

Ramendra Prasad Das Vs Assam State Electricity Board and Others

Court: Gauhati High Court

Date of Decision: Aug. 24, 1996

Acts Referred: Constitution of India, 1950 " Article 14

Citation: AIR 1997 Guw 95

Hon'ble Judges: D.N. Chowdhury, J

Bench: Single Bench

Advocate: B.C. Das, J. Deb and N. Nath, for the Appellant; B. Chowdhury, A.N. Chowdhury and N.N. Saikia, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.N. Chowdhury, J.

The question involved in this Writ Petition about the procedural fairness in the realm of allotment of contract by the public authority. The Respondent No. 2, The Chief Engineer, (T&T), Assam, State Electricity Board, invited sealed tender from reputed

manufacturer-cum-Erectors for supply and execution of some works. This case is concerned with the tender specification No. ASEB/CE/TT/TR-

67(B) for construction of 220 K.V. D/C Tower foundation erection of towers as per approved drawing of ASEB, string of zebra conductor

ground wise testing and commissioning B. G. Railway track crossing by existing 220 KV D/C towers at 7 (seven) locations. Clause A-II-10

contained the provisions of past experience e.g. "The Tenderer shall submit their tender alongwith their detailed past experience. "

2.-3. As per the specification contained in bidding document tender was required to submit with his bids in two separate envelopes viz. the

technical and commercial bid and other for the price bid. As per NIT if the bidder is not found qualified in the technical and commercial bid then

his tender would be entirely rejected.

4. Altogether 4 (four) parties submitted their tenders paper including that of the Petitioner. On 26-12-95 the technical/commercial bid of the

tenderers were opened and duly examined by the design circle transmission of the Board which is headed by an Engineer of the rank of

Superintending Engineer. It was asserted by the Petitioner that on 6-2-96 the Superintending Engineer after examination of the tender had

submitted his report after scrutinising and examining the matter in depth and forwarded the same to the Chief Engineer (T & T). The petitioner

asserted the Chief Engineer is the final authority to accept or reject the tenders and in the instant case the Chief Engineer delegated his function to

the Deputy Manager, Accounts and on the basis of Deputy Manager, Accounts note the Chief Engineer, (T & T) decided not to accept the tender

of the Petitioner. According to the Petitioner he is one of the experienced Contractors in the line and more so he tied up with M/s. Ananta

Chowdhury who is also experienced in the trade. But the authority without considering his experience and financial credibility rejected his tender

arbitrarily and capriciously. The authority also fell into serious error on rejection of the tender on irrelevant consideration.

The Respondents filed its affidavit and contested the claim of the Petitioner. The Respondents narrated that the contract relates to the matter of

great public importance relating to construction of B.G., railway line from Bongaiga to Guwahati via Panchratna ghat across the river Brahmaputra

and the said railway line to pass into various places beneath the high tension 220 KV line namely Agia Sinha line. According to the Board the

authority while constructing the railway line the railways collected high earth for the Railway track and thereby vertical clearance between the said

EHV line and the ground level drastically reduced far less than the statutory vertical clearance under the provisions of the Electricity Acts and

Rules. The Board (ASEB) through its officers brought the same to the notice of the Railway and thereafter it was decided that the

Respondent/Board shall renovate the existing line on all crossing points providing for required vertical clearance in accordance with its relevant

laws as early as possible. After a joint survey the Board submitted its provisional estimate to the Railway and in pursuance of which a notice tender

were so invited. According to the Board, the report of Superintending Engineer (designed) and the office note from the office of the Chief Engineer

(T & T) were referred to Deputy Manager, Accounts for verification and scrutiny. The Deputy Manager, Accounts gave detailed report on 28-3-

96 which revealed that the tenders submitted by the petitioner and M/s. Shri Ram Construction and Associates were not complete as per tender

specification and hence were not acceptable. According to the said note nothing was submitted regarding supply of insulator and accessories of

Tower, Conductor, Nuts and Bolts etc. As regards experience of the petitioner, he submitted information only of maintenance works and not

original construction works of the kinds. According to the said note the Petitioner does not have required practical experience to undertake

erection work of the kind which requires considerable knowledge and practical experience. According to the Board an affidavit of Mr. A.

