

Chaina Ram Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : Apr-23-2014

Appellant : Chaina Ram

Respondent : State and ors

Judgement :

1 D.B.Civil Special Appeal No.574/2014 Chaina Ram V/s State of Rajasthan and ORS.23.4.2014 Hon'ble the Chief Justice Mr.Amitava Roy Hon'ble Mr.Justice Vijay Bishnoi Mr.Manoj Bhandari for the appellant.

The subject matter of challenge is the judgment and order dated 14.3.2014 rendered in S.B.Civil Writ Petition No.5787/13 dismissing the appellant-writ-petitioner's assailment of the decision of the State Government rejecting the bid offered by him for securing the mining lease in question and ordering initiation of a fresh process therefor.

We have heard Mr.Manoj Bhandari, learned counsel for the appellant-writ-petitioner.

For the order proposed to be passed, we do not consider it essential to issue formal notice to the respondents.

A summary version of the relevant facts would outline the backdrop.

A Notice Inviting Tender (for short, hereinafter referred to as the NIT.) dated 20.11.2012 was issued by the Superintending Mining Engineer, Department of Mines, Government of Rajasthan, Jaipur for grant of mining lease for excavation of river sand (bajri) from rivers, drain, nadi, nala, bhalas etc. recorded as gair mumkin in the revenue records of various revenue villages of Tehsil Jaitaran District Pali.

In response thereto, one M/s Kuber Associates and the appellant herein i.e. Chaina Ram 2 offered their bids to the tune of Rs.8,65,00,000/- and Rs.5,21,00,000/- respectively.

As proclaimed, the tender process was to be governed by Rule 35 of the Rajasthan Minor Minerals Concession Rules, 1986 (for short, hereafter referred to as the Rules.). Rule 35 (vi) mandated inter-alia that every tender shall be accompanied by power of attorney in case the tenderer is a partnership firm/association of persons and resolution of board of Directors in case of company, as the case may be, in terms of sub-clause (d) thereof.

Though the bid offered by M/s Kuber Associates was higher than that of the appellant herein by Rs.3,44,00,000/-, it was adjudged to be not in conformity with the above stipulation as its tender was not accompanied by power of attorney as required.

The tender opening committee thus rejected its bid on this ground and referred the matter to the Director, Mines and the Secretary, Department of Mines, Government of Rajasthan for appropriate decision having regard to the interest of the revenue.

In turn, the Director, Mines, Government of Rajasthan by his communication dated 17.4.2013 directed the Superintending Mining Engineer to issue a fresh NIT for grant of the mining lease for the area in question.

The NIT as required was issued on 6.5.2013.

Stirred by this initiation, the appellant as well as M/s Kuber Associates sought to invoke the writ jurisdiction of this Court by instituting S.B. Civil Writ Petitions No.5787/2013 and 5834/2013.

Incidentally, by the judgment and order impugned in the instant appeal, both these writ petitions have been dismissed.

3 The State-respondents in their reply pleaded that the tender furnished by M/s Kuber Associates was not in compliance of the mandatory requirement contained in Rule 35(vi)(d) of the Rules and thus, was rightly adjudged to be invalid.

According to them, the bid of the appellant-Chaina Ram was not accepted being much lower than that of M/s Kuber Associates and further keeping in mind the interest of the revenue of the State.

The respondents in their reply mentioned inter-alia that in response to the fresh NIT the highest bid received was of Rs.13,78,00,000/-.

Whereas before the learned Single Judge, the learned counsel for M/s Kuber Associates argued on the aspect of invalidation of its bid seeking to disinter its true purport as perceived by it (M/s Kuber Associates).the learned counsel for the appellant-herein with reference to Rule 35 (ix) insisted that in terms thereof following the rejection of the bid of M/s Kuber Associates, the offer of the appellant-Chaina Ram being the next highest and valid in all respects, the tender opening committee was under an obligation to provisionally select him for being awarded the mining lease before referring the matter to the competent authority to take a decision for sanction or rejection thereof.

It was urged that having regard to the peremptory enjoinder of Rule 35 (ix).the tender opening committee had no option to refer the matter to the State Government for decision without provisionally selecting the appellant as highest valid tenderer.

