

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

Order reserved on 11.11.2019
Order pronounced on 06/12/2019

WPC No. 3832 of 2019

- Devnath Singh Rajput S/o Late Kapil Dev Singh Rajput, Aged About 51 Years R/o Kalinidi Kunj Colony, House Number 106, Kabir Chawk District Raigarh Chhattisgarh

---- Petitioner

Versus

1. Chhattisgarh State Cooperative Marketing Federation Through Its CBD Commercial Complex Tower, C, 6th Floor Sector 21, New Raipur Atal Nagar (Chhattisgarh).
2. Anmol Singh Bhatia S/o Harvinder Singh Bhatia, R/o Bajarpara Jashpur Road Pathalgaon, District Jashpur Chhattisgarh.

-----Respondents

For Petitioner	: Ms. S Harshita, Advocate
For Respondent-1/Federation	: Shri Ashish Surana, Advocate
For Respondent-2	: Shri BP Sharma and Shri MN Thakur, Advocates

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu

CAV Judgment

Per Parth Prateem Sahu, J.

1. Petitioner has challenged the award of contract of 'Hamali Work' by respondent- 1 Chhattisgarh State Cooperative Marketing Federation.
2. Facts of case relevant for disposal of this petition, in nutshell, are that respondent No.1 floated online tender of 'Hamali Work' for Kharif Season 2019-20. Last date for submission of tender/bid document was 04.05.2019 and bid opening date was 05.09.2019. In the said tender proceedings, eleven tenderers have submitted their

offers online including the petitioner as well as respondent No.2. Technical bids of the tenderers were examined by the Tender Committee in which initially respondent No.2 & one Ashok Kumar Agrawal were found to be 'ineligible' as per Annexure P1. Reasons assigned for declaring petitioner as 'ineligible' in the technical bid are as follows:-

- “i) According to tender condition, copy of receipt of Demand Draft in the District office of respondent No.1 has not been attached online;
- ii) Contract Integrity Pact was not notarized.”

Price bid of respondent No.2 was opened and in many of the items of tender, respondent No.2 was declared to be 'lowest bidder (L1)'. Petitioner being aggrieved by the action on the part of respondent No.1 in opening the price bid of respondent No.2 even after enlisting him to be ineligible, has filed this Writ Petition seeking for following reliefs:

“10.1 The Hon'ble Court may kindly be pleased to call for the entire record pertaining to the case of the petitioner.

10.2 The Hon'ble Court may kindly be pleased to declare the letter dated 09.09.2019 (Annexure P1) to the extent to which it allows the respondent No.2 to rectify the disqualification in the tender process.

10.3 The Hon'ble Court may kindly be pleased to direct the respondent authorities to declare & consider the candidature of the petitioner for award of tender considering the petitioner's price bid.

10.4 The Hon'ble Court may kindly be pleased to direct the respondent authorities to declare the decision to declare

respondent no 2 (Anmol Singh Bhatia) as eligible to participate in price bid as bad in law and thus illegal.

10.5 Any other relief, which this Hon'ble Court may deem fit and proper, may also be awarded to the petitioner including the cost of the petition."

3. Ms. Harshita, learned counsel for the petitioner submits that respondent No.2 had not uploaded essential documents along with e-tender i.e. copy of deposit receipt of Demand Draft in the District Office, and further his 'Contract Integrity Pact' was not notarized, as per the requirement of tender document. She further submits that on account of afore lapses found by the Tender Committee on the part of respondent No.2, he has been shown to be ineligible in the list prepared by respondent No.1 of all the bidders whose bids have been evaluated by the Committee. She submits that though respondent No.2 has been shown to be ineligible, respondent No.1 has opened his price bid, which is an illegal and arbitrary act on the part of respondent No.1. She also submits that non-submission of aforementioned two documents, in the manner as prescribed under tender document, respondent No.2 cannot be permitted to participate in further tender process. She also submits that action on the part of respondent No.1 in permitting respondent No.2 to further take part in tender proceeding and opening of his price bid even when the mandatory requirements have not been fulfilled by respondent No.2 and finding him to be ineligible, is bad in law. She places reliance on the order dated 13.2.2015 passed by the High Court of Judicature at Hyderabad for the State of Telangan & Andhra

Pradesh, in Writ Petition No.1068/2015, parties being KRF Infra Projects India Pvt. Ltd. v. State of Telangana & ors.

