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Court : Kerala

Decided On : Jun-09-1972

Reported in : AIR1974Ker23

Judge : V. Balakrishna Eradi, J.

Acts : [Constitution of India](#) - Articles 14, 19(1) and 226

Appeal No. : Original Petn. No. 6242 of 1971

Appellant : General Electrical and Engineering Co., Trichur

Respondent : The Chief Engineer (Projects) and ors.

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : V.M. Prabhakaran Nair and; K.P. Radhakrishna Menon, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V. Balakrishna Eradi, J.

1. This writ petition has been brought by a firm of partners engaged in the business of manufacture and sale of structural fabrications, pump sets etc. having its registered office and place of manufacture in Trichur town. The Chief Engineer (Projects), Government of Kerala--1 respondent-- issued a notification dated 10-11-1970 inviting tenders for the supply and erection of sixteen numbers of radial gates for the sluices of Pazhassi Barrage at Kulur. In response to the said notification the petitioner firm submitted its tender on 8-3-1971 offering to supply and erect the gates in question for a total sum of Rs. 22,35,200/-. A copy of the tender submitted by the petitioner has been produced before this court and marked as Ext. P1. Altogether seven tenders were received by the 1st respondent and the petitioner's tender was found to be the lowest. Considerable time was taken up for reaching a final decision on the question of awarding the contract and ultimately the petitioner was informed by the Chief Engineer as per his communication Ext. P2 dated 1-12-1971 that the work has been awarded to the 3rd respondent as per a Government Order dated 23-11-1971. Ext. P3 is a copy of the said Government order. The petitioner has come UP with this writ petition seeking to quash Exts. P2 and P3 and praying for the issuance of a writ of mandamus compelling the Chief Engineer (1st respondent) and the State of Kerala (2nd respondent) to accept the petitioner's tender and to award the contract to him. It is contended on behalf of the petitioner that as the person who had submitted the lowest tender the petitioner was entitled to expect that the contract in question would be awarded to it and that in choosing the 3rd respondent an arbitrary discrimination has been practised against the petitioner. According to the petitioner, the 1st respondent (Chief Engineer) had inspected the petitioner's factory and had been fully satisfied about the technical competency of the petitioner firm to execute the work in question and had, therefore, recommended to the Government that the contract may be awarded to the petitioner. The petitioner has alleged that the 3rd respondent -- Kerala Electrical & Allied Engineering Company Limited -- has been given an undue preferential treatment purely on account of the circumstance that it is a Government owned company and its Chairman at the relevant time happened to be occupying also the position of Chairman of the Stores Purchase Committee. Reliance was placed by the petitioner on some of the provisions contained in the Store Purchase Manual

compiled by the Government of Kerala in support of his contention that in the matter of awarding contracts by invitation of tenders the principle to be ordinarily followed is that the contract should be settled in favour of the lowest tenderer. It is urged on behalf of the petitioner that the provisions contained in the aforesaid manual have the force of rules and that the award of a contract in violation of those rules is liable to be called in question before this court under Article 226 of the Constitution. On the said basis the petitioner contends that the Government have acted illegally in passing the order Ext. P3 sanctioning the award of the contract in question in favour of the 3rd respondent. The petitioner has also alleged that the impugned action has been taken without due regard to the financial interests of the State Government because an additional expenditure of more than Rs. 3 lakhs has been caused to the Government by reason of the contract being awarded to the 3rd respondent in terms mentioned in Ext P3. This action, the petitioner contends, cannot be regarded as having been taken with due care and caution and that it is in that sense vitiated by want of good faith.

2. A detailed counter-affidavit has been filed on behalf of the State Government by the Secretary to Government, Water and Power Department. It is stated therein that the Government had bestowed anxious consideration on all relevant aspects before the final decision was taken by the Cabinet of Ministers to award the contract to the 3rd respondent company. In the first instance the departmental purchase committee had at its meeting held on 21-7-1971 discussed the subject in great detail and after examining all the various aspects the committee was of the opinion that the petitioner had neither the special equipment nor the experience to execute the highly specialised work of making and supplying the radial gates. The Additional Director of Industries (Technical) who had been consulted by the committee had also expressed the opinion that with the machines installed in the petitioner's factory it is not possible to fabricate the heavy gates and hoists conforming to the Indian Standard Institute specification. He was further of the opinion that as a small scale unit the petitioner's factory was capable of manufacturing only small gates and other fabrications. The committee therefore came to the conclusion that the Government would be taking a risk if the major work involving a highly specialised job is to be entrusted to the petitioner firm since it lacked experience and also necessary tools and equipments. The committee

after dealing with the merits of the other tenderers recommended the entrustment of the work to the 3rd respondent company since in its opinion the 3rd respondent had all the necessary machinery and equipments for the manufacture of radial gates and the hoisting mechanism and it had already supplied several shutters and gates to the irrigation branch of the Public Works Department. The matter was thereafter placed before the concerned Ministers incharge of the portfolios of 'Works, Water and Power' and Industries, and negotiations were held with the representatives of the 3rd respondent company in the presence of the two Ministers with a view to reduce the rate quoted by the 3rd respondent. It was then agreed by the 3rd respondent to take up the work at a total cost of Rs. 26 lakhs without any escalation either in the costs of materials or wages. Thereafter, the subject of finalisation of the award of the contract was placed before the Cabinet of Ministers and the final decision was taken by the Cabinet to settle the contract in favour of the 3rd respondent. On the basis of these averments it has been submitted in the counter-affidavit that the impugned action has been taken by the State Government in the best interests of ensuring the prompt and proper execution of the work by a contractor possessing the requisite technical skill and wherewithal, who can be depended upon to carry out the work satisfactorily.

3. As pointed out by the Supreme Court in *Achuthan v. State of Kerala*, AIR 1959 SC 490, it is perfectly open to the Government even as it is to a private party to choose a person to their liking to fulfil contract which they wish to be performed. When one person is chosen rather than another the aggrieved party cannot claim the protection of Article 14 because the choice of the person to fulfil the particular contract must be left to the Government. The petitioner has no right to insist that the Government should accept his offer merely on the ground that it happens to be the lowest. A citizen has no fundamental right to trade with the Government nor can there be any infringement of either Article 19(1)(g) or Article 14 of the Constitution if the Government refuses to accept the lowest tender and decides to enter into the contract with the person who in its opinion is the most competent and dependable amongst the tenderers. *State of Orissa v. Harinarayan Jaiswal*, (1972) 1 SCWR 832 = (AIR 1972 SC 1816).

4. Though the counsel appearing for the petitioner sought to rely on some of the provisions contained in the Store Purchase Manual in support of his contention that the award of the contract to the 3rd respondent is in violation of some of those provisions, the said argument ignores the fact that the Store Purchase Manual is a mere compilation of executive instructions which are intended only for the guidance of the subordinate officers of the State Government and are not statutory rules having the force of law. Even if there has been any violation of any of the provisions in the said manual that will not give rise to a cause of action entitling the petitioner to approach this court for relief under Article 226 of the Constitution.

5. In the light of the averments contained in the counter-affidavit, the truth of which is fully borne out by the contents of the file produced before me, I have no hesitation to hold that the petitioner's allegation that the contract has been awarded to the 3rd respondent only with the object of favouring a Government owned company is devoid of any factual foundation. The petitioner's suitability for the award of contract has been examined in detail and the grounds on which the petitioner has been eliminated are fully relevant in the matter of taking a decision concerning the award of a major specialised work.

6. The original petition is, therefore, devoid of merits and is dismissed. The parties will bear their respective costs.