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HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 691 OF 2016

Rohit Sahu, S/o Shri Panchram Sahu, aged about 24 years, R/o Station Road, Lodhipara, Raipur (C.G.), Civil & Revenue District, Raipur.

… Petitioner

Versus

1. Union of India, through the Secretary, Ministry of Railway, New Delhi, acting in the premises, through office of the Senior Divisional Commercial Manager, Raipur.

2. South Eastern Central Railway, through its Divisional Commercial Manager, Raipur.

... Respondents

For Petitioner	:	Mr. B.P. Sharma, Advocate.
For Respondents	:	Mr. Abhishek Sinha, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

05/04/2016

1. The Petitioner assails notice inviting tender (hereinafter referred to as 'NIT') dated 13.1.2016 and the consequent directions to proceed under the earlier tender notice dated 19.8.2015 with regard to the parking stand for four-wheelers at the Raipur Railway Station for a duration of three years.

2. Learned Counsel for the Petitioner submits that from the information obtained by it under the Right to Information Act, dated 2.12.2015 it transpires that he was the highest amongst the three bidders. Prior to the same on 30.10.2015, his tender documents were found to be wanting with regard to solvency certificate and turn over certificate. It was submitted within 21 days as directed. Rejection of the tender on the ground that the documents were required to be submitted along with original offer was therefore not justified. The next submission

was that once an NIT is published, it is required to be taken to its logical conclusion in accordance with law unless there are valid and cogent reasons for cancellation and publication of a fresh tender. The Respondents being a 'State' within the meaning of Article 12 of the Constitution of India do not have an absolute right to behave like a private tenderer and the basic minimum requirement of compliance with Article 14 of the Constitution will apply. On a challenge made by the Petitioner, the Respondents are required to disclose the reasons for cancellation of the earlier tender. Merely because they may be of the opinion that the reserve price of the current tender can be increased and may fetch better offer of bids, cannot be a valid justification for cancellation of the tender and inviting of fresh bids. Even if no vested rights have accrued to the Petitioner by virtue of being declared L1, it cannot be denied the contract except for valid and justified reasons. The Respondents also wrongly held on to the deposit made by the Petitioner under the earlier NIT which prevented him from participating in the fresh NIT.

3. Learned Counsel for the Respondent-Railways opposing the application submits that no indefeasible right accrues to a person even if it is L1. No communication has been made to the Petitioner with regard to its status as L1 much less requiring it to deposit the EMD after opening of the tender documents. There are no allegations of malafide. A bonfide decision has been taken to cancel the earlier tender notice and go in for fresh publication so as to invite better offers as the Respondents genuinely believe that it is in a position to obtain higher offers and that it is therefore its bounden duty being the guardian of public finances to obtain the best offers that may be available. The minutes of the tender committee dated 2.12.2015 are speaking in

nature that none of the parties were found eligible and which has not been challenged. It cannot be contended that the decision to go in for fresh tender was arbitrary.

4. We have considered the submissions on behalf of the parties.

5. In tender matters the jurisdiction under Article 226 of the Constitution is limited and while exercising powers of judicial review under Article 226 of the Constitution, the Court will confine its examination primarily to the decision making process. If the decision making process is procedurally flawed, it will warrant interference under Article 226 of the Constitution and not otherwise. The normal principle undoubtedly is that once a tender notice is published it must be taken to its logical conclusion in accordance with law. If the process is annulled midway and a challenge is laid out that it has not been done bonafide, was contrary to law or malafide, judicial review will primarily be confined to first examine the reasons for cancellation. If the reasons for cancellation cannot be said to be arbitrary, irrelevant or not germane, the Court will not step into the shoes of the Respondents to decide whether cancellation should have been ordered or not virtually taking decisions on their behalf. The Court will not go into the sufficiency of the reasons but only relevancy of the reasons.

6. In 2005 (6) SCC 138 (Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.), the principles for judicial review in tender matters was explained as follows:-

> “11. The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three Judge Bench in *Tata Cellular* v. *Union of India*. It was observed that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian

> of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.
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> 12. After an exhaustive consideration of a large number of decisions and standard books on Administrative Law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides."

7. The writ petition does not allege any malafides in cancellation of the earlier tender notice. Furthermore, it has not been done with an intention to defeat the Petitioner alone. The entire tender has been scrapped giving equal opportunity to all fresh bidders. The opinion of the Respondents that better offers may be coming, being the guardian of public finances, it cannot be held to be arbitrary, fanciful and an invalid justification for cancellation of the tender.

8. The Petitioner, even if declared L1, no indefeasible right accrues to it that the works must be awarded to it. More importantly, no communication has been made to it by the department and in absence of which not even a semblance of any limited legal right is created in his favour. Even if the Respondents asked for any documents from the Petitioner it was but a part of the process of decision making by them

when ultimately they have concluded for more than one reason that they would not like to go ahead with the tender notice. In absence of any specific challenge to the decision of the tender committee dated 2.12.2015, the question of sitting in judgement over it to decide what is the relief to be granted to the Petitioner simply does not arise. Additionally the fresh tender was published on 13.1.2016. The last date for submission of bids was 22.2.2016. The writ petition itself was filed on 23.2.2016. That alone is considered a sufficient ground not to entertain the writ petition.

9. There is no specific pleading in the writ petition that the Petitioner was prevented from participating in the fresh NIT because he made a demand for refund of his money under the earlier tender and which the Respondents have declined.

10. If there is any money of the Petitioner in deposit with the Respondents pursuant to the tender notice dated 19.8.2015 it is naturally required to be refunded to him in accordance with law within a maximum period of two weeks from the date of receipt and/or presentation of a copy of this order before them.

11. There is no merit in the writ petition. It is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

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