

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.10170 of 2015

DATE OF DECISION: NOVEMBER 20, 2015

Devinder son of Hari Om Sharma and othersPetitioners

Versus

Union of India and othersRespondents

CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Ashok Kumar Sharma, Advocate for the petitioners.
Mr.Amit Kumar, Advocate for respondents No.1 to 4.
Mr.KS Narang, Advocate for respondent No.5.

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TEJINDER SINGH DHINDSA, J.

The petitioners seek a writ of certiorari to quash the order dated 1.5.2014, Annexure P6, whereby the contract of selling of tickets at Silakheri Halt Station has been allotted in favour of respondent No.5 by the Railway Authorities.

2. The third respondent i.e. Senior Divisional Commercial Manager, Northern Railway, New Delhi issued an advertisement dated 28.1.2014 inviting applications from eligible candidates for giving contract for sale of tickets at Silakheri Halt Station (at Safidon) on Jind-Panipat line for a period of five years. The

eligibility conditions laid down were that the candidate should be minimum Matriculation pass and resident of the local area. Upon contract being allotted, commission was payable on a structured basis on the sale of tickets to be calculated for each day separately. It was made clear that upon receipt of more than one application, the contract would be allotted by draw of lots. The petitioners being eligible submitted their applications within the stipulated time frame. It has been stated that a draw of lots was slated for 20.3.2014 and the petitioners duly reached the venue at the given time. However, without disclosing any basis thereof, the draw of lots was postponed and an announcement was made that the date and venue for conduct of the draw of lots would be duly informed.

3. Learned counsel appearing for the petitioners has drawn our attention to Commercial Circular No.26 of 2005 dated 29.6.2005 issued by the Government of India, Ministry of Railways (Railway Board) and whereunder para IV regulates appointment of Halt Contractors for sale of tickets. The relevant part of para IV and upon which heavy reliance was placed is extracted hereunder:

“A Selection Committee of Sr.Scale Officers from Commercial, Finance and Operating Deptts shall scrutinize and shortlist the eligible offers. Selection will be by a draw of lots, drawn by any child if there is more than one suitable candidate.

All the eligible candidates should be advised the date, time and venue of the draw through

Courier/Regd.AD so that they may attend the draw if they so desire.”

4. The precise case set up on behalf of the petitioners is that without informing the petitioners as regards the date and venue of the fresh draw of lots, the respondent-Authorities have, in utter violation of the Commercial Circular dated 29.6.2005, allotted the contract for sale of tickets at Silakheri Halt Station for a period of five years in favour of respondent No.5. It has been argued that the action is arbitrary as the petitioners have been denied the opportunity to participate in the process of allotment of contract for the sale of tickets at the Halt Station in question and, as such, the impugned order awarding the contract to respondent No.5 cannot sustain.

5. In response to the petition, a joint reply has been filed on behalf of respondents No.1 to 4. The eligibility of the petitioners for allotment of work in question has not been disputed. A stand has been taken that the original draw that had been slated for 24.3.2014, had been postponed as the petitioners themselves had created a ruckus as the names of two candidates were sought to be included in the draw even though they were not present. It has been averred that the fresh draw was fixed for 24.4.2014 and for which the petitioners had been informed vide letter dated 7.4.2014 despatched through speed post on 11.4.2014. Learned counsel for respondents No.1 to 4 has contended that the petitioners had also been informed telephonically as regards the draw of lots to be conducted on 24.4.2014, but inspite thereof they had not come present.

6. Respondent No.5 who has been allotted the contract was duly served and is represented through counsel. He has, however, chosen not to file a reply. Be that as it may, a stand was taken on his behalf that a notice had duly been received with regard to intimation of fresh draw of lots conducted on 24.4.2014 and on the basis thereof, he had participated in the draw of lots.

7. In view of the stout denial on the part of the petitioners as regards any intimation having been received with regard to the draw of lots conducted on 24.4.2014 and to test the veracity of the stand taken on behalf of the respondents, following order was passed by this Court on 15.10.2015:

“Reply on behalf of respondents No.1 to 4 has been filed in Court today and the same is taken on record.

The official respondents have not produced any evidence to establish that the eligible candidates especially the petitioners were advised the date, time and venue of the draw through Courier or Registered AD. Respondent No.5, who has been awarded the contract claims to have received the notice. The respondents are given one more opportunity of producing the same by the next date.

Hence, adjourned to 2.11.2015.”

8. In spite of opportunities having been availed of twice over i.e. on 2.11.2015 and 16.11.2015, the official respondents have failed to produce before us any material to substantiate their stand that the petitioners had been informed as regards the

date, time and venue of the fresh draw of lots conducted on 24.4.2014. Surely, the official respondents would maintain an outward register of the letters despatched through Registered AD/speed post. Learned counsel appearing for the official respondents concedes to the same. However, he expresses his inability to produce such register. It is not even his case that the outward register has since been lost. Even learned counsel appearing for respondent No.5 states that even though a communication/intimation had been duly received as regards the draw of lots that was conducted on 24.4.2014, yet he is unable to produce the same.

9. In the given fact situation, we cannot, but observe that the contract has been allotted in favour of respondent No.5 in a surreptitious manner. The concept of equality and fairness applies even in matters of awarding public contracts. The State has the right to enter into contracts but is also under the bounden duty to observe equality. Even though an individual may choose not to deal with any person but the State cannot choose to exclude persons arbitrarily. The relevant clause contained in para IV of the Commercial Circular dated 29.6.2005 issued by the Ministry of Railways as regards the eligible candidates to be informed the date, time and venue of the draw through Courier/Registered AD is to ensure transparency and fair play in the matter of appointment of Halt Contractors for selling of tickets. The peculiar facts noticed hereinabove clearly indicate that the procedure prescribed under the Commercial Circular dated 29.6.2005 has been deviated from. The contract in

question has been allotted in favour of respondent No.5 without even informing the petitioners regarding the draw of lots inspite of their being eligible.

10. In view of the above, the writ petition is allowed. Impugned order dated 1.5.2014 at Annexure P6 allotting the contract for sale of tickets at Silakheri Halt Station for a period of five years in favour of respondent No.5 is quashed. Official respondents are directed to conduct the process of allotment of the contract at the Halt Station in question afresh in accordance with law and by strictly adhering to the Commercial Circular bearing No.26 of 2005 dated 29.6.2005. Such process be initiated and concluded expeditiously. Till this order is implemented, respondent No.5 shall be permitted to continue. The process shall, however, be completed without fail, latest by 15.12.2015.

11. Petition allowed.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

NOVEMBER 20, 2015
SRM

Note: Whether referred to Reporter? (Yes/No)