The learned counsel for the appellant-Chain Ram thus 4 maintained that the omission on the part of the tender opening committee to recommend the appellant as the provisionally selected tenderer was in contravention of Rule 35 (ix) and thus, the decision of the State Government in rejecting his tender and initiating a fresh process is patently illegal and non est in law.

That having regard to the reserved price of Rs.1,65,00,000/- referred to in the earlier NIT, the purported ground of interest of the revenue was of no relevance or significance whatsoever, he urged.

The learned Additional Advocate General however endorsed the action of rejecting the tender of M/s Kuber Associates and of initiating a fresh process by referring to Rule 35(vi)(d) and (xii) of the Rules.

The learned Single Judge rejected the impugnement on both the counts.

Without dilating on the reasons pertaining to the rejection of the tender of M/s Kuber Associates being inessential qua the present appeal, suffice it to mention that the learned Single Judge in essence was of the view that the tender opening committee while referring the matter for appropriate decision to the competent authority without recommending the appellant to be the provisionally selected tenderer did not act illegally.

That such action did not prejudicially affect the appellant was also recorded.

The learned Single Judge concluded as well that a highest bidder in a process for awarding of public contracts per se is not vested with any unassailable right to claim acceptance of its bid and that the competent authority is equipped with the power to take a decision for sanction or rejection thereof in its discretion for valid reasons even if the same was highest in financial terms. It was noted as well that in matters of award of a contract, the interest of public revenue was of paramount significance and if the highest bid received in a given fact situation was not found adequate, the State Government was not precluded from rejecting the same.

Referring to Rule 35 (xii) of the Rules, the learned Single Judge returned the finding that merely because the appellant was the only valid tenderer, there was no obligation cast on the State Government to accept his bid and in view of the huge difference in the two bids received i.e. of M/s Kuber Associates and the appellant-Chaina Ram, the non-acceptance of the offer of the latter on this consideration could be construed to be valid.

That the fresh NIT has fetched the highest bid of Rs.13,78,00,000/- was also recorded.

Mr.Bhandari has assiduously argued that as admittedly, the tender process at all relevant times was governed by Rule 35 of the Rules as professed, consequent upon the rejection of the tender of M/s Kuber Associates, the tender opening committee in terms of sub-clause (ix) thereof was under an obligation to recommend the appellant as the provisionally selected tenderer before forwarding the matter to the competent authority.

According to the learned counsel, the tender opening committee had no option whatsoever to omit to do so and that on that count alone, the decision to reject his bid and direct initiation of a fresh process ought to have been adjudged to be in patent violation of the Rules and declared null and void, he urged.

Mr.Bhandari has argued that a statutory process having been initiated, no departure from Rule 35 was permissible in any manner whatsoever and thus, the impugned decision being vitiated by the apparent contravention of Rule 35 (ix) it ought to have been declared illegal and non-existent.

The learned counsel insisted that the learned Single Judge thus ought to have annulled the impugned action and directed the official respondents to award the mining lease in favour of the appellant.

To buttress his contentions, Mr.Bhandari has placed reliance on a decision of a coordinate Bench of this Court in D.B.Civil Special Appeal (Writ) No.118/2013 M/s Shiv Shankar Company V/s State of Rajasthan and ORS.and D.B.Civil Special Appeal (Writ) No.119/2013 M/s Ganpati Associates V/s State of Rajasthan & ORS.(decided on 22.4.2013).We have examined the pleaded facts, the documents on record and the arguments advanced.

Having regard to the ambit of the impeachment in the instant appeal, it is considered inessential to dwell upon the aspect of validity or otherwise of the rejection of the tender of M/s Kuber Associates.

Admittedly, the tender process at all relevant times was regulated by Rule 35 of the Rules.

Clauses (ix) and (xii) thereof are quoted hereinbelow for ready reference:- 35.

Procedure for Tender:-(ix) The tender opening committee shall select the highest 7 valid tenderer as provisionally selected tenderer and presiding officer shall declare the same.....(xii) The competent authority shall take decision for sanction or rejection, of the provisionally selected tender and no tender shall be regarded as accepted unless competent authority issues sanction for the same.

