

Mukul Kumar Vs. Divisional Railway Manager, Northern Railway, Allahabad and Others

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Court : Allahabad

Decided On : May-06-1994

Reported in : AIR1995All72

Judge : B.M. Lal and ;S.K. Verma, JJ.

Acts : [Indian Contract Act, 1872](#) - Sections 2; [Constitution of India](#) - Articles 14, 16, 16(1), 21 and 226; Karnataka Civil Services Rules

Appeal No. : C.M.W. No. 9566 of 1994

Appellant : Mukul Kumar

Respondent : Divisional Railway Manager, Northern Railway, Allahabad and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Mr. Mahesh Gautam and ;Mr. Vijai Gautam, Advs.

Disposition : Petition Dismissed

Judgement :

ORDER

S.K. Verma, J.

1. The petitioner through this writ petition under Art. 226 of the Constitution of India prays for a direction in the nature of certiorari quashing the order dated 3-3-1994 issued by the respondent No. 2 in favour of respondent No. 4 and for a mandamus directing respondents No. 1 to 3 to accept the only tender of the petitioner holding it as valid.

2. , The petitioner had been operating the contract for cycle/scooter stand at Aligarh Junction Railway station for the last four years. His contract was to expire on 23-3-1994. Meanwhile on 9-12-1993, a tender notice was issued inviting tenders for the contract for the next two years, i.e. 1994-95 and 1995-96. Three persons offered their tenders, namely, H.K. Dubey, N.K. Singh, respondent NO. 4 and Mukul Kumar, petitioner. Their offers were Rs. 1,29,000/-Rs.2,97,000/- and Rs. 1,47,000/- respectively. The tender notices required deposit of earnest money and also certain documents. The petitioner claims that the tender notice (Annexure 1 to the writ petition) mentioned that no tender will be considered if it is not accompanied with documents mentioned in the notice. The other two persons did not submit the documents. Only the petitioner submitted the documents also along with his tender. The tenders were opened on 18-1-1994 and in presence of all the tenderers, it became known that only the petitioner's tender was valid. However, through the impugned order dated 23-3-1994 the tender of respondent No. 4 was accepted and he was allowed time to furnish the documents mentioned in the tender notice as also some other documents. The petitioner claims that since only his tender was valid, the respondents Nos. 1 to 3 could not award the contract to any body else. This action of the respondents Nos. 1 to 3 is discriminatory and is hit by and is violative of Arts. 14, 16 and 21 of the Constitution. The impugned order has also been challenged on the basis of mala fides. The order has also been challenged on the ground that extension of the opportunity to furnish documents was allowed to respondent No. 4 without giving the petitioner an opportunity to be heard and, therefore, the action of the respondents Nos. 1 to 3 was discriminatory and was in colourable exercise of powers.

3. In their counter affidavit, respondents Nos. 1 to 3 have admitted that the petitioner was having a contract of the Cycle/Scooter Stand which expired on 23-3-1994 and that tenders were invited according to notice dated 9-12-1993, and that the tenders of the other two tenderers did not accompany the documents required. However, the contention of the respondents No. 1 to 3 is that although it was mentioned in the tender notice that the tender was liable to be rejected if the documents mentioned in the tender notice were not submitted, the tender form and the instructions to the tenderer attached along with the tender form mentioned clearly that if the receipt of the deposit of the earnest money was not furnished along with the tender form, the tender shall not be considered but with regard to documents, it was mentioned that the tender was liable, to be rejected if these documents were not attached along with the tender form. Thus, submission of documents was not a condition-precedent and it could be relaxed in so far as the tender was liable to be rejected and it could be rejected or it could not be rejected on that ground. The respondents No. 1 to 3 also stated in the counter affidavit that the tenders were placed before a Tender committee which advised that the tender of the respondent No. 4 should be accepted and, therefore, the competent authority accepted the tender of the respondent No. 4 permitting him to submit the four documents mentioned in the tender notice along with certain other documents such as money receipt showing the deposit of Rs.83,625/- including security deposit and one month's licence fee and Rs,49,500/- which was 1/6th of the tender amount. It has been contended that there was no discrimination and the Committee considered the relevant factors along with public interest in awarding the contract to respondent No. 4. The principles of law were followed, there being no statutory rules requiring the tender to submit these documents. The conditions were imposed regarding these documents, only in order to safeguard the realisation of the tender amount and if the respondent No. 4 is even now not in a position to furnish these documents his tender is liable to be rejected and the tender of the petitioner may be accepted or the competent authority may reject all the tenders and invite fresh tenders. Thus, there is only a provisional acceptance of the tender of the respondent No. 4 on the advice of the Tender Committee which has taken into consideration the interest of the administration and public interest. The action taken by the respondents No. 1 to 3 is neither arbitrary

