

(2001) 05 P&H CK 0180

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4996 of 2001

Bhaichara Goods Transport
Truck Union, Narwana

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 29, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 299

Citation: (2001) 3 RCR(Civil) 688

Hon'ble Judges: R.C. Kathuria, J; N.K. Sodhi, J

Bench: Division Bench

Advocate: Mr. Surinder K. Garg, for the Appellant; Mr. Sidharath Sarup, Mr. Bhoop Singh and Mr. J.B. Tacoria, for the Respondent

Final Decision: Dismissed

Judgement

R.C. Kathuria, J.

In this writ petition, the petitioners have prayed for direction to the official respondents not to accept the tenders of the private respondents and in case the same have been accepted by them then the latter be restrained from executing the work allotted to them.

2. Petitioner No. 1 is Bhaichara Goods Transport Truck Union. This union has been armed consisting of members mentioned in Annexure P.2 in order to carry out the contracts entered into between members of the petitioner-union and various agencies of the State Government for the purposes of transportation of food-grains stock articles/gunny bates etc. by road from one centre to another within the District Jind. For the year 2001-2002 tenders were invited by the official respondents and the same were to be received upto 28.2.2001 at 11.00 a.m. by the office of the Additional Deputy Commissioner, Jind (respondent No. 4) and were to be opened on the same day at 11.30 a.m. In terms of the requirement of the tender notice, the petitioners

submitted their tender quoting rate at 15% above the last year D.C. rates for the transportation of food-grains from various purchase centres in Tehsil Narwana and has also deposited the security amount of Rs. 15,000/- vide receipt No. 183 dated 28.2.2001. As the tenders had quoted excessive percentage of rates above the D.C. rates for the year 2000-2001 for the work to be undertaken therein, all the tenders were rejected at the spot on 28.2.2001 by the official respondents. Thereafter fresh tenders, as per tender notice, copy of which is Annexure-P.6, with the writ petition, were invited for 27.3.2001 by the committee headed by respondent-No. 4 constituted for the said purpose. The stand of the petitioners is that they wanted to submit the fresh tender on 27.3.2001 in the office of respondent No. 4 and reached there for the said purpose at 9.00 a.m. but they were not allowed to enter the office of respondent No. 4 by the police force deployed there. Whereas respondents No. 3 to 6 received the tenders of respondents No. 10 to 12 and their supporters under various names in order to help them and oust the petitioners from undertaking the tender work.

3. Aggrieved by the action of the official respondents, petitioners through Shri Dharam Pat addressed a letter, copy of which is Annexure-P.7, to the Chief Secretary, Haryana, Chandigarh informing him that the petitioner was stopped from entering into the office by the police force deployed there and was denied the right to submit the tender for the work notified. It was brought to his notice that the government was being duped of lacs of rupees by accepting the tender at the higher rates while they had been ready to do work at the lower rates as they had been undertaking this work for the last more than ten years. It is further case of the petitioners that on 29.3.2001 they met official respondents No. 3 and 5 and impressed upto them to cancel the tender received on 27.3.2001 or in the alternative they and respondents No. 10 to 12 be called for negotiation as they were ready to undertake the work at the rate of 20% below the last year D.C. approved rates but their offer was refused by them. Thereafter they submitted an application to the official respondents No. 3 and 5 to give them the copy of the tender submitted by respondents No. 10 to 12, but their application was destroyed. Terming the action of the official respondents as illegal, arbitrary and against the public interest, they filed the present writ petition.

4. On notice of motion, respondents No. 1 to 4 and 7 to 9 have contested the claim of the petitioners. Joint written statement has been filed by respondents No. 1 to 4 and 7 to 9 wherein the stand of petitioners for submission of their tender on 28.2.2001 and rejection of all the tenders on the ground that rates quoted by them were found excessive being above the D.C. rates fixed for the last year was admitted. At the same time, it was maintained that in response to the fresh tender notice, the petitioners did not submit their tender on 27.3.2001 as required. Further according to them, in all, 8 persons submitted their tenders for Narwana, Safidon, Ghogheria, Julana, Pillukhera and Jind. Out of these tenders, two tenders were received for Narwana and centre of Tehsil Narwana. M/s Balaji Truck Union,

Narwana, through Shri Bhim Singh was one of the tenderers for this centre, but as it did not deposit the earnest money, its tender was rejected. The other tender was submitted by M/s Rattan Singh and Company, Narwana which had offered to undertake the work at the rate of 10% increase from the last year D.C. rate. As the rate so quoted by it was reasonable, same was accepted by the committee on 27.3.2001. Thereafter Shri Rattan Singh deposited the security on the same day vide receipt No. 225, copy of which is Annexure-P3. The petition was also resisted on the ground that it was bad for non-joinder and of M/s Rattan Singh and Company in whose favour the tender was accepted on 27.3.2001 being a necessary party. No separate written statement has been filed by respondent No. 5.

5. We have heard counsel for the parties and have gone through the pleadings and documents placed on record.

6. During the course of arguments, it was not disputed by the counsel for the parties before us that the tenders of the tenderers who had submitted their tenders in response to the tender notice Annexure-P.2 on 28.2.2001 were rejected by the official respondents on the spot on the same day as they had quoted excessive percentage of rates above the D.C. approved rates fixed for the work to be undertaken. It was also admitted by them that fresh tenders were invited upto 27.3.2001 by the committee headed by respondent No. 4 for the work to be undertaken as specified in the tender notice Annexure P.6 which was to be submitted to the office of respondent No. 4 upto 9.00 a.m. The only grievance made from the side of the petitioners is that the official respondents with the help of police force not only denied them their legitimate right to submit the tender on 27.3.2001 but had also succeeded in manoeuvring the allotment of work to M/s Rattan Singh and Company so as to favour it and cause loss of lakhs of rupees to the State exchequer and for that reason this Court should intervene to set aside the arbitrary, unfair and unreasonable action of the official respondents.

