

CASE COMMENT - M/S N.G. PROJECTS LIMITED VS M/S VINOD KUMAR JAIN, 2022

Shubham Walunj***INTRODUCTION**

When it comes to getting any service for our house we always invite more than 3-4 agencies to tender and after looking at the price, and service features then we assign the work to one of them. Similarly, in the case of the government, the process is also the same when the government needs any product or service they invite the tender for the work and finally assign the work. Government agencies have the freedom to set their terms and conditions while inviting tenders and also to decide to whom to assign or not. In India, since early years there have been consistent cases of the bidder and the contractors having grievances with the tendering process. Often the tendering process in India has frequently been accused of being malafide, corrupt, biased, and arbitrary. Earlier, when such accusations have been brought before a court, it has led to stay orders, injunctions, or declarations that the tendering process was illegal or void. In this case, we will be dealing with the case of M/S N.G. Projects Limited vs M/S Vinod Kumar Jain, 2022¹.

FACTS OF THE CASE

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For the reconstruction of the Nagaruntari-Dhurki-Ambakhoriya Road, the Jharkhand Road Construction Department invited tenders. Vinod Kumar Jain respondent No. 1 took part in the tender procedure and provided a bank guarantee as for security; however, later the tender was cancelled and a new notice accepting tenders was passed.

In the meeting held for the technical evaluation of bids, the Tender Evaluation Committee found that 13 bids out of 15 bids, including respondent no. 1, failed to adhere to the terms of the Standard Bidding Document (SBD). The reasons why the Committee came to this decision in the case of respondent No. 1 are that: firstly, the letter submitted by him along with the amended bank guarantee was not in the format as prescribed in the SBD; secondly, the amount stated in the bank guarantee, both were discovered to be different in terms of numbers and words; thirdly, it was reported that the bank guarantee was valid for the duration prior to the

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¹ M/S N.G. Projects Limited v. M/S Vinod Kumar Jain (2022), SLP (CIVIL) No. 2103

date when the NIT was approved; lastly, the affidavit and undertaking supporting Respondent No. 1's bid were improperly notarized.

After a detailed evaluation of the appellant's financial bid and when the technical bid of the appellant was found to be substantially responsive then the work contract was given to the appellant. Once he received the contract, he started the road construction work and finished around 21.9 km of the planned 24 km road. According to the appellant, it had mobilized the plants and machinery to Garwa and had finished work of around Rs. 8.5 crores. Thus, respondent no. 1 Vinod Kumar Jain filed a Writ Petition to challenge the decision of the Technical Evaluation Committee's finding that its bid was non-responsive.

LEGAL ISSUES

- The only question on the Supreme Court's initiative was whether the Division Bench of the High Court and the Single Judge had enough right to intervene with the tender given to the Appellant.
- Whether the appellant's bid was non-responsive?

OBSERVATION OF THE HIGH COURT & THE SUPREME COURT

After the pleadings were finished, the High Court's learned single bench issued a common ruling that denied the appellant's award of the contract for the work in question as well as two other works. The Division Bench of the High Court dismissed two appeals against two other tenders. However, the Division Bench of the High Court held that there couldn't be a valid distinction between the case of the two other works against which Letters Patent Appeal was rejected and the appeal against the work in question, despite the fact that the appellant had already started execution of the work and that part of it had already been completed.

The Supreme Court observed that the High Court has erred in interfering with the grant of tender to the Appellant.² Supreme Court took a few cases into consideration while observing this case. The Supreme Court stated that the interference in the contract granted to the appellant was completely unjustified and resulted in a loss of public interest. Road construction is a crucial component of infrastructural development in every State.

² Raghav Bhatia, "Case Comment – N.G. Projects Limited v. Vinod Kumar Jain: Judicial Review of Tender Disputes", Law School Policy Review & Kautilya Society (2022)

Based on the guidelines established by this Court in *Tata Cellular v. Union of India* (1994)³, the learned Single Bench and the Division Bench of the High Court were using their judicial review authority to determine whether the State's decision was manifestly arbitrary or unjust and to serve as the decision's appellate authority. The government is the guardian of the finances of the State it is expected that the government should protect the financial interest of the State. The government is always free to decide whether which tender to accept or to reject. But while accepting or rejecting a tender, it is important to keep in mind the principles stated in Article 14 of the Constitution. If the government tries to find the best candidate or the best quotation, there can be no question of a breach of Article 14. It is difficult to consider the right to choose as an arbitrary power. Therefore, the exercise of the aforementioned power for a secondary purpose will limit the use of that power.

The Supreme Court also considered the case of *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited & Anr*⁴, where it was decided that even if the project's owner or employer began writing the tender documents, they are the best qualified to interpret them, understand their needs, and respect them.

Supreme Court also took into consideration the case of *Uflex Ltd. v. Government of T.N*⁵, according to this Court, the basis for creating what is commonly referred to as the "tender jurisdiction" was the government's enlarged role in economic activity and its related ability to provide economic "largesse". The objective is to improve transparency and provide aggrieved parties the ability to use the High Court's jurisdiction under Article 226 of the Indian Constitution for purposes beyond the strict enforcement of contractual rights under civil law. Today, however, the truth is that barely any tender remains unchallenged. The High Court's authority under Article 226 of the Constitution is sought by unsuccessful parties or parties that did not even participate in the tender.

The Supreme Court suggested as its final recommendation that disputes where the grant of tenders is challenged could be brought directly before the Division Bench of the High Courts and not the Single Judge because multiple layers of jurisdiction cause delays in the final adjudication of such disputes.

³ *Tata Cellular v. Union of India* (1994), JT 1994 (4) SC 532

⁴ *Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited & Anr* (2016), Civil appeal No. 9078

⁵ *Uflex Ltd. v. Government of T.N* (2021), Appeal No. 4862-4863

DECISION

The Supreme Court in this case held that a contract of public service not be interfered with, without caution since issuing interim orders could potentially derail the entire process of a service which was meant for the larger public good. It was also concluded that the interference in the contract granted to the Appellant was completely unnecessary and had resulted in a loss of public interest after carefully considering the arguments made by the parties. The Supreme Court had reversed the Jharkhand High Court judgement which granted relief to the contractor and held that the tendering process was arbitrary. The High Courts or the Hon'ble Chief Justice to entrust these petitions to a Division Bench of the High Court, which would avoid at least a hearing by one of the forums.

ANALYSIS & CONCLUSION

When discussing problems related to the award of a tender or tender document, the Supreme Court has kept a very clear approach of refraining from interfering with the tender jurisdiction of the government bodies or tendering authorities, unless the court detects any disregard for the principles of natural justice or the existence of any arbitrariness or malafide process. The Supreme Court concluded that the interference in the contract granted to the Appellant was completely unnecessary and had resulted in a loss of public interest after carefully considering the arguments made by the parties.

According to the bench Hemant Gupta and V Ramasubramaniam in this case, the position of the law on the interpretation of the terms of the contract is that the question of whether or not a term of the contract is necessary is to be regarded from the perspective of the employer and by the employer. The respondent has submitted the same bank guarantee which was drawn at the first bid submission, the dates were also the old in the guarantee. The bank guarantee is an important document in the tender process and it was not in the format told by the SBD and the respondent has intended to claim that it is a significant change to the terms of the contracts.

The court also believed that the authority accepting bids and ensuring that such authority is aware of expectations from the tenderers while assessing the consequences of non-performance are crucial factors in determining whether a bidder fulfills the tender condition. In view of this, the appeal was dismissed with a directive to the respondent State to allow NG Projects to restart and finish the work while disregarding the time spent during the stay of the contract's execution.