

(2005) 11 DEL CK 0146

Delhi High Court

Case No: WP (C) 18075/05 and CM 11690/05

SPL's Sidhartha Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision: Nov. 7, 2005

Acts Referred:

- Food Corporations Act, 1964 - Section 6(1), 6(2)

Citation: AIR 2006 Delhi 83 : (2006) 1 BC 484 : (2005) 2 CTLJ 328 : (2005) 125 DLT 104 : (2005) 85 DRJ 314

Hon'ble Judges: Markandeya Katju, C.J; Madan B. Lokur, J

Bench: Division Bench

Advocate: Jayant Bhushan and Anjoo Jain, Adv Jagat Singh, Ashwani Sharma and Ritesh Sharma, for the Appellant; Rajan Sabharwal and Rajeev Kumar, for R1, for the Respondent

Final Decision: Allowed

Judgement

Markandeya Katju, C.J.

This writ petition has been filed praying for a mandamus directing respondent No. 2, the Food Corporation of India (FCI) to award the tender in question in favor of the petitioner as the petitioner is the only tenderer who qualifies the guidelines laid down in the tender document. The petitioner has further prayed for a writ of certiorari to quash the letter dated 21.7.2005 by which the Central Government directed the FCI to keep the tender in abeyance.

2. Heard learned counsel for the parties and perused the record.

3. The petitioner is a company registered under the Companies Act having its registered office at Greater Kailash, New Delhi. It is engaged in the business of flooring. It is alleged in paragraph 2 of the petition that the petitioner is a sole patent holder of the rodent repellent technology and Therefore no other company can manufacture the said product. It is further alleged that the petitioner is well known for its expertise, price and competitiveness. It has been successfully

supplying dunnage flooring material to respondent No. 2 for the last nine years.

4. In paragraph 6 of the petition it is alleged that FCI floated a new tender on 17th July, 2004 with the clause that the parties applying must have prior experience of three years. The technical bid was opened and petitioner had qualified, but on 17th November, 2004 the said tender was scrapped without assigning any reasons. Respondent No. 2, FCI, within three weeks of scrapping the earlier tender again on 9th December, 20004 invited competitive bidding for purchase of godown flooring material of polyethylene film bonded with hessian for use as dunnage for storage of food grains in covered godowns. The petitioner had apprehension from a bare reading of some of the conditions that they were tailor made with the ulterior motive to favor one of the parties and it wrote a letter in this connection to respondent No. 2 which did not take any action in this regard.

5. Upon opening of the techno-commercial bids it appears that one M/s Airtrax Polymers Private Limited did not accompany the tender document with the test reports of Rodent Repellent, Ant-termite and anti-fungal from a reputed laboratory, which was the essential criteria for the tender. The petitioner was informed from reliable sources that after the technical bid the said M/s Airtrax Polymers Private Limited supplied the copies of its test reports from a laboratory called Inspection Syndicate of India which is not recognized by the Bureau of Indian Standards. It is alleged that calling of reports post technical tender is against the CVC guidelines and settled principles. It is further alleged that the test which takes normally 42 days to complete, was said to have been completed by M/s Inspection Syndicate in just two days.

6. It is alleged in paragraph 10 of the petition that the respondent No. 2 FCI had introduced the said criteria with only purpose to some how or the other neutralize the petitioner's performance and/or experience and expertise. It is alleged in paragraph 11 that the favoritism towards a party to the tendering process is evident from the fact that the said party despite not meeting one of the important and/or mandatory criteria for pre-qualification (the experience of three years) is being favored and that party has got test done from an laboratory which is not recognized.

7. In paragraph 12 it is alleged that the petitioner fulfilled all the terms and conditions as laid down in the invitation for pre-qualification or participating in the tender and after furnishing all the information/clarification asked for by respondent No. 2 was waiting anxiously for the award of the tender but to its shock and surprise the bid of M/s Airtrax Polymers Private Limited who was ineligible as it had no experience nor were manufacturers of rodent repellent products were considered vide letter dated 22.7.2004. The petitioner wrote several letters on 3.12.2004, 10.12.2004, 11.12.2004, 15.2.2005, 18.2.2005, 11.3.2005, and 22.3.2005 to the Chairman and Managing Director of the FCI against the injustice being done to them in not considering their proposal. However, no action was taken by

respondent on the representations. The petitioner also wrote letter dated 28.3.2005 to respondent No. 2 but to no avail.

8. It is also alleged in paragraph 16 of the petition that on 2.5.2005 the petitioner received a letter from respondent No. 2 granting it parallel tender for a period of two years vide annexure B. Subsequent to the awarding of the parallel tender the respondent No. 2 on 11.7.2005 issued an order for supply of 350 rolls of godown flooring vide Annexure C. As soon as the order was received the next day by letter dated 22.7.2005 the petitioner deposited Rs. 1,90,890/- towards 5% of refundable security deposit and Rs. 38,178/- towards 1% additional security deposit vide Annexure D. However to the utter shock of the petitioner company, vide fax dated 21.7.2005 the respondent kept the tender in abeyance without assigning any reasons till further orders vide Annexure E.

