

Unibros Vs. All India Radio, Union of India, Dir. (Db), Ministry of Information and Broadcasting

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Court : Delhi

Decided On : Sep-18-1995

Reported in : 1995IVAD(Delhi)37; 1995(35)DRJ90

Judge : D.P. Wadhwa and; M.K. Sharma, JJ.

Appeal No. : Civil Writ Petition No. 2295 of 1995 and Civil Miscellaneous Appeal No. 3852 of 1995

Appellant : Unibros

Respondent : All India Radio, Union of India, Dir. (Db), Ministry of Information and Broadcasting

Advocate for Pet/Ap. : Mukul Rohatagi,; R.L. Pal,; Sandeep Sethi,;

Judgement :

D.P. Wadhwa, J.

(1) The petitioner, a partnership firm enlisted as Class I (Building) Contractors in various departments of the Central Government including Central Public Works Department, was banned from business dealings with the Central Government in the Ministry of Information and Broadcasting and its attached and subordinate

offices for a period of ten years with immediate effect. This was by order dated 15 June 1995. The reason for passing such an order was that the Government was of the view that the petitioner was guilty of malpractice, having deliberately and knowingly given false information and misled the department into pre-qualifying the petitioner thereby securing advantage to it. The petitioner has challenged this order and seeks a writ, order or direction for quashing the same.

(2) The charge on the face of it would appear to be rather serious but as we have examined the record and heard the matter we find no basis for such a charge.

(3) This is fourth petition in the series of writ petitions filed by the petitioner, the earlier writ petitions being - (1) Cwp No. 3426/94, (2) Cwp No. 4388/94, and (3) Cwp No. 1127/95. The petitioner has challenged the impugned order on various grounds. To understand the rival contentions we may briefly state the facts. On September 22, 1988 respondents invited applications by public notice for short-listing of contractors for construction of Doordarshan Bhavan, Phase-II at Mandi House, New Delhi, involving work of double basement and 12 stored structure on that. One of the conditions for pre-qualifying to tender was -

'ONLY contractors having specialised reputation for good quality, speedy execution, having specialised machinery and equipments, valid registration of Class-I in Cpwd, Mes, P&T; and State Pwd of the State in which the proposed work is situated. The firms/Contractors having latest valid income-tax clearance and having (a) executed satisfactorily at least one contract of building work of value not less than Rs.4 crores in last 3 years; (b) turnover of not less than Rs.9 crores in last 3 years as per Income-tax returns and (c) should have executed satisfactorily at least one multistoreyed building not less than six storeys with basement, need apply with following details/enclosures.'

(4) In order to meet the condition that the petitioner had 'executed satisfactorily at least one contract of building work of value not less than Rs.4 crores in last 3 years' the petitioner gave a certificate issued by Maruti Udyog Limited (MUL) which certificate is dated 20 May 1988 and, in relevant part, is as under :-

'THIS is to certify that M/s. Unibros Engineers & Contractors, New Delhi, has successfully carried out the following works within the last three years :-

S.No. Name of the work Cost of work (Rs.in lacs) 1. Construction of Computer Centre Canteen,, Spare parts store,, components store including loading /unloading platform at Maruti Udyog Ltd.,Gurgaon.

(5) The site with reference to which the Maruti Udyog Limited had granted the certificate was visited by the engineers and architect of the respondents who were members of the Pre-qualification Committee and had obviously given satisfactory report after verifying the work done by the petitioner at Maruti Udyog Ltd. The petitioner was informed by Office Memorandum dated 4 July 1989 that he was short-listed for the work in question along with nine other contractors. This Office Memorandum reads as under :-

'SUB: Short listing of contractors for the work of construction of Doordarshan Bhavan, Mandi House,Phase-II at New Delhi On the basis of the recommendation of the committee constituted for scrutinising of the applications and to ascertain the quality of works, speed of execution and other related data concerns the pre-qualification of contractors the Chief Engineer (C)-I Ccw Air has been pleased to shortlist the following 10 (ten) firms for the construction of Doordarshan Bhavan, Mandi House Phase-II New Delhi in exercise of the power delegated on him vide para 3 of section 18 of C.P.W.D. Manual (Vol.II):-

Sl.no. Name of the firm Address 6. Unibros 6/83, Padam Singh Road, W.E.A. Karol Bagh,, New Delhi.