4. Shri Ashish Surana, learned counsel for respondent No.1 submits that all the bids/offers submitted by the tenderers have been evaluated by the Committee minutely. Description of technical bids submitted by respective tenderers has been considered and a list of all the bidders showing them to be eligible\ or ineligible after evaluation of their tender documents and further mentioning specifically the reasons for their disqualification was prepared. The said list has been forwarded by the District Marketing Officer, Raigarh vide letter dated 09.9.2019 to all the bidders. Respondent No.2 finding himself to be ineligible on the basis of letter dated 9.9.2019, submitted his explanation by way of letter mentioning therein that he has submitted required demand draft within specified time with the District Marketing Office, Raigarh and further that Appendix prescribing list of essential documents to be uploaded after getting it notarized does not prescribe submission of the 'Contract Integrity Pact'. It is also submitted that on the basis of reply submitted by respondent No.2, the District Marketing Office, Raigarh wrote a letter to the Managing Director, Chhattisgarh State Cooperative Marketing Federation Ltd., Raipur on 03.10.2019 and sought for clarification. The said letter dated 03.10.2019 was replied by the General Manager vide letter dated 14.10..2019 mentioning therein that as per requirement of the tender conditions, a tenderer has to deposit original Demand Draft/Bank Guarantee of security

amount with the office of the respondent and the original of the same has been submitted by respondent No.2 and copy of Demand Draft was also uploaded online, which is in accordance with terms and conditions of tender document, and that the 'Contract Integrity Pact' can be deposited after acceptance of bid of tenderer. Learned Counsel further submits that on the basis of aforementioned clarification received from the Head Office, respondent No. 2 has been treated as 'eligible' and only thereafter his price bid was opened. He vehemently submits that it is not a case where further documents have been accepted for fulfilling the terms and conditions, which were mandatorily required to be submitted at the time of submission of the tender. He also submits that there is no arbitrariness or malafide in the action of respondent authorities or error in the decision making process. He submits that the petition being devoid of substance is liable to be dismissed.

5. Shri BP Sharma, learned counsel for respondent No.2 submits that respondent No.2 fulfilled all the terms and conditions as prescribed in the tender document. He has deposited the demand draft towards security deposit in the office of respondent No.1 at Raigarh i.e. in the office of the District Marketing Officer, Raigarh within time specified and also uploaded copy of Demand Draft along with his bid. He submits that 'Contract Integrity Pact' was also forming part of tender document but it could not be notarised only because Appendix 2 of the tender document does not provide for submission of notarised 'Contract Integrity Pact'. He further submits that as per

terms and conditions of the tender document, all relevant documents have been timely submitted as per requirement. He also submits that the petitioner has formed a cartel along with other tenderers and they have quoted much more price than the price quoted by respondent no.2 in his bid, which would cause huge loss to respondent No.1. He also submits that the petitioner could not point out whether there is error in decision making process of the authorities or they have arrived at a decision which no reasonable authority could have arrived. He further submits that the law is well settled with regard to scope of interference in the tender process of Government or Government instrumentalities. Reliance is placed on the decision of Hon'ble Supreme Court in the matter of **Municipal Council Neemuch Vs Mahadev Real Estate and others**, reported in AIR 2019 SC 4517.