It is too trite to note that these two clauses catalogued under Rule 35 do have a collective existence and bearing on the tender process and thus, have to be read in conjunction in order to discern the correct and veritable import thereof.

A harmonious construction and exposition of the clauses contained in Rule 35 is thus the legislative mandate so much so to further and consolidate the purpose thereof.

It is no longer res-integra that a public participatory process to be informed with the constitutional guarantee of transparency, objectivity and fairness has to invariably adhere to the norms predicated to govern the same and no departure therefrom is permissible on irrelevant or extraneous considerations.

On a conjoint reading of clauses (ix) and (xii) of Rule 35, it is apparent that even if the tender opening committee selects the highest valid tenderer as provisionally selected tenderer, the same would be subject to the decision to be taken by the competent authority and no tender would be regarded as accepted unless it issues sanction for the same.

Though having regard to the language employed in clause (ix).it cannot readily be concluded that the 8 tender opening committee had been left with an unbridled discretion not to select the highest valid tenderer as provisionally selected

tenderer, however, if it decides to do so on valid and acceptable reasons, such omission per se, in our comprehension, cannot be repudiated to be irreversibly vitiated by any legal infirmity.

The competent authority in clause (xii) of Rule 35 having been vested with the power to take ultimate decision to sanction or reject a provisionally selected tender so much so that the same would not be regarded as accepted unless sanctioned by it, in our view, it thus demonstrate as well that any omission on the part of the tender opening committee to recommend the highest valid tenderer as provisionally selected tenderer ipsofacto would not afflict the ultimate decision of the competent authority.

In this view of the matter, we find ourselves in complete agreement with the conclusion recorded by the learned Single Judge qua the cavil of non-compliance of clause (ix) of Rule 35 of the Rules.

The investiture of the power in the competent authority to sanction or reject the provisionally selected tender does connote in unmistakable terms that the recommendation of the tender opening committee is not final.

Axiomatically the competent authority on valid grounds may decline to accept the recommendation of the tender opening committee identifying the provisionally selected tenderer.

In the case in hand, as would be apparent on the face of the record, there was formidable bid margin of Rs.3,44,00,000/- between the offers of M/s Kuber 9 Associates and the appellant.

As the award of mining lease was akin to distribution of State largesse, the decision of the State Government to forsake the on-going process on the ground of inadequacy of the offer of the appellant, as the guardian of its finance, can by no means be castigated as arbitrary and illogical.

As in the event of the appellant being recommended as a provisionally selected tenderer as well, the same would have been subject to the eventual decision of the competent authority under clause (xii) of Rule 35, in our estimate, on a cumulative

consideration of all relevant aspects, the impugned decision of initiating a fresh process by rejecting his offer cannot be dubbed as invalid or unconstitutional.

The appellant as the valid tenderer assuredly did not have any vested right to insist on the acceptance of his bid under the Rules and that the competent authority as clause (xii) of Rule 35 would authenticate in no uncertain terms was left with a discretion and supervening power to sanction or reject his offer, however, on valid grounds.

In the facts of the present case, the impugned decision founded on the consideration of State exchequer cannot be repudiated as illegal or vitiated by impertinent or collateral determinants.

If held otherwise it would emasculate clause (xii) of Rule 35 of its potency and purpose.

The contextual facts in M/s Shiv Shanker Company and M/s Ganpati Associates (supra) are distinctly different in which amongst others the interplay of clauses (ix) and (xii) of Rule 35 of the Rules did not fall for scrutiny.

Thus, any observation made 10 therein qua Rule 35 does not enure to the benefit of the appellant in the singular facts and circumstances as obtain in the case in hand.

In the wake of the above, we are of the firm opinion that the findings entered in the impugned judgment and order are based on a correct appreciation of all essential facts legal and factual and do not call for any interference in the present appeal.

The appeal thus lacks in merit and is dismissed.

(Vijay Bishnoi)J.

(Amitava Roy)CJ Parmar

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