IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: November 22 , 2016
Judgment delivered on: February 03, 2017

\+ W.P.(C) 1027/2016

ASHOK TYAGI ..... Petitioner

Through: Ms.Anshul Gupta with Mr.M.K. Mehta and Mr.Anirudh Shukla, Advs.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr.Manish Mohan, CGSC with Mr.Kavinder Gill, Ms.Manisha Saroha, Advs. for R-1.
Mr.Sachin Datta, Sr.Adv. with Ms.Kanupriya, Adv. for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:

(i) issue a writ, order or direction in the nature of mandamus / certiorari or any other writ, order or direction directing the respondents to seize and desist from such activities which hinders the natural justice and biasness,

(ii) direct the respondent no.1 to issue tenders under the appropriate heading specifying the scope and nature of services required in the said tender,

(iii) direct the respondents to cancel and dissolve the tender bearing ID

No. 2015_DGT_50673_1 and Ref No. MSDE-18021/4/2015-TTC issued by Directorate General of Training, Ministry of Skill Development and Entrepreneurship, Govt. of India and issue fresh tender for the same giving reasonable opportunity to the people to participate in tender as per law,

(iv) any other further order or directions which this Hon'ble Court may deem fit and appropriate for the furtherance of cause of justice and in favour of the Petitioner may kindly be also passed.

2. It is the case of the petitioner that the present petition is in the nature of Public Interest Litigation without any self-gain or for gain of any other person, institution / body and further, the petitioner has no motive other than public interest. It is averred that the petitioner is involved in the business of printing. Respondent nos. 2 and 3 are also engaged in the business of printing, packaging and other printing related activities. Respondent no.2 is a proprietorship concern in the name of Chandra Prabhu Offset Printing Works under the proprietorship of one Mr. Abhishek Jain and the respondent no.3 is a Private Limited Company in the name of Chandra Prabhu Offset Printing Works Private Limited having Mr. Abhishek Jain as one of its Director. It is averred that both are having same offices and printing press at the same address. It is averred that respondent nos. 2 and 3 have been illegally obtaining tenders of the Central Government for the last 5 years. Respondent no.1 Ministry of Skill Development and Entrepreneurship, Govt. of India had invited bids vide its letter dated 14th October, 2015 for printing, packaging, dispatch, collection and evaluation of secret and confidential documents on PAN India basis, but the said tender was under the heading "Engaging of an Agency for assisting Directorate General of Training

under the Ministry of Skill Development and Entrepreneurship in conducing All-India Trade Test under the aegis of NCVT / CAC". Therefore not clarifying the purpose of the said tender as the heading is not disclosing any job work relating to printing / packaging or translation, binding or any work relating to printing. As the heading of the tender was not disclosing its true purpose, only six companies participated in the bid and out of them respondent no.2 was one of the participant. As per the rules of allotment of bids, certain technical criteria had to be fulfilled. The first criterion was that the company should be registered under the Companies Act. It is averred that the respondent no.2 submitted its bid and for the purpose of scrutiny and eligibility, respondent no.2 in connivance with respondent no.1 submitted the profile of respondent no.3 / company to fulfill the criteria. Even thereafter, respondent no.2 was declared as the lowest bidder. When the respondent no.1 was in the process of allotting the tender to respondent no.2, the petitioner preferred a writ petition being no. W.P.(C) 11456/2015 before this Court, but due to some technical reasons, the same was dismissed as withdrawn. It is averred that the petitioner had sent a letter / representation dated 14th December, 2015 to the respondent no.1 requesting to dissolve the said tender, but no action has been taken. Reference has been made that the complaints have also been given to CBI and Anti-Corruption Bureau, Delhi Government, but no action has been taken. The entire process of allotment of tender is void.

