Delhi Development Authority And Anr vs Uee Electrical Engg. (P) Ltd. And Anr on 19 March, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2100, 2004 AIR SCW 1853, (2004) 4 JT 562 (SC), 2004 (4) JT 562, (2004) 18 ALLINDCAS 243 (SC), 2004 (11) SCC 213, 2004 (1) CTLJ 345, 2004 (3) SCALE 565, 2004 (3) ACE 517, 2004 (2) RECCIVR 463.2, 2004 (2) SLT 748, (2004) 5 ALLMR 1078 (SC), (2004) 3 SUPREME 429, (2004) 2 RECCIVR 463(2), (2004) 3 SCALE 565, (2004) 3 ALL WC 1952, (2004) 75 DRJ 76, (2004) 3 MAD LW 650, (2004) 2 WLC(SC)CVL 144, (2004) 16 INDLD 229, (2004) 110 DLT 447

Author: Arijit Pasayat

Bench: S. Rajendra Babu, Arijit Pasayat, G.P. Mathur

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           CASE NO.:
Appeal (civil)  1725 of 2004

PETITIONER:
DELHI DEVELOPMENT AUTHORITY AND ANR.

RESPONDENT:
UEE ELECTRICAL ENGG. (P) LTD. AND ANR.

DATE OF JUDGMENT: 19/03/2004

BENCH:
S. RAJENDRA BABU & ARIJIT PASAYAT & G.P. MATHUR

JUDGMENT:
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JUDGMENT 2004(3) SCR 286 The Judgment of the Court was delivered by ARIJIT PASAYAT, J. Leave granted in SLP (C) No. 23987/2002.

The Delhi Development Authority (herein after referred to as the "DDA") calls in question the legality of the judgment rendered by a Division Bench of the Delhi High Court whereby it has held that the act of the appellant in not awarding contract to the respondent No. 1 M/s UEE Electricals Engg. P. Ltd. was not in accordance with law. Though the contract awarded to the second respondent was not nullified, it was held by the High Court that the first respondent who was deprived of its right was entitled to costs to be paid by the appellant. Liberty was also granted to the respondent No.l to file a suit for damages if it so thought appropriate.

Background facts as projected by the appellant DDA which need to be noticed are as follows:

In March 2001, tenders were invited by the appellant for the supply and installation of Clear Water Boosting Pumping Station at Command Tank No. 1 at Sector-7. Clause 10 of the Tender Notice indicated that the final decision, with respect to acceptance of the tender, rests with the Chief Engineer (Electrical) and there was no compulsion to accept the lowest tender. On 21.5.2001 Ashok Sehgal - a Director of the respondent no. 1 - company went to the Division Office of the Authority, where one Mr. V.K. Kapoor was acting as the Assistant Engineer (Electrical), for clearance of his earlier dues. Aforesaid Mr. Ashok Sehgal insisted that the files should be handed over to him which was not done by Mr. V.K. Kapoor. Since the files were not handed over, Mr. Ashok Sehgal physically assaulted Mr. V.K. Kapoor with a sharp weapon which caused an injury near the right eye. At about 3.45 P.M., an FIR was lodged by Mr. V.K. Kapoor for alleged commission of offences punishable under Sections 186, 353, and 332 of the Indian Penal Code, 1860 (in short the "IPC") before the Dabri Police Station, Delhi. The matter was also referred for enquiry to the Executive Engineer (Headquarter) of DDA. Mr. Ashok Sehgal submitted a letter to the Commissioner of Police at about 8 P.M. on the same date making allegations against officials of DDA. On 19.6.2001 Enquiry Officer submitted a report inter alia observing that Mr. V.K. Kapoor's version was correct and that the allegations made by Mr. Ashok Sehgal appear to be in retaliation. It was found that Mr. Ashok Sehgal had tried to support his case by producing a medical certificate issued by a Private Poly Clinic which was not valid for a Medico-legal case. The further allegation that Mr. V.K. Kapoor demanded bribe from Mr. Ashok Sehgal was found to be incorrect. The allegation that Mr. Ashok Sehgal was physically beaten up by Mr. V.K. Kapoor was also found to be not correct in view of the statements given by some eyewitnesses. It was, therefore, recommended that necessary action should be taken by the competent authority.

On 23.7.2001 the price bid, so far as the tender in question, was opened and the respondent no. 1 was declared to be a successful bidder. However, on 28.8.2001 the Project Manager (Electrical) wrote to the Secretary, Contractor Registration Board requesting for appropriate action against the respondent No. 1- company in the light of the Enquiry Report referred to above. It appears that subsequently action was taken by the Contractor Registration Board in terms of the Rule 22.3(k) of the Enlistment Rules of DDA.

On 25.10.2001 the Works Advisory Board decided that the tender of respondent No. 1 should not be considered since show cause notice was being issued to it. Therefore, other tenderers were called for negotiations to lower the rates offered. It was also decided that in case the rates were not lowered, fresh tender was to be issued.

