

Gopal Kumar Das Vs. India Tourism Development Corporation Ltd.

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Court : Kolkata

Decided On : Sep-05-1991

Reported in : (1992)1CALLT387(HC)

Judge : Susanta Chatterji, J.

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

Appeal No. : Matter No. 750 of 1991

Appellant : Gopal Kumar Das

Respondent : India Tourism Development Corporation Ltd.

Judgement :

Susanta Chatterji, J.

1. The present writ petition has been filed for a writ of mandamus to command the respondents to rescind and/or cancel any revised offer and/or the acceptance thereof under the tender for sale of Tata Deluxe Coach, particulars whereof are detailed in annexure 'A' and other consequential reliefs. It is stated in detail that on or about 15/16th March, 1991, the respondents namely India Tourism Development Corporation Ltd. and their Officers published an advertisement in the Ananda Bazar Patrika for sale of divers motor vehicles. The said advertisement inviting tenders was in respect of two separate vehicles, an Ambassador car 1982

model bearing Registration No. BPA 1302 and a Tata Deluxe Coach (Bus) 1984 model bearing No. WHY 9903. The petitioner had submitted his offer for purchase of the said Tata Deluxe Coach together with the earnest money of Rs. 5,000/-. On 21st March, 1991 at the appointed time the tenders of various offerers including the petitioner were opened and there were about twelve offerers. On opening various tenders, it was found that the petitioner's offer of Rs. 1,72, 501/- was the highest. On the very next day i.e. on 22nd March, 1991, the petitioner was surprised to receive a communication from the respondent No. 3 the Manager, Ashok Travels and Tours of India Tourism Development Corporation since his offer was below the expectation the competent authority has given another chance to the petitioner to file his further offer in a sealed cover to be submitted by 23rd March, 1991. It is placed on record that on enquiry the petitioner came to learn that only four of the highest bidders amongst twelve original bidders including the petitioner have been requested to submit their revised offers and/or conduct private negotiation in respect of their proposed sale of the said Tata Deluxe Coach. The petitioner, however, submitted his offer of Rs. 1,72,501/- being considered to be reasonable and fair. Stating all these facts in details the petitioner has come to this Court seeking leaves that no steps should be taken by the respondents to ask for further offer and /or to act in terms of the earlier tender call. It is contended that the respondents without fixing any reserve price acted in an unethical and arbitrary and malafide manner in pretending that the highest offer received in respect of the said Tata Deluxe Coach is below the expectation. The respondents are not free to revise and to ask for further offer to limited persons and they were not free to open negotiation.

2. The writ petition is contested by the respondents. In the Affidavit-in-opposition the respondent No. 3 has alleged, inter alia, that as per orders in terms of the directives of the Vice-President of Ashok Travels and Tours dated 12th March, 1991 in the matter of the sale of vehicle No. WHY 9903 known as AC Deluxe Coach 1984 model and as also as per instruction issued dated 10th December, 1990 by the Manager (MMNB) through AGM (E) regarding the sale of Ambassador car No. BPA 1302 an advertisement was made by inviting tenders in three leading papers namely Statesman, Sanmarg and Anandabazar Patrika. On or about 21st March, 1991, at about 3 P.M. the tenders were opened by the committee in

presence of the tenderers and out of the said twelve tenders two tenders were found to be not sealed properly. Therefore, the committee informed the Vice-President about the highest offer received from the different tenders over phone. The Vice-President asked the said committee to explore the possibility for escalation of the offers by inviting revised offers and negotiations as the price offered was not considered upto the satisfactory mark. By a letter dated 21st March, 1991, the said committee invited revised offers from the ten valid bidders which would be required to be submitted by 11 A.M. under sealed cover on 23.3.1991. On 23rd March, 1991 the said committee received only two revised offers from Sri B. K. Dutta and Sri B. N. Biswas. The said two offers were opened in presence of said Sri B. N. Dutta and Sri B. N. Biswas and Gopal Kumar Das. After reviewing the revised offers given by Sri B. K. Dutta to the tune of Rs. 1,76,353/- and Sri B. N. Biswas to the tune of Rs. 1,76,800/- the Vice-President instructed the Tender Committee to negotiate with the bidders again. Accordingly the letters were issued to both the bidders to be present at 3 P.M. on the same date but upon the request, of one of the tenderers the date for negotiation was fixed at 11 A.M. on 25th March, 1991. In the meantime on or about 23rd March, 1991 at about 5 P.M. Sri Gopal Kumar Das sent a letter written by Sandersons & Morgans, Advocates and the said letter was also sent to the Vice-President along with the minutes of the Tender Committee for consideration and/or decision in the matter. At the time of negotiation on 25th March, 1991, the negotiated offer was opened by the said committee and it transpired that Sri B. N. Biswas offered Rs. 1,78,901/- plus tax and Sri B. N. Dutta offered Rs. 2,05,000/- inclusive of all taxes. The development was again brought to the knowledge of Vice-President (A.T.T.) and by obtaining legal advice, Ashok Travels & Tours directed the Tender Committee to sell the vehicle to Sri B. N. Dutta. On 28th March, 1991 the sale was duly completed and the said vehicle was sold to Sri B. N. Dutta. Copies of the relevant documents have been annexed to the writ petition, other allegations of the writ petitioner have, however, been denied.

