



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.03.2022

Coram:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, Chief Justice
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.678 of 2022

and

C.M.P.No.4711 of 2022

KK Alliance Private Limited,
Rep. by its Director Mr.Vivek Amritlal Tank,
30 Cecil Street, No.19-08, Prudential Tower,
Singapore-049-712

Having Branch Office at:

SAS Business Centre,
Level 5, Landmark Building,
Ramdaspeth, Nagpur-440 010.

.. Appellant/Petitioner

Vs.

1. The Union of India,
Rep. by its Secretary to the Government,
Ministry of Coal and Petroleum,
Shastri Bhavan, New Delhi-110 001 (India).
2. The Union of India,
Rep. by its Director General of Mines Safety,
Ministry of Labour and Employment,
Dhanbad-826 001.
3. The Director of Mines Safety,
Chennai Region,
No.46 (Old)/5 (New) 2nd Street,
Block-"AA", Anna Nagar, Chennai.
4. NLC India Ltd.,
formerly Neyveli Lignite Corporation Limited,
Rep. by its Authorised representative,
No.8, Mayor Sathyamurthy Road, 1st Floor,
FSD, Egmore, Chetpet, Chennai-600 031.

.. Respondents/
Respondents



Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 03.02.2002 passed by the learned Single Judge in W.P.No.15464 of 2018 on the file of this Court.

Prayer in WP.No.15464 of 2018:

This Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records pertaining to the impugned letter, bearing No.18-19/000521/MM 22 (01) dated 05.05.2018, and to quash the same pertaining to tender, bearing No.ENQ/17-18/003603/MM 22(01) dated 23.12.2017, and consequently, to direct the fourth respondent to declare the petitioner as single successful bidder of the tender within a time.

For appellant : Mr.N.L.Rajah, Senior Counsel for
Mr.Kaviyanathan for
M/s.Nathan and Associates

JUDGMENT

(The Judgment of the Court was delivered by The Hon'ble Chief Justice)

The Writ Appeal has been filed challenging the judgment dated 03.02.2022, whereby the Writ Petition preferred by the writ appellant was dismissed.

2. The Writ Petition was filed challenging the order dated 05.05.2018 pertaining to tender floated on 23.12.2017. The tender aforesaid was cancelled due to administrative reasons.

3. The learned Senior Counsel appearing for the appellant/writ petitioner, giving out the facts, submitted that the appellant-Company is an authorised distributor of Reutech Radar System (South African Entity) for the Indian Region dealing with the most advanced Slope Monitoring Radar System (SMRS). The said SMRS is primarily manufactured only by three companies throughout the World and are being distributed through distributors in the Indian Region.

4. The respondents invited the tender on 22.06.2017. The writ petitioner as well as other distributors have participated in the tender. However, the fourth respondent cancelled the said tender and floated another tender on 23.12.2017 for installation, commissioning and setting up of SRMS system in the mining sites of the fourth respondent. The writ petitioner again participated in the tender along with two other manufacturers and it is learnt that in the technical bid, competitors were disqualified. The



writ appellant being the only qualified bidder, ought to have been declared as the successful bidder for award of work, however, instead of awarding the work contract to the writ appellant/writ petitioner, the tender was cancelled again. The fourth respondent floated another tender on 04.05.2018 in respect of the same work, without even cancelling the earlier tender. The order for cancelling was passed on 05.05.2018 showing it to be for administrative reasons. The cancellation of the tender by the respondents, was wholly arbitrary, illegal and violative of Articles 14 and 19 of the Constitution of India. The writ petition was filed challenging the action of the respondents. It is more so, when no reason was assigned to cancel the tender and accordingly, the learned Single Judge should have caused interference in the decision of the respondents, with a direction to accept the bid of the petitioner for award of work. The learned Single Judge, however dismissed the Writ Petition.

5. The contention of the appellant/writ petitioner is that there are only three manufacturers of the radar system. The learned Single Judge, without any contest on the statement aforesaid, recorded a finding that there are several manufacturers of the radar system, for which, bids were invited. It is without counter by the respondents. Thus, the finding of the learned Single Judge to this effect, has been challenged by way of this appeal. It is also on the ground that despite the judgment of the Supreme Court requiring a speaking and reasoned order on the administrative side as well as on quasi-judicial side, the failure herein remained un-noticed by the learned Single Judge, despite the fact that the order is impugned by the writ petitioner. The respondents have not supplied the reasons to cancel the tender, rather have shown it to be on administrative reason. Accordingly, the prayer is made now to set aside the impugned order passed by the learned Single Judge, with the acceptance of the prayer made by the petitioner-Company in the Writ Petition.