3. The case of the respondent no.1 in its counter-affidavit being that the title of the

tender is correct and only six firms have participated in the process and they all were well versed with the purpose / work of tender. The tender document was notified properly and correctly as per GFR Rules and the tender was uploaded on Central Public Procurement Portal on 14th October, 2015 as per the procedure of E-procurement system, Government of India. It is averred that the Tender advertisement was published in Times of India Newspaper from sixteen different locations in the country and the same was available on the DGT website. Respondent no.1 has referred to the letter addressed by the petitioner to Director TTC dated 14th December, 2015 and the objection raised by the petitioner has been apprised to the Hon'ble Minister vide note dated 22nd December, 2015. As the application was submitted through e-mail as general letter known as "public grievance", the reply was not necessary to be sent to the person who is not a part of the activity concern". It is averred that the petitioner is habitual for submitting various RTIs and applications to various officers from time to time. Six tenders were received and bids were opened on 5th November, 2015 and scrutinized by a Committee of 5 members and out of six only 3 firms were qualified for technical evaluation. These three firms were re-evaluated technically by a Committee of 5 members and all the three obtained above 60% marks and were declared eligible for opening of financial bids. After scrutiny, summary was uploaded on 19th November, 2015 and M/s. Chandraprabhu Offset Printing Works Pvt. Limited, respondent no.3 was selected as L-1. It is averred that there is no manipulation at any level.

4. Respondent no.2 has filed its counter-affidavit. Respondent no.2 in its counter-affidavit challenged the maintainability of the petition as a Public Interest Litigation inasmuch as the petition has been filed to serve personal interest and in support of its contention, it is averred that certain reliefs have been sought by the petitioner with regard to the tender itself issued by the respondent no.1. It is also averred that the petitioner is involved in a similar business of printing and has not applied and participated in the bidding process. The case of the respondent no.2 is that the letter of invitation reflects the purpose for which the tenders were called for. It is averred that the Chandra Prabhu Offset Printing Works is a Proprietorship concern under Ms. Kalpana Jain and on 1st day of April, 2015, a Succession Agreement has been executed between M/s. Chandra Prabhu Offset Printing Works and Chandra Prabhu Printing Works Pvt. Limited whereby the Company has taken over w.e.f. 1st day of April, 2015, as going concern, with all its assets and liabilities along with its Rights and Privileges of the predecessor. The respondent no.2 would also contest the petition on the ground that as the petitioner has withdrawn the earlier writ petition and the present petition having been filed on the same grounds in the guise of Public Interest Litigation, is a an abuse of process of the Court. Respondent no.2 has denied the allegations made by the petitioner that Mr. Abhishek Jain has vitiated the bidding process in any manner. Respondent No.2 also denied that the Director of the Respondent no.3 and Respondent No. 2 are different entities. It is averred that the entities have been merged as one Company on 1st April, 2015. It is averred that respondent no.3 was declared as lowest

bidder and it is the documents of respondent no.3 which were produced for scrutiny and evaluation process and the respondent no.2 seeks the dismissal of the writ petition.

5. It is the contention of the learned counsel for the petitioner that the impugned tender has not been published as per the Rules laid down by CVC or the judgment of the Supreme Court and it has been published secretly in connivance with all the respondents to benefit respondent nos. 2 and 3. It is stated that the heading of the tender does not disclose any purpose. The tender was also not published in e-procurement website. The tender was found on e-procurement website under the heading of Ministry of Shipping. That as per the eligibility, it is a Company registered under the Companies Act which could have applied and therefore respondent no.2 should have been disqualified as it is a proprietorship concern. The technical scrutiny was of respondent no.3, who did not apply in the said tender. On the basis of technical scrutiny of respondent no.3, respondent no.2 was declared L-1 and given the tender. Even in the past, respondent nos. 2 and 3 have also cheated and obtained the tenders in the same manner. He would also state that from Annexure-R5 at page 20 of the counter-affidavit filed by respondent no.1, it is clear that it is the respondent no.2, which was declared L-1 and not respondent no.3 / Company. He would further state that the case of the respondent nos. 2 and 3 is that the respondent no.2 was succeeded by respondent no.3. At the top most Para of page 15 (Succession Agreement), it is clearly stated that from 1st April, 2015, the predecessor firm was ceased to carry on business,

whereas respondent no.2 submitted its bid in November, 2015 in the present tender. He would also state that it is the respondent no.2, which is receiving payments from respondent no.1. Learned counsel for the petitioner would rely upon the following judgments of the Supreme Court:-

(i) Nagar Nigam Meerut v. Al Faheem Meat Exports (P) Ltd. and Ors. 2006 (13) SCC 382; and

(ii) Jagadish Mandal v. State of Orissa and Ors. 2007 (14) SCC 517.