6. We have heard learned counsel for the respective parties and perused the records.
7. As regards the first ground urged by learned counsel for the petitioner that respondent No.2 has not uploaded copy of receipt of Demand Draft towards security deposit submitted by him in the office of District Marketing Office, Raigarh, which is one of the conditions mentioned in the tender document, and therefore the bid of respondent No.2 ought not to have been opened. A perusal of the letter dated 09.09.2019 (Annexure P-1) mentions that the receipt of the copy of DD has not been uploaded along with other documents enclosed with the tender document. Respondent

authorities have submitted that on the last date of online submission of tender document Respondent No.2 has submitted demand draft in the office and copy of demand draft was also attached / enclosed along with the tender documents submitted online. Respondent-2 has complied with the condition of deposit of Security amount with the bank and demand draft was also submitted with the office as admitted by respondent No.1. The Officer of District Marketing Office, Raigarh sought for a clarification from the office of MD, CG State Cooperative Marketing Federation which was answered on 14.10.2019 and have stated that there was substantial compliance by respondent-2 when once he has deposited the security amount through demand draft and the same was submitted in the office of District Marketing Federation and the notarised Contract Integrity Pact can be submitted at the time of acceptance of the tender.

8. The evaluation committee on the basis of clarification given by the higher officer, who is managing the affairs of respondent-1 have held respondent-2 to be eligible which in the opinion of this court cannot be said to be an arbitrary action or there is any error in decision making process because the tender Evaluation Committee acted only on the clarification given from its Head Office.
9. In the case at hand respondent No.2 has already deposited the security amount, submitted DD with the office and also uploaded copy of DD along with tender document. It is not a case where respondent-2 has not deposited the security amount with the bank or not submitted the original DD with the authority and uploaded the

copy of same online along with his offer. Merely not uploading copy of receipt when admittedly the original DD has been submitted by respondent-2 in the relevant office of respondent-1, itself will not make respondent-2 to be ineligible. It is for the owner or employer to assess whether there is substantial compliance of the terms and conditions prescribed in the tender documents. Ofcourse, only from the material available with them.

10. Hon'ble Supreme Court in the matter of Municipal Corporation, Neemuch (supra) has held thus:

“14. In the present case, the learned Judges of the Division Bench have arrived at a finding that such a sanction was, in fact, granted. We will examine the correctness of the said finding of fact at a subsequent stage. However, before doing that, we propose to examine the scope of the powers of the High Court of judicial review of an administrative action. Though, there are a catena of judgments of this Court on the said issue, the law laid down by this Court in the case of Tata Cellular Vs. Union of India reported in (1994) 6 SCC 651 lays down the basic principles which still hold the field. Paragraph 77 of the said judgment reads thus:

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in [R. v. Secretary of State](#) for the Home Department, ex Brind, (1991) 1 AC 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, 'consider whether something has gone wrong of a nature and degree which requires its intervention'".

15. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion, that the decision maker has not understood the law correctly that regulates his decisionmaking power or when it is found that the decision of the decision maker is vitiated by irrationality and that too on the principle of "Wednesbury Unreasonableness" or unless it is found that there has been a procedural impropriety in the decisionmaking process, it would not be permissible for the High Court to interfere in the decision making process. It is also equally well settled, that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision making process."

11. Hon'ble Supreme Court yet in another case **West Bengal Central School Service Commission Vs Abdul Halim** reported in (2019) 9 Scale 573 while considering the scope of interference under Article 226 of constitution of India has held thus:

“31.The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

33. In entertaining and allowing the writ petition, the High Court has lost sight of the limits of its extraordinary power of judicial review and has in fact sat in appeal over the decision of the respondent No.2.”

12. Hon'ble Supreme Court in the matter of **Consortium of Titagarh Firema Alder S.P.A.-Titagarh Wagons Ltd., through Authorised Signatory v. Nagpur Metro Rail Corporation Limited (NMRCL) through its General Manager (Procurement) and Another** reported in (2017) 7 SCC 486, held thus :-

“30.....The Court quoted a passage from *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd., (2016) 16 SCC 818*, wherein the principle that interpretation placed to appreciate the tender requirements and to interpret the documents by owner or employer unless mala fide or perverse in understanding or appreciation is reflected, the constitutional Courts should not interfere. It has also been observed in the said case that it is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given.....”

13. Other important fact of the case is that the difference of rate quoted by the petitioner and respondent- 2 is having a wide difference. The rate quoted by the petitioner is much more on higher side than the rate quoted by respondent- 2 which will definitely affect respondent- 1 financially. The chart has been prepared by respondent- 2 in its reply has not been disputed by learned counsel for the petitioner. To have proper analysis of rates, some of the rates quoted by the petitioner as well as respondent- 2 are mentioned herein below :

(Annexure E1 of the petition).

