

Frontier Engineering Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Feb-12-2004

Judge : Ranjan Gogoi, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : WP (C) No. 8713 of 2003

Appellant : Frontier Engineering

Respondent : State of Assam and ors.

Advocate for Def. : P. Roy and R.K. Jain, Advs.

Advocate for Pet/Ap. : Bhuyan, Adv.

Disposition : Petition dismissed

Prior history : Ranjan Gogoi, J. 1. A Tender Notice was published in the issue of 'the Assam Tribune' dated 23rd September, 2003 inviting tenders for the following works : 'Dhansiri irrigation Project :Construction of Silt Ejector at Ch 80.00M of main canal'. The petitioner along with five other tenderers submitted tenders for the grant of the aforesaid contract and four of the tenders having been found to be valid, the Tender Committee in a meeting held on 18.10.2003 recommended the petitioner for grant o

Judgement :

Ranjan Gogoi, J.

1. A Tender Notice was published in the issue of 'the Assam Tribune' dated 23rd September, 2003 inviting tenders for the following works :

'Dhansiri irrigation Project :Construction of Silt Ejector at Ch 80.00M of main canal'.

The petitioner along with five other tenderers submitted tenders for the grant of the aforesaid contract and four of the tenders having been found to be valid, the Tender Committee in a meeting held on 18.10.2003 recommended the petitioner for grant of the contract. It must be noticed at this stage that though the petitioner was L3 in the tender process, the Tender Committee took the view that as the lowest tenderer had already been awarded a major work in the same project, his name should not be recommended. In so far as the second lowest tenderer, i.e., the Respondent No. 5 herein is concerned, the Tender Committee took the view that a another work allotted to him i.e. construction of permanent protection embankment at down stream of Dhansiri barrage from ch. 1325m to 1435m was still in progress, the recommendation should be in favour of the writ petitioner. In making its recommendation, the Tender Committee also took note of the fact that there were no current and pending ongoing work in so far as the writ petitioner is concerned.

2. The recommendations of the Tender Committee, therefore, reached the table of the Hon'ble Minister. The departmental Minister in his note dated 20.10.2003 while agreeing with the recommendation of the Tender Committee in so far as the lowest tenderer is concerned, recorded the fact that as per information received from the Project Engineer, the work of permanent protection embankment at down stream of Dhansiri barrage from ch. 1325m to 1435m has been physically and successfully completed by the Respondent No. 5 and therefore, the matter required the re-consideration of the Tender Committee. Thereafter, it appears that the matter was reconsidered by the Tender Committee on 21st October, 2003 and the Tender Committee reviewed its earlier decision by holding that the Respondent No. 5 had completed 90% of the works in question and what was left, are minor works. On the aforesaid basis, the Tender Committee reviewing its

earlier decision, recommended the Respondent No. 5 for the grant of the contract which recommendations have been accepted by the Hon'ble Minister on 31st October, 2003. However even before that, apprehending that the grant of the contract would be made in favour of the Respondent No. 5, the instant writ petition was filed on 22nd October, 2003 wherein an interim order was passed by this Court on 22.10.2003 restraining the authority from awarding the contract work to any of the tenderers. Though there is some controversy as to whether the works have been allotted to the Respondent No. 5 in the meantime and if so, whether the interim order passed by this Court on 22.10.2003 has been violated, the writ petition itself is being disposed of, it will not be necessary to go into the aforesaid controversy.

3. I have heard Mr. U. Bhuyan, learned counsel appearing for the writ petitioner, Mr. P. Roy, learned Government Advocate, Assam and Mr. R.K. Jain, learned counsel appearing for the Respondent No. 5.

The records pertaining to the grant of the contract in original have been placed before the Court by the learned Govt. Advocate, Assam. The same have been duly perused. An inspection of the said records was allowed to the learned counsels for all the parties so as to enable them to effectively assist the Court.

4. The case projected by Mr. Bhuyan, learned counsel appearing on behalf of the petitioner is that the Tender Committee while reconsidering the matter, relied upon a letter dated 20th October, 2003 written by the jurisdictional Executive Engineer certifying that the Respondent No. 5 had completed 90% of the works in question. By placing the aforesaid letter, which forms a part of the record, Mr. Bhuyan has contended that the said letter discloses that it was written by the Executive Engineer pursuant to the verbal instruction of the Chief Engineer issued on 18.10.2003. On 18.10.2003, the first set of recommendation of the tender Committee in favour of the writ petitioner was already made. In such a situation, the learned counsel for the petitioner submits that the facts surrounding the issuance of the letter dated 20.10.2003 are highly suspicious and intriguing and therefore, this Court must proceed to draw the necessary advert inferences. What prompted the Executive Engineer to write the said letter dated 20.10.2003 and