THE short listing is subject to prior approval of the competent authority to be given for appointment of consultants for architectural, structural and electrical works. Chief Engineer (Civil) reserves the right of cancellation of pre qualification without notice and without assigning any reason and such action will not involve any liability towards the Government. The short listed firms shall be duly informed about the sale of tender documents for the above work as & when these are ready. This issues with the approval of CE(C).'

(6) After short-listing of the contractors had been done, bids were invited only for the construction of foundation and the double basement and we have been told that because of financial crunch construction of 12 storeys was deferred. The bid of the petitioner was found to be competitive and on 28 March 1990 he was awarded the contract of the estimated cost of about Rs.5.45 crores. The letter of award of contract we may reproduce as under :-

'SUB: Const.of Doordarshan Bhawan at Mandi House (PH.II), N.Delhi. SH: Sub Structure up to Plinth level I/C R.C.C. foundation and double basement. Dear Sir, Your item rate tender for the above mentioned work is hereby accepted for an on behalf of the President of India at your tendered amount of Rs.5,45,27,386.00 (Rupees Five Crores forty five lakhs twenty seven thousand three hundred eighty six only) which works out to 3.03% above the estimated cost of Rs.5,29,25,911.00 (Rupees five crores twenty nine lakhs twenty five thousand nine hundred eleven only). You may arrange to execute the work at once under supervision of our Assistant Engineer (C), Sub Div. Iv, Ccw, Air, Mandi House, New Delhi, and visit this office within seven days for completion of the formal agreement. The time of completion of the work is 12 months and the same shall be reckoned from the 15th day after the date of written order to commence the work. Your letter No. UB/ONGC/158/8990 dt. 11/10/89 & also negotiation letter No.Nil dt. 19/3/90 will form part of agreement. Yours faithfully, sd/- (B.M. Mittal) Executive ENGINEER(C)'

(7) That work has since been completed. On 27 June 1994 the respondents again issued public notice for inviting applications from registered/specialized contractors for pre-qualification of their names for various works and one of them was construction of super-structure above the basement including internal and external water supply and plumbing work. This construction of super-structure was on the basement contract of which had been awarded to the petitioner. This public notice contained various conditions for pre-qualification which we will refer to at a latter stage. For the purpose of pre-qualification the petitioner submitted a certificate dated 2 June 1994 from the Executive Engineer who was in charge of the work of the double basement which certificate is as under :-

'GOVERNMENT OF India Office Of The Executive Engineer (C) Civil Construction Wing, All India Radio, Divn. No.1, 11th Floor, Cgo Complex, Lodi Road, New Delhi - 110 003. Dated: June 2, 1994 To Whomsoever It May Concern This is to certify that M/s. Unibros, Engineers & Contractors, 6/83, Padam Singh Road, W.E.A., Karol Bagh, New Delhi-110 005, are executing the work of 'Construction of Door Darshan Bhawan, at Mandi House, Phase- II, New Delhi, (Sh: Sub-structure up to plinth level including R.C.C. foundation and Double Basement)'. Though the value of the contract amount was Rs.5.45 crores, but M/s. Unibros has done the work for an amount of Rs.5.54 crores so far. It is further certified that they are fully equipped to carry our works of any magnitude. The company is resourceful and technically very sound and have strict quality control. This certificate is being issued as requested by the firm in connection with pre-qualification in some other Department. We have no hesitation in recommending them for pre-qualification in any other Department. sd/- (D.L. TREHAN) Executive Engineer (C)'

