THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
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CWP-COM No.59 of 2017
Date of Decision:22.05.2017

LRY. Labour Contractor .....Petitioner

Vs.

Chandigarh Municipal Corporation .....Respondent

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Sanjiv Manrai, Sr. Advocate with
Mr. S.P. Garg, Advocate for the petitioner.

Ms. Deepali Puri, Advocate for the
respondent/ MC.

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RAKESH KUMAR JAIN, J.(Oral)

This petition is filed for seeking a writ in the nature of certiorari for quashing the order dated nil by which the petitioner has been informed that his bid has been cancelled due to administrative reasons.

In short, the respondent invited tenders on 16.9.2016 for allotment of 25 parking lots. The reserve price was fixed at ₹3.4 crores. In order to be eligible, the Contractor was to have satisfactorily executed the work of operation and management of car parking having capacity of 1000 and above cars or two similar nature of work of operation and management of car parking having capacity of 700 and above cars or three similar nature of work of operation and management of car parking having capacity of 200 and above cars. It was also provided in the tender document that the average turn over for the last three years ending 31st March, 2015 should be ₹2 crore and duly audited by the Registered Chartered Accountant. The tender conditions further provided that in case of any revision in the parking fee during the period of license, the license fee shall be calculated proportionate to the percentile increase/ decrease in parking fee. According to the petitioner, the dual rates for the parking were fixed, one for the parking in front of Sahib Singh and in front of Empire Store, Sector-17, Chandigarh for four wheelers and two wheelers on hourly basis and for the other parking on the basis of entry. Since there was a lukewarm response to the said advertisement, therefore, the respondent floated another tender on 22.9.2016 for the same parking lots and the reserve price was decreased to ₹2 crores per annum. The eligibility criteria was also changed and from 1000 cars, it was reduced to 500 and 700 cars to 300 and from 300 to 200 cars. Rest of the conditions remained the same. The petitioner gave the bid and was adjudged highest bidder having quoted ₹2,16,15,786/-. There were some deficiencies pointed out by the Technical Committee which were removed by the petitioner. According to the petitioner, there was a pre bid negotiation in which he agreed to 220% increase but received the impugned communication by which his bid was cancelled due to administrative reasons. This led to the filing of the present petition in which, at the time of issuance of notice, the respondent was restrained from creating any third party rights. The respondent has filed reply in which the reasons, which were not disclosed in the communication under challenge, were mentioned in para 11 that in order to generate more revenue for the Municipal Corporation which is currently undergoing financial crisis, it was proposed to fix hourly parking rates in Chandigarh on the concept of paid parkings in other States. It was also the reason that there has been no revision in the parking rates from the last 16 years as it remained ₹2/- for the two wheelers and ₹5/- for the four wheelers on the basis of entry. Therefore, the Municipal Corporation in its 242nd meeting held on 28.2.2017, after detailed discussion of the House, approved the rates of the parking on hourly basis in all the paid parkings and decided to float the tender afresh on the said rates. The respondent has also filed an additional affidavit of Manoj Khatri, HCS, Joint Commissioner-I along with documents, including the discussion on the Agenda Item No.242.13 pertaining to increase in parking rates and re-invited tender of parking lots. In the 242nd meeting, the following decisions were taken by the General House by majority that (i) The tender should be floated afresh; (ii) Reserve price should be increased 100% of the already fixed; (iii) The above mentioned new rates of parking fee shall be applicable after three months of allotment of tender. The contractor shall ensure to make Smart Parking Solution functional within three months. Till then the existing parking fee will be charged from the public and (iv) The selected operator will also run the Multi Level Parking at the same rates of which the complete collection from tickets will be deposited with the Municipal Corporation, Chandigarh. The space for advertisement will be at the disposal of the operator as per the provisions approved by the Competent Authority.

Keeping in view the above decision of the General House, it is proposed that "(i) The tender earlier invited by the office for Operation and Management of 25 Paid Parkings be cancelled and the earnest money of the bidders be refunded. The office may incorporate the above decisions of the House in the tender document." Thereafter, new tender was floated on 23.3.2017 for 26 parking lots, i.e. including the Multi Level Parking in

Sector-17, Chandigarh. The reserve price was fixed at ₹4 crore per annum but there is a change in the eligibility criteria in which it is provided that "(1) The contractor shall have to fulfill the criteria of satisfactory execution of work as given below during the last 7 years from the date of publication of this tender; (a) Operation and management of one Car Parking lot/ Toll Plaza worth ₹3.20 crores annually; (b) Operation and management of two Car Parking lots/ Toll Plaza worth ₹2.00 crores each annually; and (c) Operation and management of three Car Parking lots/ Toll plaza worth ₹1.60 crores each annually." For the purpose of financial eligibility, for the first time, Joint Venture and Consortium was also added/introduced.

