

19.05.2022

Ct. No. 13

Sl.13

pk

WPA 8245 of 2022

Bimal Mishra

Vs.

Union of India and others

Mr. Arobindo Chatterjee,

Mr. T. Hossain,

.... for the petitioner.

Mr. S. N. Mukherjee, Ld. A. G.

Mr. Samrat Sen,

Mr. Nilotpall Chatterjee,

Ms. Manali Ali

... for the State

Mr. Pranit Kumar Ray,

Ms. Tiyaisha Biswas,

Ms. Megha Datta

... for the respondents.

The writ petitioner is aggrieved by the Notice Inviting Tenders and the tender process itself published by the Executive Engineer, Feeder Canal Division, Farakka Barrage Project for operation and maintenance of ferry service, motor operated at 4 locations across the Feeder Canal of Farakka Barrage Project.

It is submitted that the petitioner is an existing ferry operator and the jetties are located at ten different places. It is further submitted that in terms of the earlier practice, ten separate tenders for each jetty were floated and separate work orders were issued.

The petitioner is one such beneficiary. By reason of merging ten ferry outlets under four tenders and by increasing eligibility criteria and the estimated cost, the petitioner claims to have been deprived of even being able to participate in the tender process.

Reference is made to a work order dated 2nd August, 2018 for a sum of Rs.57,58,878/- issued to the petitioner. The last date for submission of tender is over. The petitioner has not participated in the same, as he could not.

It is now well settled by the Hon'ble Supreme Court in the case of **Michigan Rubber (India) Ltd. Vs. State of Karnataka** reported in **(2012) 8 SCC 216**, that merely because the eligibility criteria in respect of new tender is increased financially or otherwise, the same by itself cannot be intended to deprive an intending or existing bidder, player or participant.

The manner in which the State would distribute its largess and the terms and conditions thereof is in the nature of policy decision of the State and does not generally call for interference by this Court.

Paragraphs 23 and 35 of the said decision are set out hereinbelow :

“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 the 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 the 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 a fundamental right to carry on business with the Government.

35. As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd

respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide.”

This Court is of the view that the petitioner has not been able to demonstrate any vested right to participate in the tender process. The petitioner does not get such right merely because he is an existing ferry operator.

For the reasons stated herein above, the writ petition fails and is hereby dismissed.

This Court sees absolutely no urgency whatsoever in the matter having been mentioned for urgent consideration since the last date for submission of tender is over and the writ petitioner did not participate therein.

The instant writ petition is, therefore, dismissed with costs assessed at Rs.5,100/- (Rupees five thousand one hundred only) payable by the writ petitioner to the respondent no.2.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)