6. To support the arguments, a reference has been given to the judgment in the case of The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. Union of India, reported in 1976 (2) SCC 981, which has been considered by the learned Single Judge. The other judgment relied on by the learned Senior Counsel appearing for the writ appellant is in the case of The Collector Vs. V.K.Krishnaveni in Writ Appeal No.1995 of 2018, judgment dated 03.09.2018, rendered by a Division Bench of this Court.

7. The judgments supra require a speaking order at the hands of the quasi-judicial authority and even on the



administrative side for any decision so that it may not suffer from vires or arbitrariness and violation of Articles 14 and 19 of the Constitution of India.

8. Elaborating the facts of this case, it is again reiterated by the learned Senior Counsel appearing for the writ appellant/writ petitioner that even after the tender, on one another occasion, only the petitioner-Company remained a successful bidder, yet the tender was cancelled for administrative reasons. The order aforesaid does not give reasons. The administrative reason is quite vague to justify the cancellation of the tender and otherwise, be taken as arbitrary decision. The learned Single Judge should have taken note of the aforesaid to issue a direction to the respondents to accept the bid of the petitioner-Company and declare the petitioner as single successful bidder. In view of the above, prayer was made in the Writ Appeal to set aside the impugned order passed by the learned Single Judge.

9. We have heard the submissions made by the learned Senior Counsel appearing for the writ appellant/writ petitioner and perused the records.

10. The facts of the case have been narrated and thus, they need not be reiterated for consideration of the arguments raised by the learned Senior Counsel appearing for the petitioner-Company.

11. It is not in dispute that the respondents have floated the tender to invite the bid for supplying radar system of the nature indicated in the tender document. The writ petitioner/Company participated in the tender process along with others and so far as the tender in question is concerned, there were three bids, out of which, one was given to the appellant/writ petitioner. On the opening of the technical bid, two other bidders other than the writ petitioner, were disqualified, and thus, the writ appellant/writ petitioner was the only successful bidder. The respondents could have accepted the bid given by the writ petitioner, but the respondents passed the order dated 05.05.2018 to cancel the tender, showing it to be for administrative reason. The order dated 05.05.2018 does not give elaborate reasons for cancellation of the tender. It would have been appropriate for the respondents to specify the reason which persuaded them to take a decision to cancel the tender.

12. In view of the above, the matter was taken up for examination by the learned Single Judge, as during the hearing



before the learned Single Judge, the respondents elaborated the reasons and it has been taken note of by the learned Single Judge in paragraph 18 of the impugned order.

13. It has been noticed by the learned Single Judge that a global tender was floated by the fourth respondent resulted in single tender, as the two bidders other than the writ appellant-Company, were disqualified in the technical bid.

14. In the light of the facts given above, the respondents could not get competitive or comparative rates for the subject item, and therefore, they cancelled the tender.

15. The reason aforesaid has been considered by the learned Single Judge and finding it to be justified, the writ petition was dismissed. The finding aforesaid has been assailed before this Court. Before considering the aforesaid, we would take notice of the judgment referred to by the learned Senior Counsel appearing for the writ appellant/writ petitioner.

16. The first judgment referred to by the learned Senior Counsel appearing for the writ appellant is in the case of The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. Union of India (supra) and the relevant paragraph of the said judgment of the Supreme Court, is quoted hereunder for ready reference:

"6. Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N.M.Desai Vs. The Testeels Ltd. & Anr. [C.A.No.245 of 1970, decided on December 17,



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1975]. But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a Court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it



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adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs Authorities and the validity of the adjudication made by the Customs Authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under customs and excise laws an independent quasi-judicial tribunal, like the Income Tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."

17. The judgment aforesaid has been analysed by the learned Single Judge, but for fresh appreciation, we have also considered the arguments and reference to the judgment cited above. The judgment supra directs for passing a speaking and reasoned order by the authorities exercising quasi-judicial powers. Coming to the instant case, the order has not been passed by the quasi-judicial authority. The judgment in the case of Siemens Engineering and Manufacturing Co. of India Ltd., (supra), would have no application on the case for the aforesaid reason.

18. The other decision relied by the learned Senior Counsel appearing for the writ appellant, is a Division Bench judgment of this Court in the case of The Collector Vs.