(8) The petitioner on 12 August 1994 filed a writ petition (CWP No. 3426/94) in this Court challenging that the conditions imposed by press notice dated 27 June 1994 for the purpose of pre-qualification were bad in law. This petition was allowed by judgment dated 7 February 1995 and it was held that there was no intelligible or reasonable basis for the respondents laying down the particular conditions/criteria for the purpose of pre-qualification. On 10 October 1994 the petitioner was visited with an order from the Chief Engineer (Civil) suspending the business with the petitioner from tendering in Civil Construction Wing of All India Radio. This order we may reproduce as under :-

'NO.18/10/89-CW-II/815 New Delhi, dt:10.10.94 Order Subject :- Suspension of Business with M/s. Unibros from tendering in Civil Construction Wing of All India Radio. Whereas as per press notice dated 22.9.88 one of the eligibility criterion for pre qualification for the work of construction of Doordarshan Bhawan, Phase-II at Mandi House, New Delhi, was that the contractor should have executed satisfactorily atleast one contract of building work of value not less than Rs.4.00 crores in the last 3 years. And whereas M/s. Unibros, 6/83, Padam Singh Road, W.E.A., Karol Bagh, N. Delhi submitted information with his application for pre qualification for the above said work regarding execution of work costing Rs.4.18

cores in M/s. Maruti Udyog Ltd., Gurgaon. And whereas on verification, it was found that above said work costing Rs.4.18 crores actually consisted of atleast 5 different and distinct contracts/Works and not a single contract Rs.4.00 crores as required for the pre qualification and even the total cost of the works carried out by M/s. Unibros actually worked out to Rs.3.03 crores and that the biggest work completed by M/s. Unibros in the last 3 years under the single contract came to Rs.1.21 crores as against Rs.4.18 crores. The said M/s. Unibros thus deliberately furnished false certificate and a statement to get them pre qualified as they were otherwise not eligible for pre qualification. Now, therefore, I, Mahesh Chandra, Chief Engineer (Civil), Cc Air, N.Delhi, suspend business with M/s. Unibros for tendering for the works under Civil Construction Wing, All India Radio from the date of issue of this Memorandum. sd/- (MAHESH CHANDRA) Chief Engineer (CIVIL) '

To this order one more para was added by order dated 8 December 1994 which is as under :-

'The following para is added as last para (Para no.5) in this office order no. 18/10/89-CW-II dt. 10.10.94, 1994 suspending business with M/s. Unibros for tendering for the works under Civil Construction Wing, All India Radio :- 'This order will remain in force for a period of two years in the first instance from the date of issue of order.' sd/- (MAHESH CHANDRA) Chief Engineer (C)'

(9) The petitioner challenged this order of suspension in Cwp No. 4388/94. By an interim order in that petition it was directed that the petitioner might by given tender documents regarding 'Construction of Preview Theatre 'B' Wing at Sirifort Auditorium, New Delhi' as per advertisement appearing in the newspaper 'The Indian Express' dated 7th October, 1994. This petition was also allowed by judgment dated 26 May 1995. During course of hearing of that petition we recorded the submission of the Additional Solicitor General that the respondents were prepared to issue a show cause notice to the petitioner for black-listing it and to pass orders after granting opportunity to the petitioner. A time schedule of about 15 days was fixed. It had been admitted by the respondents that there had been a long delay in processing the matter after the order was passed on 10 October

1994 suspending the business of the petitioner with the respondents and when the matter related to the year 1988.

(10) The respondents have contended that the certificate given by the Mul to the petitioner and submitted by him for pre-qualification in terms of public notice dated 22 September 1988 was a false document inasmuch as petitioner had not done any construction work of the value of not less than Rs.4 crores, and that the certificate filed by the petitioner only showed that he did various works of the total value of Rs.418 lakhs. On the basis of the order suspending business dealing with the petitioner he was denied the award of tender for the work of construction of 11 storeys as per public notice dated 27 June 1994 and later the work was ordered to be awarded to M/s.Mohan Lal Harbans Lal Bhayana. This led to filing of a third writ petition (CWP No. 1127/95) wherein the petitioner prayed for a writ, order or direction seeking quashing the decision of the respondents for awarding the contract to the fourth respondent therein, namely, M/s. Mohan Lal Harbans Lal Bhayana. In that petition on 8 May 1995 we passed the following order :-

