

RAJASTHAN HIGH COURT

ACE India Transport Pvt. Ltd

Vs.

Rajasthan State Mines and Minerals

Civil Writ Petition No. 7847 of 2004

(K. S. Rathore, J.)

18.05.2005

ORDER

K. S. Rathore, J.

1. The petitioner preferred this present writ petition aggrieved and dissatisfied with the order dated 29-10-2004 issued by the Rajasthan State Mines and Minerals Limited (for short, RSSML) through fax to the petitioner by which the respondent has cancelled the tender notice dated 29-6-2004.

2. Brief facts of the case are that the petitioner pursuant to NIT dated 29-6-2004 has submitted his bid dated 31-7-2004 in two parts. In all seven tenders were submitted in pursuance to NIT dated 29-6-2004. On 9-9-2004, price bid was opened. Tenders of only three companies were found feasible and petitioner was marked as "L-1", which means lowest tenderer. Apart from the petitioner, one another company M/s. Jain Carrying Corporation was also marked as "L-1". Third company M/s. R.K. Carrying Company was kept in the category of "L-2" (second lowest tenderer).

3. A fourth company M/s. Sri Mohangarh Construction Company also participated in the tender proceedings, however, its tender was not found feasible hence, its tender was rejected. The rejection of his tender was assailed by M/s. Sri Mohangarh Construction Company before the High Court of Judicature at Jodhpur seeking direction that its price bid may also be directed to be considered and a final decision of the tender may be taken thereafter only.

4. Learned counsel for the petitioner has categorically referred the writ petition filed on behalf of M/s. Mohangarh Construction Company and more emphasis has been

given to the reply submitted on behalf of RSMML. By referring the reply learned counsel for the petitioner tried to make out his case that on behalf of respondent it was specifically alleged that Mohangarh Construction Company has even not qualified the technical bid as it is lacking criteria which is essentially required and he reproduced certain statement made in the reply wherein it was emphatically contended on behalf of the respondent that the writ petition which is filed by M/s. Mohangarh Construction Company is not maintainable because the petitioner has not been denied any of his legal and/or fundamental rights. In the matter of largess, a person who is eligible for right of consideration and that bestowed upon him and upon being found eligible, techno-commercial bid was opened and it was found that it was not fulfilling the pre-requisite criteria and accordingly its tender was rejected. But, nonetheless, the fact remains that the tender was considered and rejected. Therefore, thrust of consideration was bestowed upon him. Thus, now he cannot be permitted to maintain the writ petition. Certain portion of paras in the reply also referred wherein it was categorically submitted on behalf of the respondent that so far M/s. Mohangarh Construction Company is concerned, it of course submitted the tender but upon scrutiny it was found that it was lacking in more than one aspect and, therefore, the respondents vide letter dated 11-8-2004 pointed out the discrepancies/deficiencies in the tender which was opened on 31-7-2004. He also tried to formulate his case that it is not understandable as to how Mohangarh Construction Company which was not found technically eligible has suddenly become technically eligible within a short period of 20 days.

5. Mr. Mathur further submits that this Court while granting interim stay order dated 8-11-2004 allowed the respondents to proceed further with regard to fresh NIT but shall not finalize the tender without seeking prior permission of this Court. Therefore, in the fresh tender he participated under protest.

6. Further the petitioner raised the issue that the respondent came out with the case in the earlier writ petition that there is probability of cartel among the parties and with regard to cartel the submissions made on behalf of the respondent are absolutely on assumption and without having any enquiry. To this effect he referred the judgment of *Union of India v. Hindustan Development Corporation* rendered by Hon'ble the Supreme Court, reported ¹ in In Para 14 Hon'ble the Supreme Court has given the definition of word 'cartel'. As per Collins English Dictionary, the meaning of the word 'cartel' is given as under:-

"Cartel- Also called trust, a collusive international association of independent enterprises formed to monopolize production and distribution of a product or service, control prices etc."

7. In Webster Comprehensive Dictionary, International Edition, the meaning of the word "cartel" is given thus:

"Cartel An international combination of independent enterprises in the same branch of production, aiming at a monopolistic control of the market by means of weakening or eliminating competition...."

8. In Chamber English Dictionary the word "cartel" is defined thus :

"Cartel - A combination of firms for certain purposes especially to keep up prices and kill competition...." and same definition is given in Black's Law Dictionary.

9. And after referring this judgment submits that as per ratio decided by Hon'ble the Supreme Court only on the presumption and apprehension the allegation of cartel which is the only allegation alleged against the petitioner is without holding proper enquiry and without any basis.

10. A chart to show the rate quoted by the petitioner along with two other companies pursuant to the earlier tender notice dated 29-6-2004 was also referred and it is submitted that M/s. Jain Carrying Corporation and the petitioner M/s. ACE India Mining and Transportation have quoted the same price whereas; M/s. R.K. Carriers has referred different price. Since only three companies are found eligible in the financial bid and incidentally two companies quoted same price it does not show that there is cartel among the parties.

