

P.S. Constructions Vs. State of Goa Through the Chief Secretary and ors.

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Court : Mumbai

Decided On : Apr-16-1996

Reported in : 1997(1)BomCR163

Judge : P.S. Patankar and ;R.K. Batta, JJ.

Acts : [Contract Act, 1872](#) - Sections 3; [Constitution of India](#) - Articles 14 and 19(1)

Appeal No. : Writ Petition No. 120 of 1996

Appellant : P.S. Constructions

Respondent : State of Goa Through the Chief Secretary and ors.

Advocate for Def. : H.R. Bharne, Addl. Govt. Adv., for the Respondents No. 1 to 4

Advocate for Pet/Ap. : S.G. Dessai, Sr. Adv. ;and T. Potekar, Adv.

Disposition : Petition dismissed

Judgement :

R.K. Batta, J.

1. The petitioners challenge award of tender in respect of Uguem-Kalay road which has been awarded to respondent No. 5. The petitioners' case is that their tender was lowest being Rs. 13,66,780, but the Government accepted the tender of respondent No. 5 which was to the tune of Rs. 15,17,530/-. We have heard the

learned Counsel for the parties.

2. Sr. Advocate Shri Surendra Dessai submitted on behalf of the petitioners that the respondents No. 1 to 4 were bound to accept the lowest tender of the petitioners and without giving any reasons whatsoever or even communicating the said reasons, the Government took decision in accepting the tender of respondent No. 5 which was higher than the tender of the petitioner. Sr. Advocate Shri Dessai has pointed out that another work has been entrusted by the P.W.D. on 9-1-1996 and the respondents Nos. 1 to 4 should not have taken into account the controversy relating to the arbitration proceedings in respect of another contract which had been awarded to the petitioner which seems to be the ground for rejecting the tender of the petitioner. According to Sr. Advocate Shri Dessai, the petitioner is entitled to the award of the said tender in view of the doctrine of legitimate expectation and the award of tender is required to be set aside on the ground that the reasons have not been communicated to the petitioner. In support of his contention, he relied on *Shri Harminder Singh Arora v. Union of India and others* : [1986]3SCR63 , *M/s. Star Enterprises and others v. City and Industrial Development Corporation of Maharashtra Ltd. and others* : [1990]2SCR826 and *Food Corporation of India v. M/s. Kamdhenu Cattle Feed Industries* : AIR 1993 SC1601 . As against the above submissions, it has been averred in the affidavit filed by respondent No. 2 that the petitioner had quoted 16.5% below the estimated cost of Rs. 16,37,021/- whereas the second lowest tender was that of respondent No. 5 which was 7.29% below. The respondent No. 2 has further submitted that the petitioner had been awarded a tender previously wherein he had quoted at 12.56% below and the said work had to be completed within 450 days but the petitioner did not complete the said work and abandoned the same, as a result of which the said work had to be awarded to M/s. Ritesh Constructions. In respect of the said dispute arbitration proceedings are pending and the petitioner did not even return the balance of asphalt which was entrusted to him which was a public property. It is further submitted that the petitioner had admitted that a quantity of 36.096 M.T. of asphalt remained to be returned and the value of the said asphalt is Rs. 1,58,100/-. It is also pointed out that the said work had to be completed within 450 days whereas the work under consideration, which is of urgent nature, is to be completed within a period of 180 days. It is also submitted

on behalf of the respondents Nos. 1 to 4 that the work in question was ordered on 4-3-1996 and till today 1/4 of the work has already been completed by the respondent No. 5. This, according to respondents Nos. 1 to 4, is the justification in not accepting the lowest tender which was of the petitioner and accepting the tender of the next higher bidder.

3. In our opinion, the justification which has been put up by respondent No. 2 for not accepting the lowest tender and awarding the same to the next higher is proper and reasonable. Under these circumstances, we do not see any arbitrariness or unreasonableness in accepting the tender of respondent No. 5. In view of this matter, none of the authorities which have been quoted by the Advocate for the petitioner have any application in the facts and circumstances of this case.

4. For the foregoing reasons, we do not consider that it is necessary to entertain this petition and the petition is summarily rejected.