

bias or oblique motive against any officer. Consequently, it appears that the view taken by the authority was in the *bona-fide* exercise of its power.

(10) No other point has been urged.

(11) In view of the above, there is no merit in this writ petition. It is, consequently, dismissed. However in the circumstances of the case, there will be no order as to costs.

S.C.K.

Before Amarjeet Chaudhary & M. L. Singhal, JJ.

M/S PRITAM SINGH & SONS,—*Petitioner.*

versus

THE STATE OF PUNJAB & OTHERS,—*Respondents.*

C.W.P. No. 5510 of 1996.

3rd January, 1997.

Constitution of India, 1950—Arts. 226/227—B & R Manual of Orders, Chapter 7—Regulation 7.32 (iii)—Acceptance of tender—Lowest quotation ignored—Approval as envisaged under the rules not obtained—Lowest tender ignored without affording an opportunity of the Authority—Modified terms obtained without making offer to other similar tenderers—Effect of.

Held, that if a Government lays down a policy for doing a particular thing in a particular manner, that thing has to be done in that manner only and departure from that settled manner vitiates the decision particularly when there are no circumstances warranting the departure. Similarly, it is true that the Government may enter into contract with any person but in so doing the State or its instrumentalities cannot act arbitrarily. In the instant case, tenders were invited and the tender of the petitioner firm was lowest but it was ignored without following the proper procedure and without affording an opportunity of being heard to the petitioner while using the adverse reports against it.

(Para 11)

Further held, that the action of the respondents in obtaining the modified terms of offer of contract from one of the tenderers is not justified without affording similar offer to the other tenderers.

(Para 10)

Pawan Bansal, Advocate with R. S. Bains, Advocate, for the petitioner.

Randhir Singh, DAG (P).

P. S. Rana, Advocate, for the respondents.

JUDGMENT

Amarjeet Chaudhary, J.

M/s Pritam Singh and Sons, a sole proprietary concern under the sole proprietorship of Shri Gurjit Singh has preferred the present Civil Writ Petition under Article 226/227 of the constitution of India for issuance of directions to the respondents to give contract to the petitioner for construction of Tanda Side approach to high level bridge over river Beas at Sri Hargobindpur in District Hoshiarpur on the plea that the tender submitted by the petitioner was found to be lowest with a further prayer that the contract awarded to any other firm be quashed.

(2) Before going to the merits of the case, it is noticed that during the pendency of the Civil Writ Petition it had come on the record that M/s Kartar Singh and Company was awarded the contract for the work in question on 22nd March, 1996 and consequently the said concern was impleaded as respondent No. 5,—*vide* order dated 28th May, 1996.

(3) Skipping superfluous facts giving rise to the controversy involved in this case are that the respondent No. 4 i.e. Executive Engineer, Central Works Division, P.W.D. (B&R), Hoshiarpur invited tenders for the above contract by issuing notices in various newspapers in the first week of November, 1995 for 24th November, 1995. It was made clear that blank tender forms would be issued only after the committee of Sub-Divisional Engineers evaluated each contractor regarding its capacity to undertake the work in question. The Committee consisting of S/Shri K. S. Dhami and N. P. Singh examined the applications of the contractors and recommended four names after examining their capacity to perform the work. The firms which were recommended for issuance of blank tender forms are as under :—

- (i) M/s Satish Aggarwal and Co. Mukerian ;
- (ii) M/s Pritam Singh and Sons ;
- (iii) M/s Kartar Singh, Sarabha Nagar, Ludhiana ;
- (iv) M/s Daljit Singh and brothers, Amritsar.

All the four firms submitted their tenders and tender of the petitioner firm was found to be lowest as per the averments made in para 11 of

the Writ Petition. The comparative cost offered by the contractors is as under :—

(i) M/s Satish Aggarwal and Company	... 2.46 crores
(ii) M/s Pritam Singh and Sons	... 2.03 crores
(iii) M/s Kartar Singh	... 2.18 crores
(iv) M/s Daljit Singh and brothers	... 2.35 crores

(4) It is the case of the petitioner firm that its case was recommended by the respondent No. 4 and it was informed that it would be required to commence the work within next 30 days and formal letter would be issued. The respondent No. 4 informed the petitioner that he has already submitted the final recommendations to the respondent No. 3 i.e. Superintending Engineer, P.W.D. (B&R), Jullundur. The proprietor of the firm also met the respondent No. 4 in the first week of January, 1996. It is also the case of the petitioner firm that it had arranged the bank guarantee etc. for executing the massive work at the site in terms of the contract.

(5) When no formal letter was received, it transpired that the respondent No. 3 changed the recommendations of the respondent No. 4 and recommended for allotment of contract to some other firm. So, legal notice was served on 3rd April, 1996, annexure P-1. However, the respondent No. 5 was awarded the contract by obtaining the lower quotation in respect of some of the items of the contract at the back of the other and by procuring some adverse reports against the petitioner from the authorities without affording an opportunity of being heard and the tender of the respondent No. 5 was accepted at the level of the respondent No. 2 in violation of regulation 7.32 (iii) of B & R Manual of Orders, Chapter 7, which reads as under :—

“A tender other than the lowest may be accepted only after obtaining the approval of the officer immediately superior to the one who under the rule is competent to accept the tender.”

It is undisputed that the Chief Engineer, respondent No. 2 was competent to accept the tender and the next higher authority was the Government and the matter was never referred to the Government before accepting the tender of the respondent No. 5.

