Committee recommending the petitioner as the lowest tenderer on the basis of the aforesaid 4 elements without taking into consideration the factor of supervision and coordination charges were forwarded and placed before the Regional Manager, who was the competent authority for consideration and approval. The respondent No.4, the Regional Manager, on consideration of the records of the case including the bids and other documents of the tenderers was of the view that the operation of supervision and coordination was an important item qua the Kalamboli Stock-yard in view of its size, volume of work involved and particularly in view of the Maharashtra Mathadi Hamal and other Manual workers (Regulation of Employment & Welfare) Act of 1969, and that the said rates quoted for this item of work should be taken into account for evaluation in order that the major operations in handling work could be properly and efficiently done. The competent authority was of the further view that if the rates quoted by the tenderers for this item of operation was taken into account the petitioner firm would cease to be the lowest bidder and became the second lowest bidder thereby materially changing his status. Accordingly, he considered it proper and necessary that fresh open tenders be invited clearly stating that for the new item of supervision and Coordination, the rates quoted by tenderers would also be considered for the evaluation Along with rates of 4 major operations.

However, a decision was also necessary with regard to extension of the existing contract on the same terms and conditions and rates for a further period of 3 months i.e. w.e.f. 1.8.1995 the respondent No.4 forwarded the record of the case to the Director (Commercial) who agreed with his views. On receipt of the records back, the respondent No. 4 did not approve the recommendation of the

Tender Committee and instead cancelled the entire tender and directed for re-tendering by inviting fresh tenders. pursuant thereto the re-tender was advertised on 18.7.1995 wherein the last date for submission of tender documents and evaluation thereof has been fixed as 14.8.1995. It has been brought to our notice that in pursuance of the advertisement of the aforesaid re-tender the petitioner has also submitted his tender without prejudice to his claims in the present writ petition. We have also been informed that on 14.8.1995 only the technical bid of the tenderers were supposed to be opened and considered.

(3) Submission of Mr. Jaitley, the learned counsel appearing for the petitioner is that the decision of the respondents to cancel the bid and to invite fresh tender through a fresh advertisement is unreasonable and arbitrary and violative of Article 14 of the Constitution of India. The further submission of the learned counsel for the petitioner is that the decision of the respondents to call for re-tender is highly prejudicial to the interest of the petitioner in as much as his competitive rates are now known to the other competitors and thus the petitioner would be placed in an inherent disadvantageous position if re-tenders are called and Therefore, the decision is discriminatory and arbitrary. Mr. Jaitley further submits before us that the petitioner had quoted the lowest rates and decision of the respondents to nullify the bids and/or call for re-tenders is against the public interest as the existing contractor would be benefited at the cost of public exchequer/public money. He further submits that the petitioner had even quoted his rates for the additional element namely supervision and coordination for which rate was directed to be quoted by subsequent communication and in view of that there was no reasonable ground to cancel the bid as all other tenderers had also done so and the said informations and rates having been available to the respondents, they could have considered the same instead of taking a decision for cancelling the bids and re-advertising the tender calling for such rates which are already available on record.

(4) Mr. Banerjee, the learned Counsel appearing for the respondents has raised a preliminary objection with regard to the maintainability of the writ petition on the ground of lack of territorial jurisdiction. According to the learned counsel the tender was issued by the branch sales office at Bombay and is for a contract to be performed at Bombay and the tenders were submitted at Bombay where they were opened and evaluated. According to him the contract was to be awarded by the Regional Manager, respondent No.4 at Bombay and accordingly, the entire cause of action for the present case had arisen at Bombay and Therefore, this court has no territorial jurisdiction to entertain the writ petition. The learned counsel has further submitted that the respondent No.4, the Regional Manager, who is the competent authority, after examining the recommendation of the Tender Committee noticed that the amendments to the tender had been issued on 3.4.1995 subsequent to the notice inviting tender published generally and that also through a letter addressed to those who had submitted their tenders and that the amendment did not indicate as to whether or not the rate quoted by

the tenderers for the new item of work were to be taken into account for evaluation. The learned counsel appearing for the respondents placed before us the relevant connected records in support of his submissions.

(5) Regarding the preliminary objection raised by the learned counsel for the respondents although we find force in the submission of the learned counsel for the respondents we feel inclined to decide the present writ petition on merits as the counsel for the parties made their submissions with regard to the merits of the case as well.