'FURTHER to our judgment dated 7.2.1995 it appears that the tender of the petitioner along with others including that of the 4th respondent was considered and decision taken to award the contract to the petitioner. That was in the meeting of the Works Advisory Board dated 24.2.1995. Thereafter another meeting of this Board was held on 28.3.1995 on a communication received from the Ministry of Information and Broadcasting. That communication is to the following effect :- 'Government is not accepting the Works Advisory Board's decision to award the work relating to construction of Mandi House Phase II (Super structure) to the firm M/s. Uni Brothers. The Works Advisory Board may be requested to consider the tenders of other parties, overlooking the tender filed by M/s. Uni Brothers.'

WE have also been shown the opinion given by the Ministry of Law on a reference made to it by the Ministry of Information and Broadcasting - 'Whether contract should be awarded to the petitioner on the ground that there was some false verification furnished by the petitioner firm on a vital matter and the proceedings for blacklisting the firm had been on an advanced stage'. On that very basis it would appear that the Ministry of Law advised that the tender of the petitioner

could be overlooked. The question of black listing was very much agitated before us and we have said some thing about that in our judgment. We had also directed by that judgment to consider the tender on merits. That appears not to have been done. On the request of counsel for the respondent we will list this matter on 19.5.1995. Meanwhile we direct that the status quo as of today shall be maintained.'

(11) That petition was dismissed by order dated 11 July 1995 inasmuch as there was an order suspending business dealings with the petitioner and the respondents undertook to hold a proper inquiry after giving opportunity to the petitioner to meet the charge. We may note that a Special Leave Petition filed by the petitioner in the Supreme Court against that order was also dismissed. In the meanwhile, the impugned order banning the business dealings with the petitioner for ten years had been made which is now impugned before us.

(12) In the order dated 10 October 1994 suspending the business with the petitioner from tendering in the Civil Construction Wing of All India Radio it was stated that the petitioner had deliberately furnished false certificate to get it pre-qualified as it was otherwise not eligible for pre-qualification. In the show cause notice dated 24 May 1995 it has also been mentioned that 'by giving this false certificate M/s. Uni Bros. deliberately and knowingly gave false information and misled the department into pre-qualifying them.' On this very basis petitioner was called upon to show cause as to why it should not be blacklisted 'and Government business with them be banned.' It would appear to us that the whole premise on the basis of which the suspension order and the show cause notice were issued was wrong. It could not be said that the certificate which the petitioner had submitted was a false document. It had been given by the Mul and through subsequent letter dated 5 June 1995 Mul confirmed that not only that certificate dated 20 May 1988 had been issued by it but the fact that the work mentioned in the certificate was of one contract. It was stated that no separate tenders for the works mentioned in the certificate had been invited and 'these works were executed on the same rates, terms & conditions of the past contract and no separate earnest money was required to be deposited for these works.' The public notice dated 22 September 1988 did talk of only 'one contract of building work of value not less than Rs.4 crores in last 3 years' and not execution of one building of

that value. A contract of building work of certain value is certainly not the same thing as the building of that value. This, it would so appear, was understanding of the terms of the tender notice by the respondents themselves when their officers had visited the factory of Maruti Udyog Limited to see the work executed by the petitioner and on that basis the work of double basement was awarded to the petitioner which, as noted above, has since been executed. Meanwhile, petitioner has executed other works of various Government departments as a number of certificates of satisfactory execution of those works have been brought on record. It has not been made clear to us as to why this controversy has now been raked up after a lapse of six years. Petitioner says this stand of the department was taken up only after notice was issued by this Court in its earlier writ petition (CWP No. 3426/94) in which we had issued notice for 2 September 1994. The suspension order is dated 10 October 1994.