Sr.	Item Code	Item Description	Name of bidder	Unit	Rate/Unit	Total Amount	Net rate	Rank
		Kharsiya	Anmol singh bhatia	SET	46.2300	46.2300	0.00	L1
			Ashok kumar Agrawal	SET	215.6000	215.600	0.00	L2
5		Medical College Ground Loharsingh	Anmol singh bhatia	SET	52.5400	52.5400	0.00	L1
			Deonath Singh Rajpur	SET	318.5600	318.5600	0.00	L2
6		Handling and stacking of paddy (upto 50 kg bags)	Anmol singh bhatia	BAG	3.07	3.0700	0.00	L1
			Deonath Singh Rajpur	BAG	3.4	3.4000	0.0	L2

14. From perusal of the above item rates quoted by the petitioner as well as respondent- 2 and one Ashok Kumar Agrawal, it is crystal clear that there is a huge difference of rates between L1 and L2.

15. To exercise the jurisdiction of judicial review by the Courts, it is required to be seen that action on the part of respondents is whether there is any error in decision making process and is not of any bias or any arbitrariness.

16. Hon'ble Supreme Court in the case of **Michigan Rubber (India) Ltd., Vs State of Karnataka and Others** reported in (2012) 8 SCC 216 has held thus:

“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) xxxxxxxx

(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) xxxxxxxx

(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.”

17. If we consider the entire facts and events of the case in the light of the aforementioned law laid down by Hon'ble Supreme Court, we do not find that respondent authorities have acted arbitrarily, unreasonably or contrary to the public interest. The contract is a commercial contract and if the authorities have found that the terms and conditions mentioned in the tender document are fulfilled and acted in a fair manner, then until and unless contrary is established by the petitioner, no interference can be done. It is also in the larger public interest that there should be more and more tenderers so that

there may be competitive bids and the employer may get a chance to have a contract with the best offer.

18. Hon'ble Supreme Court in the matter of *Silppi Constructions Contractors Vs Union of India and another etc* (SLP Nos.13802-13805 of 2019) held thus:

“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity.....”

19. After considering the facts of the case in its entirety along with documents enclosed in the Writ Petition as well as the law laid down by Hon'ble Supreme Court, we do not find that respondent-1 has acted arbitrarily, unreasonably or there is any illegality in decision making process in awarding tender to respondent-2.

20. Though the learned counsel for the petitioner in ground No.9.6 has tried to raise the ground of mala fide but the said ground has not been substantiated by producing any material in support of her

argument and grounds, the allegation of *mala fide* or malice is required to be proved by the person/party alleging the same and it is burden to prove by placing cogent material on record in which the petitioner utterly failed.

21. Hon'ble Supreme Court in the matter of **Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and Others** reported in **(2005) 7 SCC 764** has held that burden of proving *mala fide* is on the person making allegation only and held thus:

“56. It is well-settled that the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". [vide *E.P. Royappa v. State of T. N.*, (1974) 4 SCC 3]. There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J. stated in *Gulam Mustafa v. State of Maharashtra*, (1976) 1 SCC 800 (SCC p.802, para 2); “It (*mala fide*) is the last refuge of a losing litigant”.

22. The judgment relied upon by learned counsel for the petitioner is on different facts. In the said case, one of the respondents therein has not uploaded the essential documents ie availability of either owned or leased machinery for the purpose of mobilisation of the key and critical equipment of the works stipulated. The documents which have not been uploaded in the said case were very crucial in the facts and circumstances of that case as the tenderer has not submitted the list of machinery required so as to assess his capability and ability to perform the work but herein the present

case, respondent- 2 has complied all the required parts of the tender documents ie deposit of security amount with bank, submission of DD in the Office etc. and Contract Integrity Pact is a document which will come into play only after acceptance of the bid.

23. In view of aforementioned discussions, we do not find that the petitioner has made out any ground calling interference of this Court in the tender proceedings.

24. The Writ Petition being devoid of any substance, liable to be and it is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma/