

S.U. Builders and Another Vs. Vice-chairman, Allahabad Development Authority and Others

S.U. Builders and Another Vs. Vice-chairman, Allahabad Development Authority and Others

SooperKanoon Citation : sooperkanoon.com/455856

Court : Allahabad

Decided On : Dec-14-1999

Reported in : 2000(1)AWC398

Judge : G.P. Mathur and ;Bhagwan Din, JJ.

Acts : [Constitution of India](#) - Articles 226 and 364;

Appeal No. : C.M.W.P. No. 25666 of 1999

Appellant : S.U. Builders and Another

Respondent : Vice-chairman, Allahabad Development Authority and Others

Advocate for Def. : A.K. Misra and ;Bhagwati Prasad, Advs.

Advocate for Pet/Ap. : C.B. Yadav, Adv.

Judgement :

Bhagwan Din, J.

1. The petitioners by means of this writ petition under Article 226 of the Constitution seek Indulgence of this court for issuing a writ In the nature of certiorari quashing the tender proceedings, which took place pursuant to the tender

notice dated 18.8.1998 published in local Newspaper 'Dainik Jagran'. Further seeking a writ of certiorari that the work order regarding High Tension, Low Tension line and Street Light of Trivenipuram Avas Yojana issued in favour of the respondent Nos. 5 and 6 may also be quashed. It is further prayed that the respondents may be commanded by a writ or order in the nature of mandamus to negotiate with the petitioners, who have offered over all lowest tender in pursuance of the tender notice dated 18.8.1998.

2. Allahabad Development Authority (hereinafter referred to as the Authority) floated the tender notice inviting the offers from the contractors who were registered with the Authority and were having certificate from the Director, Electrical Safety Directorate, State of U. P., Lucknow, as Class A approved contractors. Considering it a sensitive and specialised technical work, the Authority gave priority to those contractors who possess requisite know-how, technical competence and the equipments, capital, etc. to undertake such specialised work and therefore, required the tenderers to submit a technical offer and financial offer as well. Among the tenderers only 5 could fulfil the requirements, hence they were allowed to tender their offer. The tenders were opened on 28.9.1998. The Executive Engineer, considering the rates offered by respondent No. 5 for the H.T. & L.T. line work, being the lowest, started negotiation vide his letter dated 11.12.1998 suggesting the respondent No. 5 to reduce the rate offered by him. The respondent No. 5 vide his letter dated 18.12.1998 showed his willingness to reduce his rate by 0.15%. The Executive Engineer was not satisfied with such an offer in reduction of the rate, therefore, he wrote again a letter on 27.1.1999 to respondent No. 5 to further reduce his rate. On this the respondent No. 5 by his letter dated 28.1.1999 offered to reduce the rate to 12.49% above the scheduled rate. The petitioner on having information about the reduction of the rates by the respondent No. 5 wrote a letter dated 4.2.1999 contained in Annexure-6 to the counter-affidavit of Shailendra Singh offering to work at the rates submitted by respondent No. 5. So, the other tenderers also expressed their willingness to reduce the rates to the extent offered by the respondent No. 5. In pursuance to the offers made by the tenderers and also having regard to the fact that the work has to be completed within a period of 8 months, a Committee consisting of Executive Engineer, Superintending Engineer, Chief Accounts Officer and the Secretary of

the Authority was constituted. The Committee submitted its report dated 18.2.1998 recommending the distribution of work among all the tenderers. The Secretary of the Authority dissented with the recommendation. He refused to sign the report. Consequent upon this report was not taken into consideration by the higher authorities. However, the tender which was opened on 28.9.1998 was accepted on 4.6.1999 and by work order dated 5.6.1999 the respondent No. 5 was directed to carry out the work and submit the stamp papers for agreement. The respondent No. 5 executed agreement deed on 7.6.1999 and then completing the formalities the respondent No. 5 started work.

3. We heard Sri C.B. Yadav, learned counsel appearing for the petitioner and Sri A. K. Mishra learned counsel appearing for the respondent Nos. 1 to 4 and Sri Bhagwati Prasad, learned counsel appearing for the respondent No. 5.

4. The contention of the learned counsel appearing for the petitioner is that the tender notice was floated for the combined work of H.T. & L.T. line and the Street light, work. There has been no bifurcation of the work in two parts. Subsequently, with the object to defeat the interest of the petitioner the work has been bifurcated. Petitioner had offered lowest rate for the work of H.T. & L.T. line and Street Light to the tune of Rs. 1,59,16,451.78 while respondent No. 5 had offered second lowest rate to the tune of Rs. 1,59,16,461.03. Thus, the petitioner tendered the lowest rate for the execution of the work, that the negotiation ought to have been done between the lowest tenderer and the Authority, whereas, the negotiation has been made with the respondent No. 5, who is the second lowest tenderer, that the tender of respondent No. 5 has been illegally, arbitrarily and unreasonably accepted by the Tender Committee, without showing any cogent reason. It is further contended that the Authority has not framed any rule/policy regulating the contract.

5. On the other hand, the learned counsel appearing for the respondents urged that the work was divided into two parts. One relates to the laying of H.T. & L.T. line and other for Street Light and a schedule of the work was furnished in advance with the tender form. The petitioner and other tenderers thus were aware of the division of the works in two parts. So also all the tenderers, including the

petitioner and the respondent Nos. 5 & 6 have furnished rates for the execution of the work separately under two heads, i.e., H.T. & L.T. and Street Light. The petitioner himself offered to complete the work of H.T. & L.T. for Rs. 1,45,34,713.28, and to complete the work of street light for Rs. 13,81,738.50. The petitioner is, therefore, stopped from raising plea that the work has been bifurcated detrimental to his interest. Besides that all tenderers tendered the costs of works H.T. & L.T. line and street light separately.

6. It is further urged that the petitioner offered the cost of Rs. 1.45.34.713.28 for the work of H.T. & L.T. whereas, the respondent No. 5 offered Rs. 1,45,33,454.88. Thus, the rate of the respondent No. 5 was the lowest among the tenderers and the rate of the petitioner was next lowest rate. For the work of street light the petitioner tendered to execute the work for Rs. 13,81,738.50, whereas the respondent No. 6 offered to complete the work of Street Light for Rs. 13,79,203.20. Thus, the petitioner cannot claim to be lowest tenderer on both the items. The rate tendered by the petitioner was Rs. 1,59,16,451.78 whereas rates tendered by the respondent Nos. 5 and 6 for the completion of both the works comes to Rs. 1,59,12,658. On negotiation the respondent No. 5 had agreed to work at the rate of 12.49% above the scheduled rate. Thus, both the works are to be completed for Rs. 1,55,351.32. Thus, the petitioner cannot be said to be lowest tenderer. In regard to the third contention it is urged by the counsel for the respondent that it may be stated that the negotiation could only be entered into by the Authority with the lowest tenderer and not with any other tenderer. The Authority, therefore, has not acted unreasonably, arbitrarily or illegally.

7. We pursued the relevant papers on record. The respondents have filed the Tender Forms supplied to the petitioner and the respondent Nos. 5 and 6 and other two tenderers. The Tender Forms indicate that the work proposed to be completed by the contractors, was bifurcated in H.T. & L.T. line and Street Light. The scheduled rates have also been indicated therein. A comparative table of the financial rates offered by the technically qualified tenderers for the contract was prepared as below :

Sl. No.

Name of Contractor

H.T.&L.T.;

Street Light

Total

M/s. Shree Bhawani

15.49 %(above) Rs. 1.45,33 ,454.88

9.1%(above) Rs. 13.83,006.15

Rs. 1,59,16,461.03

2.

M/s.S.U. Builders

15.5.%(above! Rs. 1,45.34 .713.28

9.0%(above) Rs. 13.81.738.50

Rs. 1.59.16.451.78

3.

R/G.Traders

17.5%(above) Rs. 1,47.86 .396.68

(above)Rs. 13.79.203.20

Rs. 1.61.65.5

4.

M/s.RaleshElectricals

18%(above)Rs.1,48,49 .317.48

10% aboveRs. 13,94.415.00

Rs. 1,62,43.732.48

Sl. No.

Name of Contractor

H.T.&L.T.;

Street Light

Total

5.

M/s.VilaytiRam Mittal

20.7%(above) Rs. 1,51.89 .089.98

20.7%(above) Rs. 15.30.053.55

Rs. 1,67,19.143.33

In the above table the contractors have offered distinct rates for the two separate works. It is all indicative of the fact that the entire work was bifurcated in two parts. The contention of the petitioner's counsel is that the work was bifurcated later on with intent to give benefit to the respondent Nos. 5 and 6 and to defeat the interest of the petitioner, is not sustainable.

8. The rates offered by the petitioner and the respondent Nos. 5 and 6 are compiled in the above table, which demonstrates that the petitioner offered to complete the work of H.T. & L.T. line for Rs. 1,45,34,731.28, whereas the respondent No 5 offered to complete the same work for Rs. 1,45,33,454.88. Thus, the rate offered by the respondent No. 5 for completion of the work of H.T. & L.T. line was lowest among the offers made by the petitioner and the other contractors.

The table further demonstrates that the petitioner offered to complete the work of Street Light for Rs. 13,81,738.50. whereas the respondent No. 6 agreed to complete the same work for Rs. 13,79,203.20 The rate offered by respondent No. 6 is lowest among the offers made by the other contractors including the petitioner. The total amount for completion of the work offered by the respondent Nos. 5 and 6 was Rs. 1,59,12,658. Therefore, the Authority committed no irregularity or illegality in considering the rates offered by the respondent Nos. 5 and 6 which were the lowest. Apart that the respondent No. 5, on having negotiations with the Executive Engineer, agreed to complete work of H.T. & L.T. line at the rate of 12.49% above the scheduled rates. Thus, both the works are to be completed by the AW.C. 26respondent Nos. 5 and 6 for Rs. 1,55,35,132. The petitioner, therefore, cannot be said to be the lowest tenderer. As for contention of the petitioner's counsel that the petitioner also offered to complete the work at the rate, offered by the respondent Nos. 5 and 6. In para 18 of the writ petition, the petitioner himself admits that Article 364 of the Financial Hand Book Vol. VI, Chapter 12 provides that :

'Usually the lowest tender should be accepted, unless there be some objection to the capability of the contractor the security offered by him, or his execution of former work. At the same time, acceptance or rejection of tenders is left entirely to the discretion of the officer to whom the duty is entrusted, and no explanation can be demanded of the cause of rejection of his offer by any person making a tender. In cases where the lowest tender is not accepted, reasons should, however, be recorded confidentially.....'