(13) After issue of the suspension order dated 10 October 1994 no further steps were taken by the respondents and the order dated 8 December 1994 fixing the period of two years would show that the petitioner had been debarred for tendering for the works under Civil Construction Wing of All India Radio for a period of two years from 10 October 1994 and that was the final order. Otherwise, we are unable to find any reason as to why period of two years was fixed. When this order dated 10 October 1994 was subject-matter of challenge in Cwp No. 4388/94 filed on 20 October 1994 and it was submitted that the petitioner had completed the contract of double basement successfully and in that respect even certificate had been issued by the officers of the department. It was admitted therein by the learned Additional Solicitor General that no show cause notice had been issued for blacklisting the petitioner till the date of the judgment which is 26 May 1995. It was also admitted that there had been a long delay in processing the matter and accordingly no show cause notice could have been issued for the purpose of initiating the action for blacklisting the petitioner. We have not been told what further investigation/inquiry had been made in the matter after the issue of the order of suspension dated 10 October 1994. Since we were of the view that the order dated 10 October 1994 could not stand it was submitted that the respondents would be issuing a show cause notice and a schedule was set to complete the inquiry and to pass the order. The petition, Cwp No. 4388/94, was

accordingly disposed of with these observations.

(14) When we pointed out to the respondents that the works in respect of which the certificate had been issued by the Mul had been inspected and verified by their officers and those very officers constituted the Pre-qualification Committee and found that the petitioner did qualify to tender, we were told that some action was being contemplated against those officers. No such thing has been mentioned in the return by the respondents and we must reject any oblique hint that there might have been some collusion between the petitioner and the officers concerned.

(15) In the show cause notice reference was made to 'further evidence'. When the petitioner asked for the particulars of any further evidence none were supplied. Mr. Joseph, learned Senior Advocate, submitted that in the impugned order no reference had been made to any such 'further evidence'. He, therefore, sought to justify the impugned order as, according to him, no such further evidence was relied upon. We are unable to agree with such a submission. If there was any such evidence existing there could be no impediment in supplying the same to the petitioner and we think petitioner is right that such evidence could certainly have influenced the mind of the authorities. There has been certainly a failure of principles of natural justice to the prejudice of the petitioner. That the petitioner was able to get the tender on the basis of the certificate (given by MUL) and executed the contract well, may perhaps not be of much relevance if it is found that the certificate was a false document. But it was not so. The petitioner did not make any attempt to mislead the department, and if the department has been misled, as it is contended, no blame can be foisted on the petitioner. On the basis of record it could not be said that the petitioner misled the department or that he miss-procured the contract on the basis of any alleged false certificate. The petitioner could not be debarred on such superficial grounds. Mr. Rohtagi, learned counsel for the petitioner, submitted that the impugned action was actuated by malafides. He said delay in initiating the action had not been explained and that when the issue was at most of the interpretation of the certificate and which certificate the respondents themselves had interpreted in favor of the petitioner while awarding the contract of double basement to it, and now not only that a different interpretation was being put by them but the respondents had gone