Counsel for the petitioner has submitted that the impugned order by which the bid offerred by the petitioner has been cancelled on the basis of administrative reasons is patently illegal and arbitrary much less against the principles of natural justice as no reason has been assigned/ disclosed, therefore, the impugned order/ communication deserves to be set aside. In support of his contention, he has relied upon the decision of the Supreme Court in the case of **Kalu Ram Ahuja and another v. Delhi Development Authority and another, 2008(10) SCC 696; M/s Star Enterprises etc. etc. v. City and Industrial Development Corporation of Maharashtra Ltd. and others, 1990(2) PLR 264; Haryana Urban Development Authority and others v. Orchid Infrastructure Developers P. Ltd., 2017(1) JT 503.** It is also submitted that the action of the respondent in cancelling the earlier tender and floating a fresh tender by changing the terms and conditions is not in public interest as the respondent is now intending to charge the parking fee from the residents on hourly basis which was in the parking in the tender notice in which the petitioner had become the highest bidder.

On the contrary, counsel for the respondent has submitted that mere fact that the petitioner has given the highest bid would not clothe him with any kind of a right. The first tender did not get much response because reserve price was ₹3.40 crores and the agitation of the petitioner is over, as soon as the reasons have been given in the Court by the respondent, even if those were not given in the order under challenge. The respondent has supported her submission by relying upon the decision of the Supreme Court rendered in the cases of **MAA Binda Express Carrier v. North-East Frontier Railway and others, (2014) 3 Supreme Court Cases 760; M/s Siemens Aktiengeselischaft & S. Ltd. v. DMRC Ltd., 2014(11) SCC 288; Nagar Nigam, Meerut v. Al Faheem Meat Exports (P) Ltd. and others (2006) 13 Supreme Court Cases 382; Siemens Public Communication Networks Private Limited and another v. Union of India and others, (2008) 16 Supreme Court Cases 215; Tata Cellular v. Union of India, AIR 1996 Supreme Court 11(1) and M/s B.S.N. Joshi and Sons Ltd. v. Nair Coal Services Ltd. and others, 2006(11) SCC 548**. It is also submitted that the decision has been taken by the respondent in public interest because the Corporation was facing financial crisis and in order to augment income of the Corporation, the decision has been taken to cancel the earlier bid and to float fresh tender to invite more and more bidders.

I have heard learned counsel for the parties and examined the record with their able assistance. The first question which is to be decided is "as to whether the impugned order deserves to be set aside as it does not disclose any reason?" There is no dispute that the administrative authorities are also supposed to give reasons in their orders, as has been held by the Supreme Court in the case of **State of Orissa v. Binapani Dei, 1967 SCR(2) 625**. There is also no dispute that in the case of **Kalu Ram Ahuja (supra)**, the Supreme Court has held that the reasons have to be given for cancellation of the bid. The respondent has though given the reason that the bid has been cancelled on account of administrative reasons but that would not suffice. The administrative reason was also required to be disclosed for the purpose of judicial view, if any. Thus, I do not approve the manner in which the order has been passed by the respondent in cancelling the bid offered by the petitioner but the second question would arise as to "whether after the reasons, given to the Court, in the reply, by the respondent are sufficient not to nullify the impugned order?" To my mind, it would not be of any use to set aside the impugned order at this stage and to remand the case back to the respondent to give reasons because the reasons have already been disclosed and the respondent, in their decision, ultimately would give the same reasons and the petitioner would have to come back to the Court again to challenge the same.

The third question which also arises is "as to whether the petitioner, after giving the highest bid has a legal right to pursue unless no malafide or public interest got effected by the fresh tender?" In this regard, it would be helpful to refer to the following observations of the Supreme Court made in the case of **Maa Binda Express Carrier and another (supra):-**

"8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognize that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well-settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor made to benefit any particular tenderer or class of tenderers. So also the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.

9. Suffice it to say that in the matter of award of contracts the Government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the Court who is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest. (See: Meerut Development Authority v. Association of Management Studies and Anr. etc. (2009) 6 SCC 171 and *Air India Ltd. v. Cochin International Airport Ltd. (2000) 1 SCR 505.*

10. The scope of judicial review in contractual matters was further examined by this Court in Tata Cellular v. Union of India (1994) 6 SCC 651, Raunaq International Ltd.'s case (supra) and in Jagdish Mandal v. 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. v. 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 23-24)

"23. 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." (emphasis supplied)"

The petitioner could not show any malafide on the part of the respondent in cancelling the earlier tender except that he was the highest bidder and ousted from the bidding and also could not show how the public interest is going to be affected. If the public interest is going to be affected, it would be for the public to challenge the same if the decision is taken by the respondent but so far as the respondent is concerned, they have taken a decision in the best of the public interest in augmenting the revenue of the Municipal Corporation, for the purpose of spending the same on various projects to be undertaken by the Corporation. Thus, in my considered opinion, there is apparently no reason to interfere in this petition and the same is hereby dismissed.

May 22, 2017 **(RAKESH KUMAR JAIN)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No