

Rajeev Kumar Sharma Vs. State of M.P. and Others

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Court : Madhya Pradesh

Decided On : May-15-2015

Judge : Sheel Nagu & B.D. Rathi

Appeal No. : Writ Petition No. 1521 of 2015

Appellant : Rajeev Kumar Sharma

Respondent : State of M.P. and Others

Judgement :

Sheel Nagu, J.

1. This petition under Article 226 of the Constitution of India is filed by a Civil Contractor belonging to category Class-I allegedly possessing wide exercise in the field of widening and construction of roads, seeking quashment of Annexures P/1 and P/2 by which tenders are invited for widening and construction of roads under 11 different civil contract packages nomenclatured as "H, I, J, K, L, M, N, O, P, Q, R". All these packages comprise of work of three different stretch of roads. The concern of the petitioner is with civil contract packages comprising of the following roads:--

1. Mohanpur Behat Mau (MDR-01-01) and Behat Mau (MDR-02-03), Length 51.651 Kms.;

2. Murar Chitora (MDR-01-08), Murar Chitora (MDR-02-08) and Gatha Amayan (MDR-02-06), Length 45.810 Kmsk;

3. Mohana Pohri (MDR-07-06), Length 62.360 Kms.

2. Thus, for a person bidding, it is necessary to bid for each civil contract package comprising of three different stretches of roads. In other words, the tenders would be considered by treating one civil contract package as a unit and not a single stretch of road as a unit.

3. The principal ground of challenge to the above said NIT is that the same is discriminatory against the small civil contractors like petitioner, who cannot offer the bid for one single civil contract package on account of the high financial implications. It is contended that the condition has been purposely incorporated by the State to oust small civil contractors.

4. Learned counsel for rival parties are heard on the question of admission.

5. Learned counsel for petitioner by placing reliance on the decisions of *Tata Cellular v. Union of India*, AIR 1996 SC 11 (para 85); *Directorate of Education and others v. Educamp Datamatics Ltd. and others*, (2004) 4 SCC 19 : AIR 2004 SC 1962; *Association of Registration Plates v. Union of India and others*, (2005) 1 SCC 679 (Para 43) : AIR 2005 SC 469; and *Shimrut Utsch India Private Ltd. and Anr. v. West Bengal Transport Infrastructure Development Corporation Ltd. and Ors.*, (2010) 6 SCC 303 (Paras 52 to 56) : 2010 AIR SCW 3974, Paras 46 to 48 contends that the action of the State is arbitrary and cannot stand the test of judicial review. It is submitted that the above said condition imposed by the State ousts from consideration a large number of civil contractors of the like of petitioner thereby depriving them of the fundamental rights of participating in the process of tender floated by the State.

6. Per contra, the learned counsel for State Shri N.S. Kirar and respondent No. 2 Shri Vivek Khedkar submit that in terms of the decision of the Apex Court in the case of *Villianur Iyarkkai Padukappu Maiyam v. Union of India and others*, (2009) 7 SCC 561 (Para 113) : 2010 AIR SCW 4123, Para 13, the petitioner has no locus

as he did not participate in the process under challenge. Further, it is submitted by the learned counsel for petitioner Shri S.S. Bansal that the entire project of widening and construction of the road, for which the impugned tender has been issued, is required to be executed in terms of the loan obtained from the Asian Development Bank where timely completion of work is an essential criteria for release of financial assistance. It is further submitted that in case the guidelines of the Asian Development Bank are not adhered to, then the said Bank may withdraw the financial assistance. It is further submitted that there are no mala fides alleged against anyone in regard to the impugned process. Reliance has further been placed on the decision of the Apex Court in the cases of Michigan Rubber (India) Limited v. State of Karnataka and others, (2012) 8 SCC 216 (Paras 21, 23 and 35) : (AIR 2012 SC 2915, Paras 17, 19 and 31) and Maa Binda Express Carrier and another v. North-East Frontier Railway and others, (2014) 3 SCC 760 : (AIR 2014 SC 390).

7. Considering the law in regard to the scope of interference in administrative matters, which are contractual in nature and have widespread financial implication is well settled by the celebrated case of the Apex Court in Tata Cellular v. Union of India, (1994) 6 SCC 651: AIR 1996 SC 11, where the Apex Court after considering a series of judgments rendered by it gave the following guidelines:

"(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesday principle of reasonableness (including its other facts printed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decision may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

8. The mere fact of the financial implications involved for each civil contract package being beyond the pecuniary capacity of the petitioner, cannot be a legitimate ground to assail the process of tender. The State while entering into the field of contract involving widespread financial implications for the purpose of larger public interest of building and widening the roads and where a financial assistance from international organisation such as Asian Development Bank is obtained, the scope of judicial review not only becomes restricted, but the Courts are expected to act with great care and circumspection to avoid any possibility of escalation of cost due to delay and adverse effect to public interest.

9. In the instant case, the condition imposed of bidding for single civil contract package comprising of three different packages of contractors at one point of time, is in public interest. The reason behind the same appears to be that the State wants financially sound and experienced persons to bid so that the possibility of abandonment of work in the midst due to lack of financial resources is avoided.

10. The State is free to impose any condition including the one imposed herein, which appear to be reasonable, as the same has a reasonable nexus with the object of the tender process sought to be achieved. The action of the State impugned herein can neither be termed as discriminatory or unreasonable, much less irrationally.

11. In view of the above, this Court is of the considered view that no case for interference is made out and, therefore, this petition deserves to be and is therefore dismissed at the admission stage with no cost.

Petition dismissed.

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