In para 19 of the writ petition, the petitioner has admitted that negotiations take place with the lowest tenderer only. We are, therefore, of the view that the respondent No. 1 has rightly with all diligence executed is contractual power considering the rates offered by the respondent Nos. 5 and 6 as lowest and has reasonably without detriment to the interest of any body -has negotiated with the respondent No. 5 as far relates to the work of HT & LT line.

9. It may also be mentioned here that the Executive Engineer did not. negotiate with the petitioner perhaps for the reasons : firstly, that the tender submitted by the

petitioner was not lowest ; secondly, because, as stated, in the affidavit filed by Sri B. K. Singh on behalf of the respondent Nos. 1 to 4 that in the past under Agnipath Scheme the petitioner was awarded a contract work of L.T. line. He could complete a part thereof, even despite the expiry of the extended time allowed to him for the completion of the work. The petitioner has not controverted this fact in his rejoinder-affidavit.

10. In the case of G. B. Mahajan v. Jalgaon Municipal Council, AIR 1991 SC 1153, Hon'ble Supreme Court has observed that :

'While it is true that principles of Judicial review apply to the exercise by a Government body of its contractual powers, the inherent limitations on the scope of the inquiry are themselves a part of those principles. For instance, in a matter even as between the parties, there must be shown a public law element to the contractual decision before judicial review is invoked.'

11. In the present case, the material placed before the Court does not indicate that the authorities have accepted the tenders of respondent Nos. 5 and 6 for irrelevant consideration or on self-misdirection or violated the public law in the contractual decision. Hence the administrative exercise of power by the respondents does not fall within the purview of the judicial review.

12. In Raunaq International Ltd. v. I. V, R. Construction Ltd.. AIR 1999 SC 397, the Hon'ble Supreme Court held that:

'When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition. If for example, the dispute is purely between two tenderers, the Court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by Court Intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the Court would ultimately effect in public money by deciding the

dispute in favour of one tenderer or the other tenderer. Therefore, unless the Court is satisfied that there is a substantial amount of public interest or the transaction is entered into mala fide, the Court should not intervene under Article 226 in disputes between two rival tenderers.'

13. In the instant case, it is neither pleaded that in this case public interest is involved nor from the impending circumstances, it may be inferred that public interest is involved in awarding the contract in question. On the contrary, the Authority undertook the housing project known as Trivenipuram Housing Scheme, wherein approximately 1438 plots were carved out for construction of residential houses. A number of residential houses have already been constructed and residents have been constantly pressing their demands of electrification of the area at the earliest possible. So in the public interest and also undertaking given by the respondent No. 5 to complete the work at the earliest possible, the contract has been awarded to him. We do not find illegality or arbitrariness in the action of the Authority in exercising contractual power by awarding contract to respondent Nos. 5 and 6.

14. It is pertinent to mention here that Sri Om Chand in the supplementary counter-affidavit has stated that in pursuance of contract awarded on 5th June, 1999 the respondent No. 5 has already completed substantial work of the project and about half of the work on the (sic) completed. As against the total sanctioned amount for H.T. & L.T. Line, the Authority had already paid a sum of Rs. 36.75 lacs to the respondent No. 5. Therefore, any intervention by the Court, the proposed project, may be considerably delayed escalating cost and public interest would be marred.

15. In the Raunaq International Ltd. case (supra), the Hon'ble Supreme Court has further observed that:

'It is also necessary to remember that price may not always be the sole criterion for forwarding a contract. Often when an evaluation committee of experts is appointed to evaluate offers, the expert committee's special knowledge plays a decisive role in deciding which is the best offer. Price offered is only one of the criteria. The past record of the tenderers, the quality of the goods or services

which are offered, assessing such quality on the basis of the past performance of the tenderers, its market reputation and so on, all play an important role in deciding to whom the contract should be awarded. At times, a higher price for a much better quality of work, can be legitimately paid in order to secure proper performance of the contract and good quality of work which is as much in public interest as a low price. The Court should not substitute its own decision for the decision of an expert evaluation committee.'

16. The respondent Nos. 5 and 6 have been awarded the contract on the basis that the offered lowest rate for the work. The award of the contract is purely administrative matter. The scope of enquiry in Judicial review of an administrative action has been considered in Tata Cellular case. AIR 1996 SC 11 (paragraphs 85 and 112) and it has been observed that 'modern trend points to judicial restraint while reviewing administrative decisions relating to contractual power of Government.'

17. In view of above factual and legal position, we have no other option except to dismiss the petition.

18. The petition is, accordingly, dismissed. No order as to costs.