nor unreasonable.

4. We have gone through the record and have heard learned counsel for the parties. The tender notice mentions in the second paragraph that the particulars of the tender form and contract details can be had from the office of the Divisional Railway Manager, Commercial, Northern Railway, Allahabad. This means that all the terms and conditions of the contract have not been given in the notice itself. It is true that the tender notice mentions that no tender will be considered valid if it is not accompanied with the documents mentioned therein but the tender notice also mentions that there may be other particulars and details of the contract which have to be obtained from the office. The respondents No. 1 to 3 have filed the letter sent by the Divisional Railway Manager, Allahabad to the petitioner along with which the tender form with tender conditions and agreement of the contract were enclosed. Even this letter mentions in Paragraph 3 that no tender will be considered unless a sum of Rs. 7950/- (earnest money) is deposited. In the same paragraph it has been mentioned that the Income-tax clearance certificate etc. i.e. documents must also be enclosed with the tender. This letter does not mention that if the documents are not enclosed the tender will be rejected on that ground. Again Annexure 'C.A.I' contains the instructions in Hindi Paragraph 8 of which mentions that Income-tax clearance certificate and other documents should be attached with the tender. If these documents are not attached to the tender, the tender is liable to be rejected directly. The actual terms used are:

^lh/ks ukeatwj gksus ;ksX; gS A**

It would, thus, be clear that the submission of documents along with the tender was not a condition-*precedent*, the non-performance of which would make the tender immediately void *ab initio*. The documents were required to safe-guard the administration that the tenderer is reliable and is a sound party having a responsive tender according to the requirements of the railway administration. It would also be pertinent to note that even the tender notice mentions below. Paragraph 4 that any other documents such as past experience certificate etc. may be enclosed. These documents were naturally required to verify the status, character and the solvency, experience and the capability etc. of the tenderer. It would also be

relevant to state that even now these conditions are being insisted and the impugned order clearly says that in case the respondent No. 4 does not comply with those above instructions regarding deposit of the requisite amount and the documents, the offer will be treated as cancelled and the earnest money deposited by the respondent No. 4 will be forfeited. Only a provisional acceptance has been communicated through the impugned order to respondent No. 4.

5. In *India Telecomp Limited v. Union of India*, AIR 1994 NOC 3 (Delhi) page 4 a Division Bench of the Delhi High Court while considering a similar situation came to the conclusion that the compliance statement along with the tender is akin to a verification in pleadings and if there is a defect in compliance statement and the Department notices it will before selection was made it could ask tenderer to rectify the error and could not reject the tender altogether. The tenderer filing correct compliance statements subsequently, Department should have taken its notice. The rejection of the tenderers for defective compliance would be an arbitrary action. In the present case also the respondent No. 4's highest bid offered for the contract was accepted but certain documents had not been filed by him which he has been asked to file later on and the tender has been provisionally accepted.

6. Learned counsel for the petitioner has placed reliance on several decisions in support of his argument regarding violation of Arts. 14, 16 and 21 of the Constitution and regarding discrimination which may now be considered.

7. In *Maneka Gandhi v. Union of India* AIR 1978 SC 597, Art. 14 of the [Constitution of India](#) was considered by the Apex Court and it was held that:

'From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is violative of Art. 14.'

It was further held that:

'the principles of reasonableness, which legally as well Philosophically, is an essential element of equality or non-arbitrariness pervades Art. 14 like a brooding omnipresence and the procedure contemplated by Art. 21 must answer the test of reasonableness in order to be in conformity with Art. 14.'