3. The writ petition is also contested by the alleged purchaser Sri B. N. Dutta. It is high-lighted that Sri Dutta has purchased the vehicle free from all encumbrances and he has made further investment and the present writ petitioner is otherwise misconceived.

4. The learned lawyers appearing for the respective parties have made lengthy arguments. The facts of the case have been placed before this Court in the proper perspective. The attention of the Court has been drawn to the decisions reported in : [1965]3SCR173 .

5. Having considered the submissions of the learned lawyers for the respective parties, this Court finds that an advertisement was made asking for the tenders. Admittedly the tenders were filed and the same were opened. It is upto the respondents either to accept the tenders or to reject the same. If they have decided to ask for further offer a fresh advertisement ought to have been made asking all including the petitioner/respondents to participate in accordance with law.

6. Be that as it may, the second offer was allegedly given to all the tenderers. Two tenderers were not considered as they were not found eligible at the time of opening of the first tender. The respondents were not satisfied with the second offer even. They have started negotiation with two persons who responded to the second offer. This private negotiation appears to be absolutely irregular and illegal. The main respondent started private negotiation after the closure of the offers. There is scope for suspicion and it lacks the public confidence to deal with the matter. It is well settled that the respondents are expected to act fairly and justly. Moreover, the petitioner appears to be very much diligent at all stages. He is constantly chasing the matter. He has given a notice and is asking that the every matter should be done fairly and reasonably. There is a serious allegation that the steps have been taken very hurriedly and even on an alleged holiday to complete the deal to the greatest prejudice of the interest of the petitioner. True it is that the respondents are not obliged to sell the vehicle to the petitioner at the price claimed by him but it is legally expected that the respondents should act fairly and justly in dealing with the matter and take utmost precaution to sell the vehicle by giving public notice and inviting tenders. It is for the public interest to raise higher price for the sale of the bus in question. If the respondents are satisfied that the price was not upto the mark, they were completely at liberty to cause fresh advertisements and to ask for and to invite further tender and even they could have reserved the price to protect their interest. Instead, respondents have asked

for second offer given to the persons who had responded to the first call.

7. This Court does not appreciate that the respondents started private negotiation with two tenderers only. Had they started private negotiation giving a call to all the tenderers there could have become a justification for the stand taken by them.

8. Considering the matter in depth, the conscience of the Court is not satisfied as to the steps taken by the respondents in dealing with the matter. The acts done and caused to have been done by the respondents in selling the bus in question are contrary to and inconsistent with the fair play and reasonableness. It is further observed that the private respondents cannot ask for any equity as they were fully aware of the development at the time of alleged purchase of the vehicle.

9. For the foregoing reasons the writ petition is disposed of by issuing an appropriate writ quashing steps taken by the respondents to sell the aforementioned bus and the private respondents are directed to restore the bus to its original position. This judgment will not, however, prevent the respondents to take effective steps for inviting fresh tenders and the petitioner including all intending persons will be eligible to participate by giving their offers in accordance with law.

10. There will be no order as to costs.

11. On the prayer of the learned lawyers there will be stay of operation for two weeks on the condition that the bus would be maintained in its present condition and there will be no transfer of the vehicle without the leave of the Court.

12. All parties to act on a signed copy of the operative part of this judgment on usual undertaking.