9. The petitioner made representation on 27.7.2005 against this act of the respondent. On 29.7.2005 an office order confirming the fax message dated 21.7.2005 was received by the petitioner company. By the same letter respondent No. 2 cancelled the orders already issued to the petitioner vide Annexure G.

10. The petitioner has alleged that it had made arrangement for raw material, finances etc. and hence the action of respondent was wholly arbitrary and illegal. Hence this petition.

11. A counter affidavit has been filed by FCI and we have perused the same.

12. In paragraph B of the Preliminary submissions/objections in the counter affidavit it is stated that the Central Government had directed the FCI by letter dated 19.7.2005 to keep all orders concerning the tender in abeyance. It is alleged that Section 6(2) of the Food Corporation Act, 1964 empowers the Central Government to issue such directives and they are binding on the FCI. It is alleged that M/s Airtrax Polymers Pvt. Ltd complained to the Ministry against the appointment of the petitioner as parallel contractor and the Ministry of CAF&PD has called for the record of the order and has instructed vide letter dated 19.7.2005 to keep the contract in abeyance. It is alleged that in view of this letter of the Central Government the FCI had no option except to abide by the instructions of the Ministry.

13. The submission of Mr. Jayant Bhushan, learned senior counsel for the petitioner is that the Central Government had no power to issue the letter dated 19.7.2005. We are in agreement with this submission.

14. Section 6(1) & (2) of the FCI Act, 1964 state as under:

"Management- (1) The general superintendence, direction and management of the affairs and business of the Corporation shall vest in a board of directors which may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation under this Act.

(2) The board of directors, in discharging its functions, shall act on business principles having regard to the interests of the producer and consumer and shall be guided by such instructions on questions of policy as may be given to it by the Central Government.

(3) xxxxxx

15. A perusal of Section 6(2) of the Act shows that the Central Government cannot issue any direction to the FCI as it pleases, but can only give directions on questions of policy. Thus the power and jurisdiction of the Central Government over the Food Corporation of India is limited, and the FCI is not a subordinate agent of the Central Government. The FCI is a statutory body which is broadly autonomous. It has been created by Parliament and the Central Government cannot override a parliamentary statute, because the executive is subordinate to the legislature. The FCI Act only permits the Central Government to issue directives relating to policy matters and not all kinds of directives.

16. In our opinion the directive of the Central Government to keep a particular tender in abeyance or cancel the award of a contract is certainly not a policy matter.

17. In this connection Black's Law Dictionary defines "Policy" as follows:

"The general principles by which a government is guided in its management of public affairs, or the legislature in its measures."

18. Similarly the Oxford English Dictionary states that "Policy" is:

"In reference to conduct or action generally".

19. Similarly in Chambers 21st Century Dictionary the word "Policy" has been defined as follows:

"a principle or set of principles on which to base decisions; a plan of action, usually based on certain principles, decided on by a body or individual."

20. Thus the word "Policy" means broad guidelines which can be given and not detailed instructions. Putting a contract in abeyance or canceling it is surely not laying down any broad guidelines.

21. Learned counsel for FCI has relied on the decision of the Supreme Court in Food Corporation of India and Others Vs. Bhanu Lodh and Others, . In our opinion this decision is clearly distinguishable. In that decision it was held in para 13 that the two directives in question issued by the Central Government were clearly within the powers of the Central Government u/s 6(2) of the Act. The first directive was the directive dated 21.8.1995 in which the Central Government instructed the FCI that there shall not be any creation/upgradation of posts of any level except where completely unavoidable, and new divisions/offices or reorganization etc. shall not be done unless absolutely essential. The second directive dated 6.11.1995 stated that

there was violation by the FCI of the recruitment rules in the matter of recruitment to the post of Deputy Manager (Genl), Joint Manager (Accounts), Joint Manager (Genl), Deputy Manager (PF & OP), Deputy Manager (CC), Deputy Manager (Accounts) and Deputy Manager (Legal) in the FCI and hence in the interest of fairness and equity the Government has decided that the whole direct recruitment process in respect of aforesaid categories/number of posts be treated as null and void because of flagrant violations of the Recruitment Regulations.

22. A perusal of the directives of the Central Government dated 21.8.1995 and 6.11.1995 referred to in the aforesaid decision clearly show that they relate to policy decisions. On the other hand, the impugned directives of the Central Government to keep the contract/tender in question in abeyance is not a policy decision at all.

23. Hence in our opinion the directive of the Central Government to the FCI dated 19.7.2005 and the consequential cancellation of the contract given to the petitioner are wholly without jurisdiction and are hereby quashed.

24. We are not going into the question whether the award granted to M/s Airtrax Polymers Private Ltd. was valid or not since M/s Airtrax Polymers Pvt. Ltd. has not been made a respondent in this petition.

25. The petition is allowed. Parties to bear their own costs.