

CM-5887-88-2017 in
CWP-23991-2015

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM-5887-88-2017 in
CWP-23991-2015

Date of decision: 02.05.2017

Anil Kumar

..... Petitioner

Versus

Maharshi Dayanand University, Rohtak and others

..... Respondents

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

PRESENT: Mr. Ramesh Hooda, Advocate for the applicant-petitioner.

RAMENDRA JAIN, J.

CM-5887-2017

This is an application filed under Section 5 of the Limitation Act, seeking condonation of delay of 130 days in filing the accompanying application (CM-5888-2017) for restoration of the main petition which was dismissed for non-prosecution vide order dated 06.10.2016 passed by this Court. The application is supported by an affidavit of learned counsel for the applicant-petitioner.

After hearing learned counsel for the applicant-petitioner and perusing the contents of the application, which is supported by an affidavit of learned counsel for the applicant-petitioner, the delay of 130 in filing the accompanying application (CM-5888-2017) for restoration of the main petition is condoned.

CM stands disposed of accordingly.

CM-5888-2017

This is an application under Order 9 Rule 9 read with Section 151 CPC for recalling the order dated 06.10.2016 whereby the main writ petition i.e. CWP-23991-2015 was dismissed for non-prosecution. The application is supported by an affidavit of learned counsel for the applicant-petitioner.

After hearing learned counsel for the applicant-petitioner and perusing the contents of the application, which is supported by an affidavit of learned counsel for the applicant-petitioner, the same is allowed and CWP-23991-2015 is ordered to be restored to its original number.

At the oral request of learned counsel for the petitioner the main petition is taken up for hearing today itself.

CM stands disposed of.

CWP-23991-2015

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has, *inter alia*, prayed for issuance of a writ of *Certiorari* for quashing the impugned letter dated 14.10.2015 (Annexure P-3) whereby the tender of the petitioner has been scrapped. Further, a writ of *Mandamus* has been sought directing respondent No. 1 to allot the work of tender for cutting the trees in favour of the petitioner on the same terms and conditions issued on 21.05.2015 (Annexure P-1).

2. According to the petitioner, around 8 years ago, 55 thousand trees of Eucalyptus were planted by the Forest Department in the area measuring 30 acres in the premises of Maharshi Dayanand University, Rohtak (for short 'the University'). Out of the aforesaid trees, only around

opinion for the cutting of these trees in order to plant fresh hybrids and also got done their valuation from respondent No. 3. Pursuant thereto, respondent No. 3 valued 13674 trees at ₹ 86-87 lakhs and also issued 'No Objection Certificate' (NOC) for cutting the trees. Consequently, the University proceeded further to auction the trees and issued the terms and conditions of the auction vide letter dated 21.05.2015 (Annexure P-1). According to the terms and conditions, the bidder had to deposit ₹ 1 lakh towards earnest money before 12 O'clock on 16.06.2015 and further the successful bidder had to deposit ₹ 5 lakhs by 3.00 P.M. on completion of auction proceedings and had to start cutting of the trees within 10 days. All the work was to be completed within 3 months. In pursuance to Annexure P-1, total 8 bidders (including the petitioner) had participated in the bid. As per auction notice Annexure P-2, the bid was opened on 16.06.2015 at 3.00 P.M. The petitioner being the highest bidder was asked to deposit ₹ 5 lakhs as per terms and conditions of the bid and he did so through bank drafts in favour respondent No. 1-Registrar, Maharshi Dayanand University, Rohtak. The petitioner engaged two groups of labour to execute the work of cutting and removing of trees and paid them ₹ 4 lakhs each to them in advance. The contractors brought their labour at the site as the work was to be started within 10 days from the date of auction, but they were not allowed to start the work. The petitioner came to know that some of the officials of the University were interested in allotting the tender to someone else of their choice, out of the remaining 7 bidders, but they could not succeed in their plan as the bid of the petitioner was highest. Resultantly, those officials hatched a conspiracy to scrap the tender to re-allot the same.

sought opinion from the Forest Department in this regard. In response thereto, respondent No. 3 opined that it was appropriate time to cut the trees. Despite obtaining opinion from respondent No. 3 for the second time, the petitioner was again not allowed to start the work. Thereafter, respondent No. 2-Executive Engineer (C-I), Maharshi Dayanand University, issued impugned letter dated 14.10.2015 (Annexure P-3) cancelling the tender for cutting of green/dry and fallen Eucalyptus trees on administrative reasons and returned the amount of ₹ 6 lakhs deposited by the petitioner without any interest after a period of 4 months. Respondent No. 1 was now contemplating to issue fresh tenders for the same very purpose in order to allot the tender to his own person by adopting all illegal means. Hence, the present writ petition.

3. We have heard learned counsel for the petitioner and do not find any merit in the writ petition.

4. The Apex Court in **Maa Binda Express Carrier and another Vs. North East Frontier Railway and others'**, (2014) 2 CHN 96 (SCC) with regard to the scope of judicial review in contractual matters, inter alia, noticed that 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.

11. 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: (SCC p. 229 paras 19-20)

“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 the 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.”

12. 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. Since the petitioner has not been able to point out that the impugned letter Annexure P-3 issued by respondent No. 2 scrapping the tender for auction/cutting of green/dry and fallen Eucalyptus trees was in any way discriminatory or *mala fide*, therefore, the same is not open to judicial review unless and until it can be demonstrated to be malicious,

violate any fundamental right of the petitioner, nor could the action of the respondents be termed to be unreasonable so as to warrant any interference by this Court. The petitioner well within its right and wisdom can submit his bid against the fresh tender and, thus, from any angle, no prejudice is caused to him.

6. In view of the above, there is no illegality or perversity in the letter dated 14.10.2015 (Annexure P-3) scrapping the tender, warranting any interference by this Court under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

7. A copy of this order be forwarded to the respondents to avoid multiplicity of litigation.

**(RAMENDRA JAIN)
JUDGE**

May 02, 2017
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**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No