further, what prompted the Chief Engineer to make an enquiry on 18.10.2003, it is argued, remains undisclosed. Continuing further, Mr. Bhuyan has argued that the note dated 31.10.2003 of the Hon'ble Minister approving the grant of the contract in favour of the Respondent No. 5 clearly recites that the writ petitioner is yet to complete 80% of the works relating to Bordikrari Irrigation Project (Construction of Head works). What had prompted the Hon'ble Minister to record the said fact and what were the circumstances antecedent, again, are mysterious. Though there is a letter dated 18.10.2003 of the jurisdictional Executive Engineer addressed to the Chief Engineer in respect of the extent of completion of the work under the Bordikrari Irrigation Scheme in the records produced, what had prompted the Executive Engineer to write the said letter, has not been disclosed. It is, therefore, argued by Mr. Bhuyin that the performance of the writ petitioner while executing the Bordikrari Irrigation Scheme had prevailed upon the Hon'ble Minister in accepting the recommendation of the Tender Committee made in favour of the Respondent No. 5 and, therefore, in the absence of satisfactory explanation as to how the said matter had erupted, this Court again must draw an adverse inference to the effect that the contract has not been granted fairly and reasonably and by a transparent process. Lastly, it has been argued by Mr. Bhuyan, learned counsel for the petitioner that the manner in which the works were allotted to the Respondent No. 5 in spite of the interim order dated 22.10.2003 passed by this Court would disclose the anxiety of the official respondents to have the works executed by the Respondent No. 5 alone. It has, therefore, been argued that this Court, on a cumulative consideration of the several facts noticed above, must conclude that the grant of the contract made in favour of the Respondent No. 5 is for reasons extraneous and collateral and such grant, therefore, should be interfered with by this Court.

5. Mr. P. Roy, learned Govt. Advocate, Assam and Mr. R.K. Jain, learned counsel for the Respondent No. 5 by placing reliance on the records produced in original, have submitted that the award of the contract in favour of the Respondent No. 5 has been made on a due and proper consideration of all relevant facts and the contract has been awarded to the Respondent No. 5 by following a fair, reasonable and transparent process. The first set of recommendations of the Tender Committee dated 18.10.2003 had the effect of overlooking certain relevant

facts and the correct facts being pointed out after due investigation, the Tender Committee reviewed its earlier decision. According to the learned counsel for the respondents, the Respondent No. 5 having completed major part of the works allotted to him and what was left unfinished being minor works, the altered recommendations of the Tender Committee are fully justified and the decision of the State to award the contract in favour of the Respondent No. 5 cannot be faulted.

6. The rival submissions of the parties have been duly considered. Interference with the grant of a contract in exercise of power under Article 226 of the Constitution, will be made by the Court only if such a grant ex facie discloses considerations which are extraneous and collateral or in cases where the contract has been awarded by over looking more justified claims that may have been present before the authority. Liberty to choose the right contractor is always with the State ; it is only the manner in which the search has been made and the considerations that had prevailed, which will be ordinarily scrutinized by the Writ Court under Article 226 of the Constitution.

7. In the instant case, if the basis of the recommendations of the first Tender Committee dated 18.10.2003, i.e., that the Respondent No. 5 had not completed the ongoing contract work is incorrect the grant made in favour of the Respondent No. 5 must be understood to be bad. If however, the Respondent No. 5 had actually completed the said work, the decision of the State must be upheld. The above is the precise question that would require determination of the Court in the present case. The Tender Committee reviewed its earlier decision to the effect that the Respondent No. 5 had not completed the works in question on the basis of the letter dated 20.10.2003 of the jurisdictional Executive Engineer certifying that the Respondent No. 5 had completed 90% allotted works and what remained unexecuted are works of a minor nature. If what has been certified is correct, the Tender Committee was justified in recalling the recommendations made in favour of the writ petitioner. Though the facts antecedent to the letter dated 20.10.2003 of the Executive Engineer, has been questioned on behalf of the petitioner, no attempt has been made to lay any material before the Court to show that the contents of the letter dated 20.10.2003 are wrong in any way or incorrect. Merely

because, the circumstances that had led to the letter dated 20.10.2003 have not been fully explained, it will not be correct to come to the conclusion that the facts certified in the said letter dated 20.10.2003 are incorrect. No material having been laid before the Court even to suggest that the facts certified are incorrect, I am of the view that the inference of this Court has been asked to make, would not be justified. The argument of the writ petitioner that the other letter dated 18.10.2003 i.e. with regard to the extent of completion of works by the petitioner in the Bordikrari Irrigation Scheme was again issued in mysterious and suspicious circumstances need not be considered inasmuch as what was required to be approved by the Hon'ble Minister was the second recommendation of the Tender Committee made in favour of the Respondent No. 5. The Tender Committee while recommending the case of the said Respondent No. 5 not having considered or recorded any finding with regard to the completion of the aforesaid works by the petitioner the observations appearing in the note of the Hon'ble Minister dated 31.10.2003 to the above effect must be understood to be wholly redundant and superfluous.

8. For all the aforesaid reasons, I am inclined to reach the conclusion that the interference sought for by the writ petitioner ought not be made by the Court. The writ petition, therefore, has to fail. It is accordingly dismissed. No costs.

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