Chowdhury was submitted undertaking to assist the petitioner in, connection with the "works", but the name was not considered sufficient to meet

the requirement of the board and the alleged experience of Sri Chowdhury could not be considered as the experience of the petitioner. The said

note also contained that the financial position of the petitioner was also not sound and adequate. According to the Board the experience of the

petitioner is only confined to maintenance work and, therefore, respondents were not in a position to accept the tender of the petitioner. The Board

also asserted that the tenders of the remaining two other tenderers, viz. DeeBee Construction and Transpower (P) Ltd. were found to be adequate

for opening the price bid tender as they executed considerable number of similar works as evident from the list of works completed by them as

shown in the list enclosed to the respective tenders including the Brahmaputra crossing 220 KV double circuit EHV line at Bhomo-raguri (Tezpur)

and Panchratnu dhat (Goalpara) and submitted required papers. Accordingly price bids of the said two tenders were opened and the tenders

(price bid) of the petitioner and "Shri Ram Construction were not opened. It was asserted that extension of B. G. lines is of prime national

importance and is to be completed within the time schedule. The work of extension line is totally stopped on the aforesaid 7 numbers of crossing

points as the earth formation thereunder had to be removed under pressing legal mandate as stated above, and after completion of the EHV line

across the said 7 Nos. crossing points, the Railway shall have to complete the earth work and on due formation of solid earth the B. G. Railway

line will be possible. According to the Board the work in question is of highly technical in nature and is required to be completed within the time

bound programme involving huge costs. The Board further stated that the petitioner carried out the following work :

(a) Switchyard and lighting works of Barnagar 33 KV and 11/33 KV Sub-Station.

(b) Extension works of 132 K V S/C Sisugram Sipajhar line.

(c) Changing of Disc insulators of 132 KVD/ c Tinsukia Mergherita line.

According to the Board, the above works did not relate to erection work. The Respondents averred that the certificates enclosed with the lender

papers is not in conformity with lender specifications" and since Sri Ananta Chowdhury does not belong to member of Contractors" Organisational

set up and no agreement regarding tie up with Sri Chowdhury was also submitted along with tender papers. The Board also submitted the record

for perusal of the Court.

5. Mr. B.C. Das, learned counsel for the petitioner, submits that in the matter of distribution of Public property as per Governmental contract the

authority is to conform to the equality clause and, as such, such authority cannot act arbitrarily and capriciously. According to Mr. Das it is the

Chief Engineer alone who is to exercise its discretion independently without being influenced or prejudiced by any other authority. The discretion is

to be exercised justly, fairly and without being influenced by any other agency. Mr. Das particularly emphasised on the note of the Deputy

Manager, Accounts.

6. Mr. Das further submits that the Board while rejecting the tender of the petitioner, it acted in a most illegal fashion by not taking into

consideration of the experience of Sri Ananta Chowdhury with whom the petitioner tied up and in this regard Mr. Das referred amongst others the

following decisions ;

1. (1979)3SCC489 : Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, (Pr. 10, 11, 12, 20, 21).

2. Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another,

3. (1993) I SCC 445 : Sterling Computers Limited and Others Vs. M and N Publications Limited and Others,

4. (1994) 6 SCC 651 : AIR 1996 SC II --Tata Cellular (Pr. 70, 73, 74, 77, 78, 79, 81, 94 (of SCC): (85, 89, 90, 93 to 95, 96, 97, 99 and 13

of AIR).

5. New Horizons Limited and Another Vs. Union of India (UOI) and Others,

6. (1995) 2 GLR 66 -- Dolloo Tea Co. (Pr. 15-18).

7. Mr. N.N. Saikia, learned Sr. Counsel for the Assam State Electricity Board on the other hand submits that the Board at all relevant time acted

justly, fairly and as such there is no question of any procedural irregularity requiring interference from this Court. Mr. Saikia also submits that the

Board at all relevant time acted bona fide for completion to find out the most suitable amount the tenderers who shall be eligible to complete the

work on national importance at the earliest instance. The concern of the Board is the completion of the task at the shortest possible time through an

able hand and therefore directed its mind to single out the best from the choices available.

8. The discretion to prefer the suitable person rests on the Respondents. While exercising its discretion the authority is duty bound to honestly

address itself to the matter before it; legitimately exercise its discretion without allowing itself to act under the dictation of another body. It must act

justly, fairly and reasonably without being influenced by extraneous or irrelevant considerations. In exercising its discretion it must not do what is

prohibited to do. The exercise of discretion may be vitiated because of illegitimate consideration or because of the surrendering of its discretion

which will amount to improper exercise of power. Prof. H.W.R. Wade in his "Administrative Law", page 368 (6th edition) restated the law in the

following passages:

Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority

is the substance exercised by another. The proper authority may share its power with someone else or may allow someone else to dictate to it by

declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is

exercised, at least in part, by the wrong authority and the resulting decision is ultra vires and void.

The professor above mentioned cited Canadian judgment of the Supreme Court of Canada in *Roncarelli v. Duplessis*, (1959) 16 DLR 689 at 705

in the same book at page 405. The observation of R and J as mentioned therein are extracted below :

In public regulation of this sort there is no such thing as absolute and untrammelled "discretion", that is that action can be taken on any ground or

for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language be taken to contemplate an

unlimited arbitrary power, exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud

and corruption in the commission may not be mentioned in sum statistics but they are always implied as exceptions. "Discretion" naturally implies

good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its

lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused permit because he had been born in another province

or because of the colour of his hair? The ordinary language of the legislature cannot be so distorted.

