

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1046 OF 2018

James Electrical.

..... Petitioner.

Versus

State of Goa and others.

..... Respondents.

Mr. Vivek Angelo Rodrigues with Mr. Vithal Naik, Advocates for the Petitioner.

Mr. D. J. Pangam, Advocate General with Mr. Deep Shirodar, Addl. Govt. Advocate for Respondent Nos.1 & 2.

Mr. Pankaj Vernekar, Advocate for Respondent No.3.

***Coram : S.C. Gupte &
Nutan D. Sardesai, JJ.***

Date : 27th June, 2019.

P.C. :-

This Writ Petition challenges a decision on the part of the Board of Directors of Respondent No.2-Goa State Infrastructure Development Corporation ('GSIDC') to award a contract of electrical works to Respondent No.3-contractor and to cancel the whole tender process. The Petitioner was one of the tenderers who participated in the tender process. The record of the case bears out that GSIDC did not deem the Petitioner's bid as technically qualified. In fact, the prayer originally made in the Petition sought a writ of certiorari setting aside GSIDC's decision to technically

disqualify the Petitioner's bid and consider the Petitioner for opening of financial bids and participating in further process. As it was later advised, the Petitioner sought to delete this prayer. By an amendment order passed by this Court on 22nd January, 2019, the Petitioner was permitted to delete this prayer. That effectively disposed of the Petitioner's challenge to the tendering process in his own private interest. What now remains in the Petition is merely a public interest element, if at all.

2. It is submitted by learned Counsel for the Petitioner that there are several illegalities in the award of the contract to Respondent No.3. It is pointed out that the bids, which were required to be opened on 22nd June, 2018, were inexplicably not opened on that date and were opened on 29th June, 2018. It is pointed out that the Petitioner's explanation about the technical aspects of his bid submitted before cancellation of the tender process was not considered by the Respondents. It is pointed out, having regard to the documents obtained by the Petitioner in an RTI inquiry, that the notings on the file indicate that the award of the contract has been an arbitrary exercise. It is pointed out that GSIDC did not even wait for the bid evaluation report of its consultants and went ahead and awarded the work to Respondent No.3 in the face of the advice of its own experts.

4. In our opinion, the so called illegalities or infirmities pointed out by the Petitioner are rather thinly spread. These, in any event, in our opinion, do not go to the root of the matter, so as to require us to do away with the entire process and set the clock back, particularly by cancelling the subject contract for electrical works.

5. It is important to note that the subject contract for electrical works was for a 500 bedded District Hospital at Margao, Goa. Secondly, it is important to note that the contract was awarded by GSIDC to Respondent No.3 as far back as on 11th January, 2019. The entire contract work was to be completed within four months. The Court is informed by learned Advocate General that about 80% of the work has already been completed. This submission forms part of the State's affidavit dated 26th June, 2019 (paragraph 17). The averments in paragraph 17 indicate that about 85% of material is already delivered and 75% of installation has been accomplished. If, at this stage, the Court is called upon to quash the contract, it can only be on the basis of some very fundamental illegality which goes to the root of the matter and on a premise that public interest demands that greater harm would be caused if such illegality is perpetuated and setting the matter right is necessary even if it be at the cost of setting the clock back by reversing the whole process. That, as we have indicate above, we do not find in the present case. Our reasons are briefly indicated below.

6. It is not in dispute that Respondent No.3 was awarded the main contract of construction of 500 bedded hospital at Margao. That was on 17/12/2015. When the bidding process for electrical work in the hospital was on and matters were debated at the level of GSIDC Board, it was noted that major work of construction, which also included a part of electrical work such as cabling, was done by Respondent No.3 in the project. The Board was of the view that it would be advisable to continue with the electrical works with Respondent No.3 so that, in future, maintenance would be easier in accordance with the agreement between Respondent No.3 and GSIDC. It was in these circumstances that the Board was of the view that the contract work for further electrical works in the hospital should be awarded to the same contractor, i.e. Respondent No.3. Learned Counsel for the Petitioner submits that awarding of this work to the same contractor was against the expert advice furnished to GSIDC by independent experts appointed by it. Even if that be so, it cannot be suggested that GSIDC, as an arm of the State, was, in all circumstances, bound to heed the advice of its experts. Surely, in the matter of administration, the State has to have a sufficient elbow room to take decisions, even if such decisions would imply going beyond or against the advice of experts. All that needs to be ensured is that there is no arbitrariness in State action. If it can be shown that whilst doing so, the State agency has duly applied its mind and

considered the relevant circumstances and has not taken into account any irrelevant or non-germane aspects and its decision is not actuated by *mala fides* and can be demonstrated as a reasonable decision in the facts of the case, there is nothing for the writ court to interfere. The reasons cited by GSIDC Board for awarding the contract of additional electrical work in the hospital to the same contractor, who constructed the hospital and who also did substantial part of electrical works, such as cabling, cannot be said to be irrelevant or non-germane or perverse.

7. Learned Counsel for the Petitioner submits that the very fact that the work tendered was to be completed within four months and is demonstrably not completed even after six months, gives rise to a legitimate apprehension that all was not well with the contract. If the contractor has overshoot the limit for completion of the contract work, it is for the Government to adopt suitable steps for redressal. It would be rather premature to reflect on this aspect of the matter in the present Petition and that without proper pleadings on both sides. Learned Counsel for the Petitioner also raises some other grievances about the work. Even these are not really matters germane for consideration of the present Petition. In any event, the Court is informed that there is a pending PIL, namely, Writ Petition No.359/2007, generally concerning hospitals being constructed by the State Government or its agencies. Learned Counsel for the

Petitioner does not dispute that these latter objections can be appropriately brought before the PIL Court in that Petition.

8. Accordingly, we find no merit in the Petition. The Petition is dismissed. We, however, reserve liberty to the Petitioner to raise matters concerning work being carried out by Respondent No.3 in District Hospital at Margao, Goa in PIL Writ Petition No.359/2007, or before any other appropriate forum.

Nutan D. Sardesai, J.

S.C. Gupte, J.