

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-23911-2016

Date of decision: 06.12.2016

M/s Anup Kumar Singla

..... Petitioner

Versus

Union of India and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. Kshitij Sharma, Advocate for the petitioner.

RAMENDRA JAIN, J.

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has, *inter alia*, prayed for issuance of a writ of Certiorari for quashing the Condition C (10) and Condition B (13) in notice inviting tender (Annexure P-1) being arbitrary, unconstitutional and inhibiting a fair level playing field between the bidders and the impugned order dated 18.10.2016 (Annexure P-10). Further, a writ of mandamus has been sought directing the respondents to allocate the work between L-1 bidders (including the petitioner) in the light of tender dated 13.08.2016 (Annexure P-6) in which the infirmity of allotment of work to a particular/single L-1 bidder has been rectified.

2. A few facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The Bharat Petroleum

Corporation Ltd. (BPCL) vide notice dated 11.05.2016 (Annexure P-1) had invited tenders for tank lorry requirement for road transportation of bulk petroleum products for location of Bathinda. The requirement was of 7 tank lorries of 12 KL and 52 tank lorries of 18 KL including 15 TLs of A.T.F. The closing date for submission of tenders was 01.06.2016, which vide corrigendum dated 26.05.2016 (Annexure P-2) was extended to 10.06.2016. In response thereto, 25 bidders had submitted their respective application. On 23.05.2016, pre-bid meeting was held. The technical bid of all the bidders including that of the petitioner was accepted. Accordingly, vide e-mail dated 19.07.2016 (Annexure P-3), the petitioner was informed regarding the acceptance of its technical bid. The date for submission of price bid was notified as 21.07.2016 as per e-mail dated 16.07.2016 (Annexure P-4) to the petitioner. According to bid history dated 21.07.2016 (Annexure P-5), the price bids of all the applicants were accepted as L-1 bids. The aforementioned lacuna i.e. allotment of work to single L-1 tenderer was rectified by the respondent-Corporation in a subsequent tender dated 13.08.2016 (Annexure P-6) issued in Mumbai containing a specific condition that all the L-1 bidder would get work and minimum one tank truck. Accordingly, the petitioner served a legal notice dated 16.08.2016 upon respondents No. 2 and 3 to allocate work uniformly to L-1 bidders in a fair and transparent manner. It was also requested not to create monopoly by allotment of work to a single L-1 bidder. The petitioner also showed its willingness to quote a better rate than all the L-1 bidders and to provide new trucks if sufficient time is given to it for arrangement of the same. The petitioner had also given reminder dated 21.10.2016 (Annexure P-8) under the Right to Information Act to the

respondents. However, no action was taken thereon. Thereafter, the petitioner filed CWP-19377-2016 which was disposed of by this Court vide order dated 19.09.2016 (Annexure P-9) with a direction to respondent No. 2 to take a decision on the legal notice dated 16.08.2016 (Annexure P-7) in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two weeks from the date of receipt of certified copy of the order. In compliance of the order Annexure P-9, the official respondents have passed a speaking order dated 18.10.2016 (Annexure P-10), whereby the representation of the petitioner was disposed of with the observation that all the bids including that of petitioner after preliminary scrutiny were pending for further selection process as per Tender/Contract terms and conditions. Hence, the present writ petition.

3. After giving our thoughtful consideration to the arguments advanced by learned counsel for the petitioner, we do not find any merit in the instant petition, because the matter in dispute is contractual in nature.

4. The Apex Court in **Maa Binda Express Carrier and another Vs. North East Frontier Railway and others' (2014) 3 SCC 760** with regard to the scope of judicial review in contractual matters, inter alia, noticed that for formulating conditions of a tender document and awarding a contract, the State authorities are required to be conceded greater latitude and their action is not open to judicial review unless it can be demonstrated to be malicious, arbitrary, unreasonable or misuse of its statutory powers. The relevant observations recorded therein are extracted as under:-

“10. The scope of judicial review in contractual matters was further examined by this Court in ***Tata Cellular Vs. Union of***

India (1994) 6 SCC 651, Raunaq International Ltd.'s case (supra) and in *Jagdish Mandal Vs, State of Orissa and Ors. (2007) 14 SCC 517* besides several other decisions to which we need not refer. In *Michigan Rubber (India) Ltd. Vs. State of Karnataka and Ors. (2012) 8 SCC 216*, the legal position on the subject was summed up after a comprehensive review and principles of law applicable to the process for judicial review identified in the following words:

“19. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of

contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has capacity and the resources to successfully execute the work; and (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

20. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the

court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"; and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226." (emphasis supplied)

11. As pointed out in the earlier part of this order the decision to cancel the tender process was in no way discriminatory or mala fide. On the contrary, if a contract had been awarded despite the deficiencies in the tender process serious questions touching the legality and propriety affecting the validity of the tender process would have arisen. In as much as the competent authority decided to cancel the tender process, it did not violate any fundamental right of the appellant nor could the action of the respondent be termed unreasonable so as to warrant any interference from this Court. The Division Bench of the High Court was, in that view, perfectly justified in setting aside the order passed by the Single Judge and dismissing the writ petition."

5. Further, in Jagdish Mandal Vs. State of Orissa and others 2007(14) SCC 517 the Supreme Court was examining the issue of scope of judicial review in the matters of contracts and after considering the matter in detail had held that the contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions.

Principles of equity and natural justice stay at a distance. If the decision is bona fide and is in public interest, courts will not in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. Nothing could be demonstrated that the action of the respondents was actuated with mala fides or was unreasonable so as to warrant interference by this Court.

6. In view of the above, we do not find any ground to interfere in exercise of writ jurisdiction under Article 226 of the Constitution of India. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

7. Registry is directed to bring this order to the notice of the respondents, so as to avoid any concealment of this order by the petitioner.

(RAMENDRA JAIN)
JUDGE

December 06, 2016
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(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No