6. On the other hand Mr. Manish Mohan, learned counsel for respondent no.1 would rely upon the counter-affidavit filed by the respondent no.1 in the petition. Similarly, Mr. Sachin Datta, learned Sr. Counsel who appears for respondent nos. 2 and 3 would submit that the present petition is nothing but an abuse of process of law and the petitioner being himself in the printing business, the petition cannot be construed as a petition in public interest. That apart it is his submission that the tender has been issued properly in accordance with the relevant rules and the stand of the petitioner that it is in violation of the CVC Rules and the judgment of the Supreme Court is totally untenable. He seeks the dismissal of the writ petition.

7. Having heard the learned counsel for the parties, first and foremost it must be held that from the perusal of the Annexure-R3 filed by respondent no.1, three Companies which were qualified for Technical evaluation included Chandra Prabhu Offset Printing Works Pvt. Ltd., i.e., respondent no.3. In other words, respondent no.2 had not applied for the

tender. This is in view of Annexure R3 and Annexure R4 of the counter affidavit of respondent No.1 (pages 17 & 18). The plea of the learned counsel for the petitioner that the heading of the tender document does not prescribe the purpose for which the bids are invited is concerned, page 34 of the writ petition, i.e., bid data sheet prescribe the scope of work; and the assignment, which is sufficient for a bidder to understand and bid for the same. Surely, the petitioner has no locus to urge, this issue. It is for the Company who was eligible but could not apply for lack of clarity (if any). The plea of the learned counsel for the petitioner that the tender was not published in e-procurement website of the Government of India under the Ministry of Skill Development and Entrepreneurship is concerned, suffice to state Annexure-2 to the writ petition filed by the petitioner does reveal that the tender was published on the e-procurement System, Government of India and the name of the organization has been given as Director General of Training and the said position can be seen from Page 30 of the petition. The plea that the tender was found on e-procurement website in the heading of Ministry of Shipping is concerned, the same is without any basis and moreover such was not the stand of the petitioner in the writ petition. That apart even in reply to the CM No. 38859/2016, the respondent no.1 has stated that the tender document was available on DGT website. That apart it is also stated that, publishing the tender on Central Procurement Portal is not under the control of the respondent no.1. In any case, no prejudice has been caused to any Company, as no such Company has filed petition on that ground. In so far as the plea of the learned counsel for the petitioner, the first and foremost rule of the tender is that only the Companies registered under the Companies Act could have applied, therefore, respondent no.2 should have been disqualified as it is a proprietorship concern is concerned, suffice to state the record reveals that Chandra Prabhu Printing Works Pvt. Ltd. which had applied for the tender and not Respondent No.2. The petitioner primarily relied upon page 20, Annexure-R5 of the counter-affidavit filed by respondent no.1 to submit that it is respondent no.2 which was declared as L-1. Regrettably, the same is overlooking page 17 and 18 of the counter-affidavit which clearly reveals that it is the Chandra Prabhu Offset Printing Works Pvt. Ltd. which had bid for the tender. That apart the date of submission of bids being 4th November, 2015, which date was much after the respondent no.3 had taken over the rights and liabilities of the proprietorship firm Respondent no.2. The plea of the learned counsel for the petitioner that it is the respondent no.2 which is receiving the payments from the respondent no.1 is concerned, the same also is untenable in view of the Sanction order, placed by the respondent no.1 in its reply to CM. No. 38859/2016 (page 8). That apart the petitioner except filing the statement of A/c of the Respondent No.3, has not made any averments in the application to substantiate the stand that the payments are being made in the name of Respondent no.2. That apart it is important to note that the petitioner also being in the same nature of business, it cannot be said that the present petition is bonafide and in public interest. We refrain from saying anything further.

8. In so far as the Judgments, relied upon by the Ld. Counsel for the petitioner in *Nagar Nigam Meerut (supra)*, the Ld. Counsel has referred to Para 13, 14 and 18, to contend that the tender which has not been put up for public viewing is illegal, is concerned, suffice to state, in view of the fact, tender Advertisement was issued in the Times of India Newspaper from 16 different locations and the tender was also uploaded on e-procurement system of Government of India, the Judgment on facts has no application. Similarly, in the case of *Jagdish Mandal (supra)* and connected Appeal would not have any applicability as this Court does not find any illegality to interfere with, issuance of Tender and a ward of the same to the respondent no.3.

9. In view of our above discussion, we do not see any merit in the petition. The petition is dismissed. No costs.

CM Nos.4493, 11554, 38859/2016

In view of our above conclusion, the applications are dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

FEBRUARY 03, 2017
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