The liquor licence of the restaurant owner was cancelled by the Quebec Liquor Commission at the instance of the Prime Minister of the Quebec

for the reason that the owner habitually stood as bailor for the members of the Sect of Jehovah's witnesses.

9. The Rules and principles as mentioned above however should not prohibit the department or departments from consulting and deliberating and

adhere to the policy laid down. There must be a qualitative distinction between deliberation and seeking views and thereafter honestly arriving at its

own judgment and acting mechanically put the stamp of approval without due application of mind.

10. The principle of law has been laid down in Halsbury's Laws of England (paragraph 31 page 33 -- 4th edition) in the following way.

Acting under dictation. A body entrusted with a statutory discretion must address itself independently to the matter for consideration. It cannot

lawfully accept instructions from or mechanically adopt the view of, another body as to the manner of exercising its discretion in a particular case,

unless the other body has been expressly empowered to issue such directions.....

11. The Supreme Court of India in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, observed that the Commissioner of Police was

entitled to take into consideration the advice tendered to him by a public body set up for this express purpose, and he was entitled to in the bona

fide exercise of his discretion to accept that advice and act upon it even though, he would have acted differently if this important factor had not

been present in his mind when he reached a decision.

12. I have perused the records and the Notes tendered by the respective officers, including the comments of the Finance Department. The

respective officer, expressed their respective view points from different angles. The concerned authority no doubt took into consideration the

evaluations made by the officers at various stages including the view points expressed by the finance. These bodies are the limb of the authority and

not a stranger body. The authority exercised its discretion genuinely and honestly and I do not find any infirmity in the decision making process in

taking into consideration the view points of the Finance Department.

13. As alluded earlier that the discretion to select the best tenderer is vested upon the Board. In the instant case the Board examined the respective

tenders. On examination of the lenders, so far as the petitioner is concerned, it is found that tender of the petitioner lacked some essential

information. The experience cited, including the experience of Mr. A. Chowdhury, was duly considered by the Board and found that the said

experience does not adequately meet their requirements. In short, the Board was not satisfied about the credentials of the petitioner and his

collaborator for entrusting the work in question. Such evaluation of credentials are essential from any commercial point of view and, therefore, the

consideration that arc taken by the Board for assessment of the respective parties cannot be said to be irrational or arbitrary. The Board,

considering all those aspects of the matter, found that the petitioner lacked the required experience and also found the financial position of the

petitioner was not sound and adequate for undertaking the erection of the kind requiring considerable knowledge, skill, practical experience as well

as the financial capacity. The considerations, those were taken by the Board, under no circumstances can be said to be arbitrary or unreasonable.

The Board assessed the fact in an objective standard and tried to adjudge the best among the tenderers by considering the case of all the

tenderers.

14. Article 14 has not interdicted the Authorities from ascertaining the best person from amongst the tenderers. The right to find out the best

quotation from the available quotations cannot be branded as arbitrary. If the authority by keeping in mind the principles laid down in Article 14 of

the Constitution accepts or rejects a tender cannot be any scope of judicial review. This Court in Civil Rule No. 1316 of 1996 in 35 Pakaria Min

Samabai Samity Ltd. v. The State of Assam disposed on 18-7-1996 restated the extent of judicial review in the following paragraph.

Article 226 of the Constitution has provided a mechanism to the High Courts in India by conferring the power of judicial review to over see that

the authority acts lawfully in accordance with legislative will. The Writ Court is concerned with the legality of exercise of power to see that the

actions of the authority are taken lawfully, within the legal limits of the power, statutory provisions are lawfully construed; the discretion conferred

on the authority is exercised properly and the decision making authority have acted justly, fairly and reasonably. Writ Court is concerned with the

legitimacy with the process of the decision making to ensure that the authority acted within the parameter of its power. But the judicial review is not

to ensure "that the authority after according fair treatment reaches on a matter which is authorised or enjoined by law to decide for itself a

conclusion which is correct in the eye of law" --. Recalled Lord Chancellor Hailsham in the Chief Constable of North Walse Police v. Evans 1982

(2) All ER 141. Judicial Review is distinct from appeal and like an appeal Court, the Writ Court cannot re-appraise the facts. The administrative

authority as alluded earlier is authorised to exercise its full discretion within its legal limit, and accept one of the course available to it. In Secretary

of Education and Science v. Tameside Metropolitan Borough Council (1972) AC 1014 (1064) Lord Diplock observed -- "The very concept of

administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable

people to hold different opinion as to which is to be preferred.....

15. have given my anxious consideration in the entire matter and upon considering all the facts, situations, I have not found any illegality in the

decision making process or any infirmity requiring interference from this Court.

16. In the result the writ petition is dismissed. The interim order dated 9-4-1996 passed by this Court is vacated. There shall be no order as to

costs.

Rule is discharged.