11. Since both the parties placed reliance on the judgment rendered by Hon'ble the Supreme Court in the case of *Union of India v. Hindustan Development Corporation*, AIR 1994 Supreme Court 988 (supra) which is being looked into. The petitioner referred and read over the Para 17 wherein Hon'ble the Supreme Court held that –

"mere question of identical price and an offer of further reduction by themselves would not entitle them automatically to corner the entire market by way of

monopoly since the final allotment of quantities vested in the authorities who in their discretion can distribute the same to all the manufacturers including these three big manufacturers on certain basis. It is also observed that only a suspicion which of course got strengthened by post- tender attitude of the said manufacturers who quoted a much lesser price. As noticed above it cannot positively be concluded on the basis of these two circumstances alone. To establish the fact that there is cartel it is necessary for the respondent to establish the fact that there is cartel."

12. Applying the ratio of the aforesaid judgment of Hon'ble Supreme Court in the instant case it is no doubt that three companies were found eligible and including the petitioner and one another have quoted same rate and third one quoted different rate and only on this ground it cannot be said that there is cartel between the parties.

13. Upon perusal of the definition part the essential ingredient to establish cartel is only when it is found that there is collusive international association of independent enterprises and to create monopoly or combination of firms for certain purposes especially to keep up prices and kill competition."

14. Here, in the instant case, it is no doubt that the petitioner and another company quoted the same price and as submitted on behalf of the respondent that both the companies were called for negotiation and in negotiation they stick to their price quoted in the tender document and this created doubt in the mind of the respondent that cartel is being formed by the petitioner and another company

15. Learned counsel for the petitioner further submits that the observation made by the respondent regarding cartel is not only contrary to the facts and circumstances of the case but also stigmatic.

16. Having gone through the judgment of Hon'ble the Supreme Court and applying the ratio in the instant case of-course it is no doubt that same price is quoted by the petitioner and one another company and this fact is not well established that both the companies have created cartel in collusive internationally for certain purposes especially to keep up prices and kill competition. Thus, so far allegation against the petitioner for cartel is concerned, I am fully convinced that the submission made on behalf of the respondent is baseless and without any basis which is contrary to the fact

and this observation made in the reply submitted by the respondent in earlier writ petition will not cast any stigma against the petitioner.

17. Now the question remains whether the relief claimed by the petitioner in this writ petition can be granted to the petitioner as the petitioner challenged the cancellation of the earlier tender document and the respondent has categorically stated that the petitioner and other company have quoted same price and it was decided that the tender is to be scrapped and fresh tender should be floated and since earlier writ at that time was pending before the High Court at Jodhpur, counsel appearing on behalf of the respondent was instructed to submit reply and to inform the decision taken by the respondent and upon furnishing of this information the High Court of Jodhpur vide its order dated 27-10-2004 has observed as under :-

"Mr. Singhvi submits that the respondents are scrapping the whole tender process, and would be going for fresh tenders. In that view of the matter, this writ petition becomes in fructuous, and the same is, therefore, dismissed. However, the learned counsel for the petitioner submits that in the event of the action of the respondents of scrapping of tender process is challenged, and that challenge is accepted, in that event, the petitioner's right would be adversely affected. Considering this submission, it is clarified that in the event of such eventuality, the petitioner's right in the present writ petition shall not be adversely affected, and for that purpose the petitioner will be at liberty to file fresh writ petition.

18. And it is further submitted by the learned counsel for the respondent that in the interest of public at large and in the interest of respondent fresh tender was invited and the petitioner also participated and the petitioner quoted much higher price than M/s. Mohangarh Construction Company and evaluation of price bid opened on 19-2-2005 at 4.00 p.m. The petitioner offered his evaluation of price bid wherein comparative chart has been given. The petitioner offered the rate as 96.50 whereas M/s. Mohangarh Construction Co. has offered its rate as 82.77 which is lowest to the petitioner.

19. Having considered this aspect and on the comparative study of the price quoted by the tenderer it reveals that the price quoted by Mohangarh Construction Co. is much less than in comparison to the petitioner. The petitioner submits that earlier the

petitioner has quoted lesser rate and to this effect referred Schedule-A appended along with the reply to additional affidavit wherein the petitioner given chart in which rate quoted by different contractors and the work which is carried out and the rate quoted by the petitioner is 82.19 and the rate quoted by Mohangarh Construction Company is 83.66 and as such the rate quoted by he petitioner is lesser that the Mohangarh Construction Company.

20. It is no doubt that the rate quoted by M/s. Mohangarh Construction Company is lesser than the rate quoted by the petitioner.

21. As this Court and Hon'ble the Supreme Court have held that there is nothing illegality in case the respondent invite fresh tender in the interest of public at large and in case they able to give the tender at the minimum price to perform the work. Therefore, petitioner's prayer cannot be allowed to cancel fresh tender document and to revive earlier tender document which has been scrapped by the respondent in the interest of public at large and furthermore the petitioner participated in the fresh tender and quoted the price which is found higher than the price quoted by M/s. Mohangarh Construction Company, on such eventuality the petitioner is not entitled to seek any relief from this Court.

22. Accordingly, the writ petition fails and is hereby dismissed with no orders as to costs.

Petition dismissed.

Cases Referred.

1. (1993) 3 SCC 499 : AIR 1994 SC 988