

27th December,
2023
(AK/SP)
17

MAT 2486 of 2023
IA No: CAN 1 of 2023

Rajib Roy
Vs.
The Union of India and others

Mr. Kamalesh Bhattacharya
Ms. Amrita Maji
...for the appellant.

Mr. Sauvik Nandy
...for the respondent no.1.

Mr. T.K. Banerjee
Mr. S. Chakraborty
...for the respondent nos.2 to 4.

Mr. Sreejib Chakraborty
Ms. Atulya Singha
Mr. Swaraj Naskar
...for the respondent no.6.

1. The writ petitioner/appellant is aggrieved by an order dated December 18, 2023 passed by a learned single Judge of this Court. The writ petition was dismissed as the writ petitioner/appellant could not make out any exceptional situation which would warrant the Court to interfere with the tendering process. The tender was invited to provide dietary services to hospitals.

2. Mr. Bhattacharya, learned advocate for the writ petitioner/appellant assails the order impugned on the following grounds:-

(a) The learned Judge failed to take into consideration the fact that the clauses in the tender process were impossible to perform.

(b) Such vague and unquantified clauses would not allow any bidder to submit his bid document as the bidder would not be in a position to assess the number of personnel required to provide the service.

(c) That the details of the work included supply of diet in the kitchen and cafeteria, for all patients, doctors, students, staff, visitors etc. That the learned Judge failed to appreciate that unless the minimum required personnel to be posted by the contractor for performance of such work was specified in the tender document, it would be impossible for the bidder to offer his price.

(d) A vague clause for supply of diet to all patients, all doctors, all students, all staff, and visitors etc., was not an indication of the quantum of food required to be cooked. This non-specification, in turn, made it impossible for the appellant to submit his papers as he was unable to fix his price without knowing the quantity of persons to be deployed for execution of such work and the quantity of food to be supplied.

3. The learned advocate for the respondents submits that the work order had already been issued to one Ghosh Roy Company on December 23, 2023. The new

contractor is going to take over on and from January 1, 2024. It is further contended that the writ petitioner/appellant, did not meet the eligibility criteria in terms of the clause stated in the tender document. The petitioner lacked the financial eligibility. Mr. Bhattacharya also admits that the petitioner did not meet the eligibility criterion with regard to the financial strength and thus could not participate.

4. Having considered the order impugned, this Court finds that His Lordship had perused the clauses and also the objection raised by the writ petitioner/appellant. The contention of petitioner that unless the exact manpower required was specified and the number of days and persons for whom the food would have to be cooked were specifically stated, the petitioner could not submit his tender document by quoting his price, was not accepted by His Lordship. His Lordship also negated the submission of the writ petitioner/appellant that before participation in a tender process, the essential requirements were to be notified clearly in the tender document and could not be inserted later on. The decisions relied upon by the writ petitioner/appellant, namely, *Tata Cellular vs. Union of India* reported at (1994) 6 SCC 651 and *Ramana Dayaram Shetty vs. International*

Airport Authority of India and others reported at (1979) 3 SCC 489 were discussed in the order impugned.

5. Upon analyzing the issues involved in the writ petition and the law laid down by the Hon'ble Apex Court time and again, His Lordship was of the view that the writ petitioner/appellant could not establish that the procedure followed was improper. No objection on the ground that the clauses were tailor-made, had been raised. His Lordship was also of the further view that the tender document indicated that supply of cooked diet and service in the cafeteria and the kitchen were to be provided by the contractor and for rendering such service, the contractor was required to have a fully equipped kitchen and adequate manpower, raw materials etc.

6. Having heard the learned advocates for the respective parties, this Court finds that the writ petitioner/appellant did not participate in the tender process, as he was not eligible. Secondly, the petitioner's contention that the quantification of the number of persons to be catered to, not having been mentioned, it was not possible for any tenderer to submit his documents upon quoting his price, is also unsustainable. The scope of the work has been provided. The requirements of the patients and in the kitchen and cafeteria have been clearly stated. It was for the

contractor or the bidder to assess the deployment of man power, to maintain such services. It was not for the authorities to clarify the number of meals which would have to be cooked for each day. Such service would be as per the order placed. In any event, the petitioner/appellant not having participated in the tender process and not having qualified for such participation owing to his financial ineligibility, nothing remains to be decided in the appeal.

7. The decision of *Tata Cellular (supra)* is not applicable in this case as the said decision was in respect of grounds for interference in a tendering process.

8. Courts can interfere if there is arbitrariness or favoritism. In this case, the petitioner/appellant has not been able to show that the tender process was either arbitrary or that the petitioner's rights had been infringed.

9. It is not for the Court to decide the eligibility criteria and the clauses in the tender document. They are within the domain of experts. The experts who are involved in the tendering process are in the best position to assess their requirement and impose such condition in the document itself.

10. Next, the decision of the *Ramana Dayaram Shetty (Supra)*, also does not apply as the said decision was with

regard to changing the rules of the game after the game had started. In this case, no such situation has been pointed out by the appellant.

11. In *Silppi Constructions Contractors v. Union of India and Ors.* reported in **2019 SCC OnLine SC 1133**, the Hon'ble Apex Court held as follows:-

“19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts, but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realize their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder . In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

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 realize 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. With this approach in mind, we shall deal with the present case."

12. There is nothing on record which would indicate that the authorities had acted contrary to law. No such averments have been made in the writ petition casting any aspersion either on the authorities or in the process followed by the said authorities. Moreover, third party rights have been created. The clauses cannot be challenged by a person who was ineligible.

13. The application and the appeal are dismissed.

14. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Shampa Sarkar, J.)

(Apurba Sinha Ray, J.)