In the present case the petitioner does not say that the principles on the basis of which contract was - to be given were arbitrary. Rather, learned counsel for the petitioner argued that those principles should have been followed.

8. Reliance has also been placed on *Raniana Dayaram v. International Airport Authority of India* AIR 1979 SC 1628. In this decision it was held that (at page 1642):

'The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Art. 14 and it must characterise every State Action, whether it be under authority of law or in exercise of executive power without making of law. The state cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory.'

We have already found that the norms and standards fixed by the respondents No. 1 to 3 have been taken into consideration while provisionally accepting the tender of respondent No. 4. The decision taken by the respondents No. 1, 2 and 3 was according to those norms and for public interest.

9. In *Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly* AIR 1986 SC 1571 : (1986 Lab 1C 1312) the apex Court while discussing the power of Courts held that:

'Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the slough of nineteenth century theories? Should the strong be permitted to push the weak to the wall,

Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under Constitution for our country. Our Judges are bound by their oath to 'uphold the constitution and the laws'. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Art. 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art. 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power.'

10. We have already discussed that in the present case the fight is not in between unequals but between persons who match each other in submitting the tenders and in participating in the auction. There is no discrimination and, therefore, there is no question of violation of Art. 14 of the [Constitution of India](#). The decision is, therefore, of no help to the petitioner.

11. The learned counsel for the petitioner also placed reliance on Delhi Transport Corporation v. D.T. C. Mazdoor Congress AIR 1991 SC 101 : (1991 Lab 1C 91) and placed special stress on paragraph 276 of the decision of the apex Court, wherein it was held that (at page 204 of AIR):

'In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is.'

We respectively agree and have after discussion found that principles had been laid down by the respondents in awarding the contract in question and the same have been substantially followed.

12. In H.C. Puttaswamy v. The Hon'ble Chief Justice of Karnataka High Court, Bangalore AIR 1991 SC 295 : (1991 Lab 1C 235) appointments made by the Hon'ble Chief Justice of High Court under the Karnataka Civil Services Rules without consulting the public Service Commission, were held to be not appropriate, being in very serious violation of Statutory law and Constitutional protection of Equality of opportunity guaranteed to the candidates under Arts. 14 and 16(1) of the [Constitution of India](#).

We do not find any violation of these principles in the present petition.

13. In Munindra Nath Upadhyaya v. State of U.P. 1992 ALJ 11.12 : (AIR 1992 SC 566), writ of mandamus was issued by the High Court to the Commissioner to accept the bid of the petitioner being the highest and to award contract to the petitioner forthwith. The apex Court held that (at page 567 of AIR):

'The direction for the acceptance of the bid and award of the contract without the satisfaction of other requisite and relevant conditions may not be appropriate. Government should have the liberty to decide the matter in the light of all considerations relevant to the matter. The High Court is right in its direction to the Government to treat respondent No. 3 as the highest bidder. But in proceeding on that basis Government must be at liberty to deal with the matter in the light of other conditions applicable to the matter. Therefore, the form in which the direction is couched requires to be modified appropriately. While the authorities are directed to accept the third respondent as the highest bidder, it would be open to them to decide whether they would, in the circumstances, accept the highest bid as adequate and to ensure compliance with other applicable conditions.'

In the present case, the highest bid has been accepted after consideration of the other relevant conditions. This decision, therefore, does not support the petitioner, who is not the highest bidder.

14. It may be remarked that in Gur Charan v. State of Punjab AIR 1956 SC 460 : (1956 Cri LJ 827), the Supreme Court has decided that (at page 463 of AIR):

'Reference to a reported case is only by way of illustration and not by way of an appeal to precedents because on the facts no two cases can be similar. Each case has its own peculiar facts and it is, always necessary to apply the precedent on questions of facts.'

15. We have already considered the facts of this particular case and we find that neither there has been any violation of Arts. 14, 16 or 21 of the [Constitution of India](#) nor the action taken by the respondents. No. 1 to 3 is arbitrary and unreasonable.

16. For all these reasons, we do not find any force in this writ petition. It is dismissed. Costs easy.

17. Petition dismissed.

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