

M/s. Prestress India Corporation

Vs

U. P. State Electricity Board and Others

Civil Appeal No. 3025 of 1988

(B. C. Ray, K. Jagannatha Shetty JJ)

22.08.1988

JUDGMENT

RAY, J. -

1. Special leave granted. Heard arguments of both the sides.
2. The appellant-company has come up before this Court against the judgment and order passed by the High Court allowing partial relief, i.e. directing the respondents to place forthwith with the petitioner an order for supply of 25,000 PCC Poles instead of 50,000 PCC Poles for which the tender was submitted, though the High Court held that the respondent Board acted in an arbitrary and discriminatory manner in excluding from consideration the tender of the appellant. Against this judgment and order the opposite party also filed a special leave petition which was dismissed by this Court by an order dated October 29, 1987 (Annexure 'I' to this appeal). It has been urged on behalf of the opposite parties that if the order of the Central Store Purchase (sic. Committee of the) Board is illegal, discriminatory and bad, the High Court can quash the same and issue a writ of mandamus directing the Board to consider the tender of the petitioner but it cannot direct the Board to place orders for supply of PCC Poles according to the tender submitted by the petitioner. It has also been urged that it is for the Board to consider and decide regarding the acceptance of the tender and the quantum of PCC Poles to be supplied by the tenderer concerned. It has, therefore, been submitted that the impugned judgment and order passed by the High Court should be quashed and set aside. It has also contended in this connection that this Court can mould the relief as appears appropriate. These submissions have no merit inasmuch as the special leave petition filed on behalf of the respondents has already been dismissed by this Court and thereby the order of the High Court directing placing order with regard to 25,000 PCC Poles is upheld. Moreover, the High Court has come to the following finding :

The Board dealt with the petitioner's case rather discriminately when compared in the context of the attitude and manner in which some others or at least one tenderer was dealt with. Accordingly, the action of the Board has to be held unreasonable, unfair and suffering from vice of arbitrariness. The action in completely excluding the petitioner from this tender was clearly not in advancement of public interest.

3. In view of this finding the direction given by the High Court for placing an order for supply of only 50 per cent of the PCC Poles to the appellant company is unwarranted.
4. The opposite party No. 1, U.P. State Electricity Board, is therefore, directed to accept the tender of the appellant and to place orders for the remaining supply of 25,000 P.C.C. Poles for which the

tender was submitted by the appellant. It will not be out of place to mention in this connection that in a similar case in *Harminder Singh Arora v. Union of India* ((1986) 3 SCC 247) this Court after coming to a finding that one of the tenders was illegally rejected directed the authorities concerned to accept the tender of the appellant.

5. The appeal is, therefore, allowed without any order as to costs.

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