(6) We find from the records placed before us in the present case that the new item of work namely - supervision and coordination charges was not included in the original tender advertised but was subsequently added to after the bids were submitted. The Tender Committee also did not take into consideration the element of supervision charges at the time of evaluation of the respective bids submitted by the tenderers. It is apparent from the records placed before us that the Committee evaluated the tender as per clause 6.8 of the Manual on Handling Contracts based on only 4 major operations namely - unloading, transportation, stacking and ex-yard delivery. As per the said evaluation on the basis of the 4 elements the petitioner claimed to be the lowest tenderer. However, the respondent No.4, the Competent Authority was of the opinion and firm view that the operation of supervision and coordination was an important item qua the Kalamboli Stockyard in view of its size, volume of the work involved and particularly in view of the provisions of Maharashtra Mathadi Hamal and other Manual workers (Regulation of Employment & Welfare) Act of 1969. According to the respondent No.4, if the rates quoted by the tenderers for this item of operation was taken into account the petitioner firm would cease to be the lowest bidder and would become the second lowest bidder. On the basis of such reasoning the Regional Manager came to a definite conclusion that it was considered proper and necessary that fresh open tenders be invited, revising the tender documents incorporating very clearly that supervision and coordination charges would form a part of evaluation in addition to the major four elements incorporated in the Manual and instructions to the tenderers. The aforesaid view, we find, was taken in order to rule out any accusation against the respondents in the matter of finalising the tender particularly in view of the fact that subsequently such bids were called for from the tenderers but not taken into consideration by the Tender Committee.

(7) We also find on record that the petitioner himself by his letter dated 17.4.1995 addressed to the Branch Manager, respondent No.3, stated that the said item of work namely - supervision and coordination charges does not show the quantity to be executed and made a query from the said Branch Manager as to whether the said supervision and coordination charges would be taken into account (till operation) while evaluating the full tender as per clause 8.6. Apparently, Therefore, there was a confusion in the mind of the petitioner and also possibly of the other tenderers as to whether the said amendment made

subsequently to the tender document would be a factor for consideration while evaluating the bids of the respective tenderers.

(8) In order to set at rest such confusions and also in order to make the relevant considerations apparent and explicit it appears that the respondents had taken a decision to call for a fresh tender mentioning therein explicitly and clearly in the tender document itself that supervision and coordination charges would form a part of the evaluation in addition to the major four elements. The records placed before us also reveal that some complaints have been received through the Ministry of Steel about finalising of the contract, taking into consideration only the four elements and ignoring the 5th one with further allegation that there would be financial loss to the respondents. The respondents considered the entire facts and circumstances of the case and in view of there being a genuine slip by not intimating the tenderers that there would be an additional element namely - supervision charges for consideration and evaluation of the tenders, the decision was taken for cancelling the tender and calling for fresh tender as stated above.

(9) Considering the aforesaid facts and circumstances and also records of the case, we are satisfied that the decision of the respondents in cancelling the tender notice and calling for fresh tenders revising the tender documents cannot be said to be arbitrary or unreasonable. To quote the words of Lord Green, M.R. in the case of *R. Vs. Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd.* wherein he summarised the principles as follows:-

"THE Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or, conversely, have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favor of the local authority, it may still be possible to say that, although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confided in them."

(10) The aforesaid summary has been appropriately quoted in the recent decision of the Supreme Court in the case of *Tata Cellular Vs. Union of India*, . In the same context we may also refer to the decision of the Supreme Court in *Fasih Chaudhary Vs. Director General, Doordarshan and Others*, wherein it was held thus:-

"IT is also well settled that the authorities like Doordarshan should act fairly and their action should be legitimate and fair and transaction should be without any

aversion, malice or affection. Nothing should be done which gives the impression of favoritism or nepotism".

(11) The factual matrix and the conclusion derived there from delineated hereinabove would clearly show that the respondents herein could not be said to have acted unfairly and the decision of the respondents appear to be legitimate and fair and no malice or affection towards any of the other tenderers has been made out in the instant case. When we have found that the decision of the respondents in the present case is within the confines of the reasonableness it is not our function and duty to further look into its merits for finding out "as to whether the particular policy is wise or foolish", as we are not exercising appellate power while functioning and exercising powers under Article 226 of the Constitution of India. As has been laid down in Tata Cellular case (supra) this court is not supposed to sit as a court of appeal but merely to review the manner in which the decision was made. As we have found that the decision was taken legitimately and fairly without any malice and affection we are not inclined to interfere with the decision of the respondents in cancelling the tender notice and in issuing a fresh tender notice. Further more we find on record that the fresh tender has already been issued inviting fresh bids in pursuance of which the petitioner has also submitted his tender. We are told at bar that the same is also being considered on its own merit Along with the bids of the other tenderers.

(12) In the result, this writ petition has no merit and is dismissed but without any costs.