(1990) 02 CAL CK 0038

Calcutta High Court

Case No: None

Bipul Ranjan Kar	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision: Feb. 9, 1990

Citation: 94 CWN 643

Hon'ble Judges: A.M. Bhattacharjee, J

Bench: Single Bench

Advocate: Jayanta Mitra, Ashoke Banerjee and B.P. Sana, for the Appellant;B.S. Bagchi for State Government and Hirannoy Dutta and Asoke Dey, for the Respondent

Judgement

A.M. Bhattacharjee, J.
" I am the Parliamentary draftsman,

I composes the country''s Laws,

And of half the litigation

I am undoubtediy the cause. "

I do not know who composed this jingling couplet and when; but the little knowledge that I have about our laws and litigations has convinced me about its truth beyond all doubt. I would, however, like to add that if the draftsman, who composes statutes and other legal instruments, is responsible for half of our litigations, the Judges who interpret them and the lawyers who aid such interpretation, are also responsible for the major chunk of the other half. And there are good many, reasons.

2. Firstly, words do not, and obviously cannot, always have any divine or mathematical or any exact clear-cut precision and if they had, much of our Literature would have been poor stuff. As Tennyson has said," "words, like nature, half reveal and half conceal the soul within" and very often we go only by the revealed half. And then, then law persons with their legal expertise attempt to

extract the half-concealed soul to get at the whole, they very often arrive at amazingly perplexing products because, (as Vivian Bose, J., put it in the Supreme Court decision in Seksaria Cotton Mills - The Seksaria Cotton Mills Ltd. Vs. The State of Bombay, , "it is not till one is learned in the law that subtleties of thought and bewilderment arise at the meaning of plain English words which any ordinary man with average intelligence, not versed in the law, would have no difficulty in understanding."

3. The case at hand is a typical example as to how careless drafting without proper advertence results in proliferation of meritless litigations. But I do not propose to blame the departmental officers or their legal advisers, if any, for such a piece of draft which has given rise to this litigation, for even in respect of Constitutional Amendment Act, obviously expected to be drafted, with the greatest possible care, caution and attention, Bhagwati, J., had to say in Minerva Mills Ltd. (Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others,) that "slovenliness in drafting is becoming rather common these days."

4. The facts of the case are short and simple. The petitioner is enlisted as a class I contractor under the Irrigation & Water Department and the case of the petitioner is that though as such an enlisted contractor he is entitled to submit tender for the works in question for which the Respondent Department have issued Notices inviting tenders, they have unlawfully declined to issue fender Forms to the petitioner on the ground that he was not ready to produce anything to show about his past experience about similar works. The petitioner contends that under the instructions, issued and the guide-lines framed by the respondent-department, as amended in 1983, a contractor outside the Department Panel may, but one enlisted as a class I contractor under the Department cannot, be required to furnish any such materials. The petitioner accordingly contends further that refusal to issue Tender Form to the petitioner has therefore resulted in violation of his right to be considered and such violation has vitiated the whole process.

5. It is not disputed that the petitioner as a class I contractor is entitled to be considered, as a matter of course, under the departmental rules and guide-lines, for works upto the value of Rupees Five Lakhs. His enlistment alone entitles him to such consideration and therefore, if he was denied any Tender Form and thus excluded from consideration in respect of any such works not exceeding Rupees Five Lakhs, the case would obviously have been different. Rut since the case in hand relates to works of higher value, this aspect does not require any advertence.

6. The relevant provisions relating to such works of higher value are not in dispute and are admittedly as hereunder, as would appear from Annexure "A" to the petition and also paragraph 6(p) of the affidavit-in-opposition of Respondent No. 4:

For works above Rs. 5 lakhs (Rupes Five Lakhs):

Open competitive tenders shall be called for from enlisted class I contractors of the Irrigation and Water Works Department, and the contractors outside the departmental Panel having experience of executing such works.

7. It is contended by Mr. Mitter, the learned counsel for the petitioner, that the words "having experience of executing such works" qualify and would therefore apply only to contractors outside the Departmental Panel and not to enlisted class I contractors of the Department. The comma appearing before the words "and the contractors outside the Departmental Panel" appearing in the affidavit-in-opposition, has been strenously sought to be pressed into service on behalf of the petitioner and it has been contended that the comma puts it beyond doubt that words appearing after the comma including, as they do, the words relating to class 1 contractors, stand disjustively separated and the words succeeding the comma do not and cannot apply to the words preceding. It may, however, be noted that no such comma appears in the Annexure "A" to the petitioner''s own petition, nor in the original provisions in the relevant Departmental records produced before me as directed.

8. The old rule that punctuations were hot be taken into consideration in construing relevant provisions no longer holds the. This rule gained ground at a time when in British Parliament, the Bills were being passed without punctuations, but such a rule has now been, as it cannot but be, steadily discarded as being anachromistic and out of tune with the present practice of the Legislatures passing Punctuated Bills. But even then punctuations have never been, by themselves, taken to be decisive and the courts would not hesitate to punctuate, re-punctuate and even depunctuate a provision statutory or non-statutory, wherever and whenever necessary, to make it reasonable and sensible and to further the objective for which the provision is made. Be that as it may, since 1 have not found any comma in the Original Document nor even in Annexure "A" to the petition, I would have to proceed on the basis that there is no comma, even assuming arguendo that a comma would have altered the position.