(6) The official respondents as well as the private respondents filed the written statements contesting the claim of the petitioner

firm. The official respondents levelled various allegations of incompetency of the petitioner firm and various reports obtained by them from the agencies where the petitioner or its allied concerns were awarded the work and allegedly the same was not completed and left over. The petitioner firm filed replication and rebutted allegations levelled in the written statement. The official respondents also filed a reply to replication filed by the petitioner.

(7) We have heard the learned counsel for the parties and perused the record minutely. There are three points to be settled in the present Writ Petition, which are as under :—

- (i) Whether non-compliance of provisions of Regulation 7.32 (iii) of B & R Manual of Orders is fatal to the awarding of contract to the respondent No. 5 without the approval of the Government ?
- (ii) Whether the authorities can use material by procuring the reports adverse to the interest of the petitioner at its back without affording an opportunity of being heard ?
- (iii) Whether the authorities can procure subsequent offer from the respondent No. 5 without affording an opportunity to other competitors/contractors in a clandestine manner and award the same to the respondent No. 5 ?

We are conscious of the law that scope of judicial review is limited to the extent in which a decision is reached by the administrative authorities and not the decision itself. If there are irregularities and illegalities in the process of reaching a decision, the same is very much within the power of the Court to set the same right. We are not going into the disputed questions of fact as agitated by both sides and we are concerned with the legal aspect of the matter.

(8) As regards point No. 1, it is undisputed by the respondents that in case the competent authority wants to accept the offer of a party other than the lowest tender, the matter has to be referred to the next higher authority. Undisputedly, it was at the level of respondent No. 2 who was competent to accept the tender that the offer of respondent No. 5 was accepted despite availability of lowest tender of the petitioner firm. It is also not disputed that Regulation for awarding contract as contained in B & R Manual of Orders is of

binding nature and is to be followed by the authorities and their violation vitiates the decision of respondent No. 2 particularly when no explanation has been given as to what were the circumstances under which the procedure prescribed under the Regulations was departed from. The only plea taken is that Regulation 7.32 (iii) is not applicable but no cogent reason has been put forth as to why it is not applicable. We find that said Regulation is fully applicable in this case.

(9) As regards point No. 2, it is well settled that no body can be condemned unheard. When the case of the petitioner firm was recommended by the Executive Engineer as admitted by the official respondents, there is nothing on the record as to what transpired at the level of the respondent No. 3. However, in any case, the respondents if wanted to oust the petitioner from the field of consideration on the basis of certain reports procured from the agencies where the petitioner firm was allegedly allotted the work, they should have afforded it an opportunity of being heard.

It is now well settled that principle of natural justice has been held to be integral part of the Article 14 of the Constitution of India and every action of the administrative authority must be transparent and should not be arbitrary. By relying upon the reports without affording an opportunity to the petitioner firm for allotting the work, despite its quotation being the lowest, has affected its rights adversely which cannot be done except after affording it an opportunity to meet the objections procured by the department at the back of the petitioner firm.

(10) As regards point No. 3, the action of the respondents in obtaining the modified terms of offer of contract from the respondent No. 5 is not justified without affording similar offer to the other tenderers.

(11) It is well settled that if a Government lays down a policy for doing a particular thing in a particular manner, that thing has to be done in that manner only and departure from that settled manner vitiates the decision particularly when there are no circumstances warranting the departure. Similarly it is true that the Government may enter into contract with any person but in so doing, the State or its instrumentalities cannot act arbitrarily. In the instant case, tenders were invited and the tender of the petitioner

firm was lowest but it was ignored without following the proper procedure and without affording an opportunity of being heard to the petitioner while using the adverse reports against it.

(12) Now coming to the power of the Court to grant relief. It is settled by now that if the Courts come to the conclusion after finding that one of the tenders was illegally rejected the authorities concerned can be directed to accept the tender of the said person but in the instant case since there are disputed facts containing allegations and counter allegations, so we would refrain from entering into that controversy and would leave the same to the respondent No. 1. However, it is a case for quashing the contract awarded to the respondent No. 5.

(13) Consequently for the reasons recorded above, we quash the contract for construction of Tanda side approach to high level bridge over river Beas at Sri Hargobindpur in District Hoshiarpur awarded in favour of the respondent No. 5 on 22nd March, 1996 and direct the respondent No. 1 to reconsider the entire issue afresh at his own level by affording an opportunity of being heard to all the tenderers who were found eligible for submitting the tender forms as per recommendations of the Committee of Sub-Divisional Engineers and to assess their suitability. If any material is to be used against any of the tenderers, that must be put to it before using against it. It is made clear that the officers who dealt with the case while granting the contract to the respondent No. 5 should not be associated with this case while reconsidering the rival claims of the competing firms and anything said in the written statement or in the reports should not prejudice the mind of the respondent No. 1 while assessing the interse merits of the tenderers. So far as the work done by the respondent No. 5 till date is concerned, that will be assessed by the high level committee to be nominated by respondent No. 1 and proper measurements etc. will be taken and will be settled at the level of the respondent No. 1 itself and the remaining work will be granted to the concern which is found suitable and number one in the merit.

(14) Since this case has been dealt with by the official respondents in a casual manner in violation of their own instructions and in violation of principles of natural justice, so ends of justice would be met if the petitioner is compensated with some cost which we quantify to be Rs. 5,000 to be borne by the officers were responsible for the lapses. The fresh assessment of the tenderers will be completed within a period of 30 days.

S.C.K.