M. Srikanth Vs. Regional Manager, Apsrtc, Sangareddy

M. Srikanth Vs. Regional Manager, Apsrtc, Sangareddy

SooperKanoon Citation : sooperkanoon.com/434769

Court : Andhra Pradesh

Decided On : Mar-12-1998

Reported in : 1998(2)ALD736; 1998(2)ALT332

Judge : S.R. Nayak, J.

Acts : Constitution of India - Article 226

Appeal No. : W.P. No. 32852 of 1997

Appellant : M. Srikanth

Respondent : Regional Manager, Apsrtc, Sangareddy

Advocate for Def. : Mr. C.V. Ramulu, Adv.

Advocate for Pet/Ap. : Mr. C. Ramachandra Raju, Adv.

Judgement :
ORDER

1. The petitioner has sought for a Writ of Mandamus declaring the action of the respondent in cancelling the tender of the petitioner by impugned proceedings No.P3/122(16)/97-RM, dated 2-12-1997 is arbitrary, mala fide, illegal and unsustainable and for a consequential direction to the respondent to accept the tender of the petitioner in respect of Canteen in New Bus Station, Siddipet of A.RS.RT.C. and award contract in his favour.

2. The relevant facts which are necessary to be noticed for the purpose of disposal of this case are stated briefly as under:

The respondent issued a Notification on 9-6-1997 calling for tenders from the public at large to grant licence in respect of canteen situated in New Bus Station, Siddipet. In response to this Notification, the petitioner and one A. Bose Babu submitted their tenders. According to the petitioner, the tender committee on 17-06-1997 opened the tenders and found that the offer made by the petitioner was the highest. At this stage, it may be noted that in the tender submitted by the petitioner he had offered to pay monthly rent at the rate of Rs.42,399-99 Ps, whereas A Base Babu offered at the rate of Rs. 39,799-99 Ps. The petitioner also claims that on 17-6-1997 the tender committee told him that his tender was accepted, but they could not communicate acceptance in writing inasmuch as this Court on 13-6-1997 passedan interlocutory order in Writ Petition No. 11996 of 1997 filed by the earlier licensee directing the respondent not to finalise the tenders called for in pursuance of the Notification dated 9-6-1997. The Writ Petition No.11996 of 1997 was subsequently withdrawn by the earlier licensee on 20-11 -1997. Thereafter, the Deputy Chief Traffic Manager, A.P.S.R.T.C. Medak Region, Sangareddy, issued a letter dated 2-12-1997 to the petitioner, which reads as under:

'It is to inform that the tender committee felt that amount quoted by you for running of Canteen at NBS/SDPT is not reasonable and recommended for cancellation of tenders.

The Depot Manager, Siddipet is being instructed to refund EMD paid at the lime offender.'

Subsequently, the respondent issued fresh tender Notification dated 6-12-1997 again calling for applications for granting licence in respect of the Canteen in New Bus Station at Siddipet. The petitioner filed the Writ Petition on 09-12-1997 in this Court assailing the cancellation of the tenders. The petitioner also filed WPMP No.38603/97 seeking stay of all further proceedings in pursuance of the tender notification dated 6-12-1997. This Court in the WPMP passed an interim order on 16-12-97 directing the respondents not to finalise the tenders till further orders.

The said interim order is still in operation.

3. The respondents have not filed any counter. However, the learned Standing Counsel for the APSRTC at the time of hearing, made available the original file maintained by the tender committee.

4. Heard Sri C. Ramachandra Raja, the learned Counsel for the petitioner and Sri C. V.Ramulu, the learned Standing Counsel for the A.P.S.R.T.C.

5. Sri Raju would contend that all the material placed before this Court and the records maintained by the tender committee clearly go to show that the tender submitted by the petitioner was in fact accepted by thetender committee on 17-06-1997 and that being so, it was totally improper for the respondent to cancel the tenders after a lapse of six months. The learned Counsel would also maintain that if the case of the respondent now put forth before the Court that on 17-6-1997 itself a decision was taken by the tender committee not to accept the tender submitted by the petitioner, then they would have returned the EMD sum of Rs. 1,15,000/- forthwith and the very fact that they did not do so clearly indicates that the tender was accepted on 17-6-1997 and the so-called proceeding drawn up by the committee on 17-6-1997 bears the date 02-08-1997 which is a concocted document created only for the purpose of defeating the legitimate claim of the petitioner. The learned Counsel also argued that on 17-6-1997, there was absolutely no good reason for the tender committee not to accept the tender of the petitioner inasmuch as the rent offered by the petitioner was more than 10% of the existing rent and therefore in terms of Circular No.24/85 dated 18-6-1985 issued by the Executive Director (Operation), there was no impediment for the tender committee not to accept the tender of the petitioner. On the other hand, Sri C. V.Ramulu, the learned Standing Counsel for the A.P.S.R.T.C. would maintain that the proceedings of the tender committee dated 17-6-1997 does not leave any doubt in anybody's mind that though the rent offered by the petitioner was the highest, the same was not accepted by the tender committee inasmuch as the tender committee thought that the rate offered by the petitioner was not reasonable. The learned Standing Counsel would also point out that the petitioner was not informed accordingly in writing because of the pendency of the Writ

Petition No. 11996 of 1997 in this Court

6. The learned Standing Counsel would also point out to the Court that in pursuance of the tender Notification issued on 6-12-1997, tenders were received and they were opened and one Srinivasa Rao has offered to pay monthly rent at the rate of Rs.81,116-10 Ps. but however, licence could not be granted in his favour on account of the interim ordermade by this Court on 16-12-1997 in W.P.MP.No.38603 of 1993.