9. I am grateful to the learned Counsel for the parties for not piling up on my desk authorities on Rules of Interpretation, whether Judicial or textual. Far from helping you in achieving clarity, they, more often than not, had to observe in Sankalchand Seth (Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another,) that "the principles of interpretation, with rules pulling in different direction, have become a murky area and just as a case-law digest can supply an authority on almost any thinkable proposition, so also these principles have collected over the years divergent formulae which can fit in with any interpretation which one may choose to place". And Lord Denning had to say about rules of interpretation (Discipline of Law - 1979 - p.9) that "if you find a maxim or rule on your side, your opponent will find one on his side to counteract it."

10. Gone are the days of literal construction, yielding place to purposive approach and we no longer interpret a legal instrument with a Lexicon on one hand and Grammar on the other. Once we can understand the purpose or the object of the provision and find that the words used can bear the interpretation consonant with such purpose or subject, we unhesitatingly adopt that interpretation, even though, when literally read lexicon and rules of grammar, would direct us to some other construction.

11. It is true that since the decisions of the Supreme Court in Erusion Equipment (Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another,) and in International Airport Authority (Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,), it is settled law that the right to be considered for any contract or other largess to be granted by the State is also a right, violation whereof would render the transaction void. It is also true that if two interpretations are equally reasonably possible of any provision, the one furthering the rights of the citizen is to be preferred. But even though the interpretation that all enlisted Class I contractors are entitled to be considered without proof of previous experience is a possible one, the construction that all Tenderers, whether Departmental or outsider, in order to be qualified for consideration by submission of tender must exhibit previous experience, appears to me to be reasonable, or, at least, more reasonable. As already noted, contractors who are enlisted as Class I, are entitled to be considered for works not exceeding Rupees Five Lakhs on the strength of such enlishment. If such enlistment alone was to entitle them to be considered even for works exceeding or much exceeding Rupees Five Lakhs in value, then there could not have been any reasonable sense in providing in the very set of rules or instruments'' of 1983, as reproduced in Annexure "A" to the petition, to the effect that enlisted class I contractors are entitled to be considered "for works estimated to cost above Rs. 2 lakhs and upto Rs.5 Lakhs only". We can not allow letters to stultify reason and sacrifice reasonableness at the alter of letters. That was the mandate of our ancient Jurist Brihaspati more than thousand years ago - KEVALAM SASTRAMASRITYA NO KARTYAVA HI NIRNAYA YUKTIHINE VICHARE TU DPARMAHANI PRAJAYATE - decide not matters by the mere letters of the code, for decision not based on reason would occasion miscarriage of justice. Unfortunately, we have learnt to prefer purposive approach from the Anglo-American Judges and Jurist and not from our own ancient law-giver.

12. But even assuming that both the interpretations of the general provisions extracted hereinbefore, as in Anenxure "A" to the petition, are reasonably possible, the one requiring and the other not requiring the enlisted class I contractors to show possession of previous experience, I am afraid that the particular and special provisions of the three Notices inviting the Tenders in respect of the works in question would clinch the matter. As already noted, the general provisions, as in Annexure "A", are mere Departmental Instructions or guide-lines and have no statutory sanction behind them. There is nothing to prevent the Respondent

Department to alter then and adopt a fresh set. True, if that was done behind the back and without notification to the intending tenderes, some different consideration, whether based on promissory estoppel or otherwise, might have arisen. But in the Notices themselves inviting Tenders for the works in question, being Notice No. 3, No. 4 and No. 5, it was clearly notified in clause 10 (vide, Annexure "C" to the Affidavit-in-Opposition of Respondents Nos.4, 5, 6 and 7) that:

The Tenderer should submit along with his application reference of past experience in the kind of work involved supported with credentials, certificates and the value of work and document regarding his financial capacity, without which the form will not be issued.

13. The expression "Tenderer" has been used absolutely without any qualification and without any exception, whether in favour of enlisted Class I Departmental contractor or any other class. As already noted, the Enlisted Class I Contractors, like the Petitioner, are, on the strength of such enlistment alone, presumed to be competent to undertake works only upto the value of Rs.5 lakhs. Therefore, the decision of the Respondent Department to insist that all Tenderers, whether Departmental or out-sider, in order to be entitled to be considered and to have Tender Forms issued for works exceeding Rupees Five Lakhs in value must prove their previous experience in respect of works of similar nature, appears to me to be quite reasonable and in the public interest. The decision of the Supreme Court in International Airport Authority (Supra, at 1638), so much relied on by the petitioner, is itself an authority for the view that any deviation or departure from the set standard or form would be liable to be struck down only when such departure or deviation is arbitrary irrational, unreasonable or discriminatory. As already stated, the provisions in class 10 of the Notices in respect of the works in question insisting production of proof of previous experience by all Tenderers, Departmental or out-sider, in respect of works exceeding Rupees Five Lakhs in value, appears to be quite reasonable and in public interest. The later decision of the Supreme Court in Kasturilal Laksmi Reddy (Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another,) has again articulated this principle with greater emphasis, relying on its decision in International Airport Authority (supra, Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,) and other decisions. It has been observed (at 2001) that "there is always a presumption that is for the party challenging its validity to show that it is wanting in reasonableness. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material.... there are a large number of policy considerations which must necessarily weigh with the Government in taking action and, therefore, the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest."

For all these reasons, I think I must discharge the Rule, which I hereby do, and as a result the interim orders shall stand vacated. No costs.