further to allege that it was a false certificate. Mr. Rohtagi said tht malafides were writ large on the face of it. He said that the respondents wanted the petitioner to be removed from competition some how and that though the petitioner was the lowest tenderer for execution of the work for construction of 11 storeys on the double basement which the petitioner had constructed, yet the contract was awarded to the other party who had given higher quotation. It is certainly difficult to understand the attitude of the respondents as to what they are going to achieve. In Government dealings one cannot be unmindful of the fact that if a contractor is competent and is able to execute the job at competitive rates he should not unnecessarily be debarred on superficial grounds causing loss to the revenue. Mr. Rohtagi said that there had also been non-application of mind in passing the impugned order and that the action was wholly arbitrary and could not stand the test of reasonableness and rationality. Mr. Joseph, learned counsel for the respondents, controverted the submissions made by Mr. Rohtagi and said that the action has been taken following the procedure established by law. He said this court could not sit as an appellate body against the impugned order and it was not the case of the petitioner that the impugned order was not passed by competent authority. Mr. Joseph said that this Court will interfere only if the impugned order was perverse, irrelevant or arbitrary and would not go into the question if the condition imposed for pre-qualification was reasonable or not. We do not think that Mr. Joseph is quite right in his submission. We are certainly not going into the question if the condition for pre-qualification purposes is reasonable or not and this argument has nowhere been advanced by the petitioner. Also we are certainly not sitting in appeal and we are quite conscious of our jurisdiction under Article 226 of the Constitution and the scope of judicial review. Mr. Joseph also said that this Court could not go into the quantum of penalty awarded to the petitioner. We, however, think that if the penalty is excessive and has no relevance to the alleged contravention, the order would certainly be hit by arbitrariness. We have been referred to various judgments of the Supreme Court and one of this Court laying down parameters under which we have to exercise our jurisdiction, and these judgments are - Referred to by Mr. Mukul Rohtagi:

1.M/s. Erusian Equipment and Chemicals Ltd. v. State of West Bengal and another, : [1975]2SCR674 . 2. Tata Cellular v. Union of India, : AIR 1996 SC11 . 3.

Express Newspapers Pvt. Ltd and others v. Union of India and others, : AIR 1986 SC872 . 4. State of U.P. and another v. Raja Ram Jaiswal and another, : [1985]3SCR1021 . 5. M/s. Aurochem (India) Private Ltd v. The Union of India and others, 1994 (2) Del Law 317. Referred to by Mr.E.X.Joseph: 1. Tata Cellular v. Union of India, : AIR 1996 SC11 . 2. G.B. Mahajan and others v. Jalgaon Municipal Council and others, : AIR 1991 SC1153 .

(16) We think the submissions made by Mr. Rohtagi are correct. Principles of law are now quite well settled as to in what circumstances the court will exercise its jurisdiction under Article 226 of the Constitution in cases like the present one. Applying those principles we find the impugned order to be bad in law. As stated above, the whole premise that the certificate was false is incorrect. It is really a paradoxical situation for the respondents. Their charge is that by furnishing a false certificate the petitioner got itself an advantage. The advantage which the petitioner got was that it got itself pre-qualified for the job. But then that very job has been executed by the petitioner satisfactorily and at the competitive bid which was lower than the bids of other tenderers. If on account of the alleged false certificate any advantage has been gained that advantage has been gained by the respondents. It is, therefore, difficult to understand what the respondents are complaining about. The very foundation on the basis of which the proceedings were held and the impugned order passed did not exist. Since the foundation of the charge itself did not exist the whole edifice built on that falls. Rules of natural justice have also been violated when the petitioner has not been apprised of the further evidence with the respondents though it is said that the same was not used against the petitioner and this was said on the ground that no aspect of further evidence finds mentioned in the impugned order. However, there is no denial to the averment made in the petition that the petitioner has been deprived of the right to know this further evidence. There certainly does exist a bias in the mind of the respondents to debar the petitioner and that would appear to be so because of earlier issuing an order of suspension of work; the delay in taking action and the amount of punishment awarded to the petitioner and that particularly on the background that advantage, if any, on account of the alleged false certificate has been obtained by the respondents themselves. There cannot possibly be always a direct evidence of bias and it can be inferred from the circumstances. The

impugned order in any case is arbitrary, unreasonable and irrational and has to be quashed. We order accordingly.

(17) We may record the submission of Mr. Rohtagi, who said so on instructions, that whatever the result of this petition the petitioner would not claim any right under the contract for construction of superstructure above basement as per public notice dated 27 June 1994. We also direct that the petitioner shall not claim any such right in that contract as that is already in the process of execution by a third party even though at a higher rate than quoted by the petitioner, causing unnecessary loss to the revenue.

(18) This petition is, therefore, allowed with costs. Counsel fee Rs.5,000.00 . Rule is made absolute.

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