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Court : Kerala

Decided On : Jan-08-2003

Reported in : II(2003)BC606; 2003(1)KLT1006

Judge : Cyriac Joseph and; A.K. Basheer, JJ.

Acts : [Contract Act, 1872](#); [Constitution of India](#) - Article 226

Appeal No. : W.A. No. 3066 of 2002

Appellant : Raveendran

Respondent : State of Kerala

Advocate for Def. : P.V. Lonachan, Government Pleader

Advocate for Pet/Ap. : Babu Joseph Kuruvathazha and; Reena Abraham, Advs.

Disposition : Appeal dismissed

Judgement :

Cyriac Joseph, J.

1. The appellant is the petitioner in O.P. No. 36894 of 2002 which was dismissed by the learned single Judge.

2. In the Original Petition the appellant prayed for a direction to the second respondent-Project Officer N.H. (ADB) Circle, Edapilly, Ernakulam not to award the third work notified in Ext. P2 tender notice to the third respondent. C.A. Shaji, by entertaining the tender received in violation of the conditions stipulated in Ext. P2, There was also a prayer for a direction to the second respondent to award the said work to the appellant since he was the lower bidder among all the qualified tenders received as per Ext. P2. There was a further prayer for a direction to respondent No. 2 to consider and dispose of Ext. P3 representation. The learned Single Judge found that there was no merit in the contentions raised by the appellant and accordingly the Original Petition was dismissed.

3. According to the appellant it was specified in Ext.P2 that tenders would be received through registered post only. The third respondent submitted his tender by courier. It is contended that since the third respondent did not submit his tender through registered post his tender was liable to be rejected. The learned Single Judge held that delivery of instruments by courier is part of the daily life and if the contention of the petitioner-appellant is accepted and the tender of the third respondent is directed to be rejected, it may amount to absolute unreasonableness. The learned single Judge has also observed that the petitioner-appellant has not established as to what is the nature of prejudice that he has suffered therefrom. It was further observed that the advertisement for delivery by registered post need not be understood as laying down any exclusive method of submission of documents. The learned single Judge has also pointed out that there was no allegation that the tender submitted by the third respondent had been received by the officer concerned after the stipulated time. The learned Judge took the view that the tender submitted by the third respondent need not be rejected only for the reason that it had been sent through courier service.

4. We do not find any illegality in the view taken by the learned single Judge that the tender submitted by the third respondent need not be rejected only for the reason that it was not sent by registered post. It may be pertinent to note that as per the P.W.D. Code and Manual contained in Ext.PI postal tender system will be adopted for all works exceeding the Technical Sanction Powers of the Executive Engineer. There is no stipulation that tenders should be sent by registered post. It

is only in Ext. P2 tender notice that it was stipulated that tenders would be received through registered post only. It is true that the terms and conditions stipulated in the tender notice should be adhered to in considering the tenders submitted by the bidders. But the question arising in this case is whether the submission of tender by courier is qualitatively different from submission of tender by registered post for the purpose of achieving the object sought to be achieved by incorporating the above mentioned condition in Ext. P2 tender notice. Learned counsel for the appellant could not point out any such qualitative difference in the submission of tender by courier. The stipulation to send the tender by registered post is for avoiding or preventing any manipulation with regard to the date, time and manner of receipt of tender. The said object can be achieved by receiving tender by courier also. Therefore we are not prepared to hold that by accepting a tender submitted through courier, the second respondent has deviated from the conditions mentioned in Ext. P2, so as to warrant interference by this Court under Article 226 of the Constitution. As rightly pointed out by the learned single Judge, there is no allegation that the tender submitted by the third respondent was received after the time fixed for acceptance of tender. We are not able to see any possibility of manipulation in the method adopted by the second respondent. We are also not able to see any prejudice caused to the appellant in the matter. Hence the appeal is liable to be dismissed.

5. Learned counsel for the appellant brought to our notice the judgment of the Supreme Court in *West Bengal State Electricity Board v. Patel Engineering Co. Ltd. and Ors.*, (2001) 2 SCC 451) and contended that relaxation by State or its agencies of a rule or condition in favour of a particular bidder is not permissible, unless expressly provided for in the rules. According to the learned Counsel, by accepting the tender of the third respondent, the second respondent granted relaxation to the third respondent from the condition that tenders would be received only by registered post. But, for the reasons stated earlier, we are of the view that the accepting the tender submitted through courier, there has not been any serious deviation from or relaxation of the condition that tenders would be received only by registered post. In the case before the Supreme Court, the bidder was permitted to correct the errors in the tender, the magnitude of which would have given a different complexion to the bid. There is no such correction of errors

in this case. In our view the above mentioned judgment of the Supreme Court has no application to the facts of this case.

6. In the above circumstances the Writ Appeal is devoid of merit and it is accordingly dismissed.

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