7. By now it is well settled that action of the State must not only be transparent, based on fair play, reasonable but also in public interest when it enters into contract with individual parties. Notice needs to be taken of the observations made in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, upon which reliance was placed by the counsel for the petitioners. The relevant portion reads as under :-

"Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be

obtained of it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Govt. is reasonable and in public interest....."

8. Our attention was also invited to the case of M/s New India Distillery and another v. State of J and K and others AIR 1997 J & K I, wherein it was observed that "it is bounden duty of the State rather its constitutional obligation not to act arbitrarily, unfairly or unreasonably in the matter of grant of contracts to the citizens and not discriminate between one citizen and another on this score. The acts of the Stale in matters relating to grant of contracts has to be guided by objective consideration and in public interest." It was further observed in that case that "once the Government chooses to adopt a system of awarding contracts by negotiations, the only permissible rule is to negotiate with each eligible party and to give every such party a fair and reasonable chance of putting across its offer and thereafter, to award contract at the rate and on the terms best suited to the Government,"

9. Viewed the controversy raised in the present petition in the light of the principles laid down in the above mentioned cases, it was pointed from the side of the contesting respondents that in the preceding years 1999-2000 and 2000-2001 tenders of petitioners with a similar increase of 10% above from the last year D.C. rates was approved and accepted by the respondent-State which shows that the State had never acted unfairly with the petitioners. Rather, the action of the State has been guided primarily keeping in view the best interest of the State involved in the award of such contracts. Reference was also made to the tender submitted by the petitioner on 28.2.2001 wherein for the work to be undertaken for the year 2001-2001 at purchase centres Barta, Dhamtan Sahib, Garhi, Ghanauri, Danauda, Sudkain, Kavarchha, Phuliankalan, Farain, Kharal, the petitioners had quoted the tender rate of 15% increase above the D.C. rates for the year 2000-2001. Finding the rates quoted by the petitioners as well as other tenders to be excessive, the same were rejected. This order of rejection of the tenders was not challenged by the petitioners as well as the other tenderers. Therefore, bonafide of the official respondents were not questioned at that time even by the petitioners.

10. Coming to the tenders submitted in response to the tender notice Annexure-P.6, it is apparent from record that M/s Rattan Singh and Company, whose tender was accepted, had quoted for the tender work an increase of 10% above the D.C. rates for the year 2000-2001. The original quotation letter had been shown to us from the side of the respondents at the time of arguments. The other quotation on M/s Balaji Truck Union, Narwana, which was submitted on 27.3.2001, shown to us, reveals that it had quoted for the tender work rate with increase rate of 15% above the D.C. rate for the year 2000-2001. The official respondents had taken up the stand that its tender was not considered as it had not deposited the earnest money. We find no reason to doubt the stand taken by the official respondents in this regard. Therefore, the contention of the petitioners that acceptance of the tender of M/s. Rattan Singh and Company was a made-up affair because nobody else was allowed to submit the tender as such is not borne out from the record.

11. It is further clear from the record that the tender submitted by M/s Rattan Singh and Company for the work to be undertaken had been accepted by the official respondents prior to the filing of the present petition but still the petitioners had not chosen even to implead M/s Rattan Singh and Company as party respondent to the petition so as to enable it to put-forth its stand before us. Even no explanation has been given in this regard. Under the circumstances, prayer made by the petitioners that the respondents be restrained from accepting the tenders of private respondents merits rejection outrightly.

12. Coming to the main grouse which has been made from the side of the petitioners is that they were prevented from submitting the tender on 27.3.2001 by the official respondents with the help of the police force and the whole action of the official respondents in accepting the tender of M/s Rattan Singh and Company deserves to be quashed is bellied from the record. No doubt, the petitioners had informed the Chief Secretary, Haryana, Chandigarh vide letter dated 27.3.2001, copy of which is Annexure-P.7 that the petitioners were not allowed to enter the office of respondent No. 4 to submit the tender. But the allegations made do not spell-out as to why the official respondents should act adversely to the interest of the petitioners when they have been allowing them to submit their tenders on earlier occasions. The petitioners could not even whisper about any animosity of the official respondents or their predecessors during the years 1999-2001 when the tender work for these years was undertaken by them so as to even remotely suggest that the official respondents were out to harm their interest in respect offender in question. It is contended from the side of the respondents that the petitioners after coming to know about the acceptance of the tender submitted by M/s Ratlan Singh and Company have come out with an after-thought story of being prevented from submitting their tender. This stand of the respondents cannot be brushed aside under the circumstances of the case. It is manifest that the petitioners had the knowledge that they had quoted higher tender rate earlier and the same was rejected. Therefore, they had deemed it proper to keep away this time. They woke

up only after the acceptance of tender of M/s. Rattan Singh and Company. Thus, having not submitted any tender on 27.3.2001 for the tender work in question, the petitioners have no locus standi to file the present petition.

In the given circumstances of the case, no case has been made out for our intervention in exercise of the power under Article 226 of the Constitution of India. In the result, we find no merit in the writ petition and dismiss the same.

13. Petition dismissed.