7. The Court has perused the proceedings sheet maintained by the tender committee. The Court could see that whenever the tender committee met to transact business, it never failed to record the proceedings of the day on which it met, may be briefly. However, this consistent practice was not adopted by the tender committee insofar as its deliberation on 17-6-1997 is concerned. The original proceedings sheet incorporates the designation of two' members of the tender committee which infact includes three members, namely, DY.CTM and RM. Against the designation of RM, initial is put and bears the date 17/6, Against the DY CTM, signature was not obtained. There is no mention of A.O./MR nor his signature is found. Admittedly, on 17-06-1997 the lender committee had dealt with as many as 12 subjects as could be seen from the proceedings of the committee made available to the Court. If, as claimed by the respondent, the tender committee took a decision on 17-6-1997 itself not to accept the tender of the petitioner on the ground that the rate quoted by him was not reasonable, then there was absolutely no impediment for the tender committee to inform the petitioner accordingly and to refund EMD without any loss of lime. I say this because the interim order granted by this Court on 13-6-1997 in W.P.No.11996/97 directed not to finalise the tenders. If the tender committee in fact on 17-6-1997 wanted to accept the tender; perhaps by virtue of the interim order they would not have accepted the tender and finalised the tender. On the other hand, if the tender committee decided not to accept the tender, they would have done so without violating the interim order of this Court. This is one important circumstance to suggest that as claimed by the petitioner, the tender was in fact accepted by the tender committee on 17-6-1997, but they cannot inform the petitioner accordingly in view of the interim orders granted by this Court. It is also pointed out by the

learned Standing Counsel himself that the EMD deposited byall other applicants were promptly returned to the applicants. If that was the correct procedure adopted by the Corporation and I say that it was so, I do not see any good' reason why they did not choose to refund the EMD to the petitioner if their case was that the tender submitted by the petitioner was not accepted on 17-6-1997. The third important circumstance is the impugned letter itself. The impugned letter speaks about cancellation of tender. Acceptance should precede cancellation. The notion of cancellation cannot be comprehended without there being an earlier acceptance or grant. Unless a thing is accepted at an earlier point of time, cancellation of such acceptance would never arise. The very fact that the Deputy Chief Traffic Manager, A.P.S.R.T.C. Medak Region, Sangareddy in the impugned letter states that the lender of the petitioner is cancelled, presupposes that the tender submitted by the petitioner was in fact accepted anterior to the date of the letter. Therefore, the circumstances referred to above and the specific pleading of the petitioner which stands untraversed clearly go to show that the tender of the petitioner was accepted on 17-6-1997 as claimed by the petitioner. In a proceeding like this, it is not necessary that the finding to be recorded by this Court under Article 226 of the Constitution of India should be beyond any reasonable doubt. The conclusions have to be recorded on the preponderance of probabilities. Applying that rule and having regard to the materials on record the aforementioned finding can be recorded.

8. In view of the finding recorded above, I would have straightaway proceed to order, but, subsequent to the filing of the writ petition, some developments have taken place which the Court cannot eschew. The development is that in pursuance of the tender notification dated 06-12-1997, tenders were received and they were opened. As pointed out supra, Srinivasa Rao submitted tender offering to pay monthly rent at the rate of Rs.81,116-10 Ps. The respondent Corporation is a statutory public Corporation. It is quite often emphasised by the Courts - the SupremeCourt and this Court thai when (he public authorities and the statutory authorities part with their largesse, those authorities should get the maximum return for the parted properties.

9. The petitioner has offered to pay a monthly rent at the rate of Rs.42,300/- whereas the present offer made by Mr. Srinivasa Rao is at the rate of Rs.81,116-10p. At this juncture, the submission made by Mr. Raju to be noted: Mr.Raju would contend that if the Court were to hold that his tender submitted on 17-6-1997 was accepted by the tender committee, it would be unfair now to direct the respondent to call for fresh applications for allotment of the canteen. I would have appreciated the submission of the learned Counsel provided he was put into the possession of the shop and the same position obtains as regards Srinivasa Rao. The competing claims of the petitioner and the public interest of the Corporation have to be balanced and a via media has to be found by the Court keeping in mind the interests of both. Simply because the officers of the Corporation have bungled in the matter of parting the largesse of the Corporation, that itself cannot be agood ground to issue direction to the Corporation as prayed for in the writ petition.

10. A sum of Rs.1,15,000/- deposited by the petitioner towards EMD was unjustly withheld by the respondent Corporation for nearly six months thereby depriving the petitioner to make use of the same money for his purpose. In that view of the matter, it is fair that the respondent should be saddled with liability to pay a reasonable interest on the said sum of money.

11. In the result and for the aforementioned reasons, I dispose of the writ petition with the following directions:

(1) The respondent shall issue fresh tender notification calling for applications for allotment of Canteen in New Bus Station A.P.S.RT.C. Siddipet. The petitioner as welt as Srinivasa Raoalongwith others are entitled to submit tenders.

(2) The respondent is directed to refund sum of Rs.1,15,000/- deposited by the petitioner towards EMD forthwith to the petitioner along with interest at the rate of 15% per annum for the period from 17-06-1997 till the date of refund.

(3) The petitioner is entitled to costs of the writ petition including his lawyer's fee which is cumulatively quantified at Rs.2,500/- and the same shall be paid to the petitioner within a period of two weeks from today.