V.K.Krishnaveni in W.A.No.1995 of 2018 (supra) and the relevant portion of this Division Bench judgment is quoted hereunder:

"9. On the aspect of natural justice, it is worthwhile to consider few decisions:

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ix) In Manohar s/o Manikrao Anchule v. State of Maharashtra and Another reported in (2012) 13 SCC 14, the Hon'ble Supreme Court at paragraph Nos.18, 19 and 21 held as under:

... ..

"19. In Kranti Associates (P) Ltd. & Ors. v. Masood Ahmed Khan & Ors. [(2010) 9 SCC 496], the Court dealt with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice. The Court held as under :

"47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-



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maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible



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to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya Vs. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving



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reasons for the decision is of the essence and is virtually a part of "due process".

... . . " "

19. The Division Bench of this Court, in the above judgment, has analysed the requirement of passing a reasoned order, not only in the quasi-judicial system, but even on administrative side. It is to avoid arbitrariness and discrimination and can be analysed in the judicial side, when a reasoned order is passed. The reasoned order requires an authority to take cautious and proper decision in the matter.

20. In view of the above, the argument made by the learned Senior Counsel appearing for the writ appellant, is that, the order impugned passed by the fourth respondent, is not a speaking one, thus to be quashed.

21. We need to analyse the facts for application of the judgments aforesaid, because, after challenging the order cancelling the bid for administrative reasons, the matter was argued at length before the learned Single Judge. The specific reasons were given and had been elaborately discussed in paragraph 18 of the order under challenge and the said paragraph is quoted hereunder for ready reference:

"18. Therefore, the prime reason for taking a decision by the 4th respondent in cancelling and issuing fresh tender (tender No.3) is that since the global tender floated by the 4th respondent turned into a single tender since no sufficient tenderers have submitted the bids while there are enough manufacturers are available globally for the subject equipment for which, the tender (2nd tender) has been floated. Further, pursuant to the tender, only three bids were quoted, of which, two bids were disqualified and the remaining bidder, i.e. the petitioner herein was available, in such circumstances, there was no occasion for the 4th respondent to compare the price and other aspects of the tender in the absence of competitive biddings for conducting reverse action in terms of the tender conditions. Therefore, in such circumstances, the 4th respondent was constrained to cancel the earlier tender and



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resorted to rebidding. This Court does not find any illegality or infirmity with the decision of the 4th respondent in cancelling the tender (2nd tender) in order to interfere with the same by this Court while exercising its discretionary power under Article 226 of the Constitution of India. In fact, in order to promote full transparency, healthy competition and award of works at the most reasonable price, it is generally desirable to invite many tenderers by the tendering authority instead of resorting to finalize the single bid."

22. The cancellation of the bid was for the reasons elaborated in this judgment. If the order for cancellation of the bid is still set aside on the ground that the decision of the respondents, was not by a speaking order, we have to give reasons to quash the detailed order of the learned Single Judge, though we do not find an error in the order, rather give justification to cancel the tender.

23. If the order is not speaking one, it cannot necessarily mean to accept the bid given by the writ appellant-Company. The matter can only be referred back to the respondents to specify the reasons for cancellation, which has already been given before the Court. When satisfied reasons have been recorded by the learned Single Judge in reference to the arguments made by the respondents, the exercise for sending the matter back to the administration to assign specific reasons, would be empty formality in this case.

24. Taking the aforesaid into consideration, we do not find any ground to cause interference in the impugned order passed by the learned Single Judge, when at length, the issue in reference to rival arguments, has been dealt with. The purpose of inviting bids is not only to make procurement, but to get competitive rates and the purpose would frustrate, if the competitive rates are not coming pursuant to the tender. The administration is having absolute authority to cancel the tenders. In the present matter, there is no allegation of arbitrariness or favouritism so as to cancel the tender to accommodate others.

25. In view of the above, we are unable to accept the arguments of the learned Senior Counsel appearing for the appellant/writ petitioner while assailing the order of the learned Single Judge.



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26. For the reasons stated above and in view of the discussion as above, the Writ Appeal fails and the same is dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

CS

To

1. The Secretary to the Government,
Union of India,
Ministry of Coal and Petroleum,
Shastri Bhavan, New Delhi-110 001 (India).
2. The Director General of Mines Safety,
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RSI(CO)
CB(07/04/2022)