On 8.11.2001, after consideration of the lowered rates offered the work was awarded to respondent no. 2 (respondent No. 3 in the writ petition before the High Court).

Show cause notice was issued to respondent No. 1 on 5.12.2001 requiring it to show cause why it should not be blacklisted by the appellant-Authority. Reply to the show

cause notice was submitted on 13.12.2001. A Writ Petition was filed by the respondent No. 1 questioning award of the contract to respondent no. 2. By the impugned judgment, the High Court, inter alia, held that the Director of the Company and the Company itself are two separate legal entities and even if any unbecoming act was done by the Director, that should not stand in the way of the contract being awarded to the respondent No. 1- company. Therefore the Writ Application was disposed of with the directions as noted above.

It appears that subsequently on 14.8.2002 the Contractor Registration Board debarred the respondent No. 1 - company and its Director for a period of five years. A Writ Petition was filed before the Delhi High Court challenging the order passed by the Contractor Registration Board. Learned Single Judge quashed the order of the Contractor Registration Board keeping in view of the impugned judgment dated 12.7.2002. However, liberty was given to the Appellant-Authority to issue a detailed and reasoned order. It appears that subsequently on 3.1.2003 a fresh order, debarring the respondent no. 1 - company and its Director for a period of five years, has been passed. That is the subject matter of challenge in WP(C) 156 of 2003.

In support of the appeal, learned counsel for the appellant - DDA submitted that the approach of the High Court is clearly erroneous. The scope of judicial review of administrative action is very limited. Unless there is a flaw in the decision-making process, there is no scope of any interference. In the instant case all the relevant aspects were taken by the Authority into account and thereafter the tender submitted by the respondent No. 1 - company was rejected. The High Court proceeded on the erroneous premises by observing that no action for blacklisting the respondent No.l - company was taken. This is factually incorrect. In fact the Works Advisory Board took note of the fact that already recommendation had been made by the Contractor Registration Board in the matter of blacklisting the respondent No. 1 - company. The High Court proceeded is if there were mala fides involved and that the action of the Director of respondent No. 1- company in assaulting an employee of the Appellant-Authority and causing serious injuries was not sufficient to take action against the respondent No. 1 - Company. Respondent No. 1 -Company being an incorporate body who acts through its Directors, when the act of a Director of the Company itself was found to be objectionable, attracting criminal action, there was nothing wrong in the Appellant-Authority deciding not to accept the tender offered by the respondent No.l -Company. The High Court was not justified in interfering with the action taken.

Per contra, learned counsel appearing for the respondent No. 1 -Company submitted that it has been rightly observed by the High Court that the respondent No. 1 - Company and its Directors are separate legal entities. Even if it is accepted for the sake of argument that a director of a company had done some objectionable act, that could not have been considered as a ground to refuse acceptance of the tender submitted by the respondent No. 1 - Company particularly when the prices offered

were lowest.

One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality" the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Unions v. Minister for the Civil Service, [1984] 3 A1I.ER. 935, (commonly known as CCSU Case).

Courts are slow to interfere in matters relating to administrative functions unless decision is tainted by any vuinerability such as, lack of fairness in procedure, illegality and irrationality. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

The famous case Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. (KB at p. 229: All ER p. 682) commonly known as 'The Wednesbury's case" is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

The law is settled that in considering challenge to administrative decisions courts will not interfere as if they are sitting in appeal over the decision.

These principles have been noted in aforesaid terms in Union of India and Anr. v. G. Ganayutham, [1997] 7 SCC 463 and Indian Railway Construction Co. Ltd. v. Ajay Kumar, [2003] 4 SCC 579. In essence, the test is to see whether there is any infirmity in the decision making process and not in the decision itself.

Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fide in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See S. Pratap Singh v. The State of Punjab, [1964] 4 SCR 733. It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in E.P. Royappa v. State of Tamil Nadu and Anr., AIR, (1974) SC 555.

Though in a legalistic sense an incorporated body like a company and its Directors are separate entities for certain purposes, in many companies they act as alter ego. For the acts of the Director, the concept of vicarious and constructive liabilities operates so far as the company is concerned. The acts of the company are done primarily through the Directors or the employees. In a case like the one at hand, the stand of respondent No. 1 - Company that even if one of its Directors has assaulted an employee of the appellant-Authority, yet it is of no consequence when deciding the tender, application. The strained relationship between a contractor and the contractee can have its implications in working out the contract.

This is not a case where the appellant-Authority can be said to have acted in a mala fide manner or with oblique motives. If the Authority felt that in view of the background facts, it would be undesirable to accept the tender, the same is not open to judicial review in the absence of any proved mala fide or irrationality. The impugned judgment of the High Court is indefensible and is set aside. The appeal is allowed. Costs made easy.

W.P.(C) No.156 of 2003 has been filed by the Company questioning the decision taken by the Authority to blacklisting it.

Learned counsel for the writ petitioner submitted that the petition was filed in this Court because of the pendency of the SLP. Since we have separately dealt with the SLP, we do not think it to be a fit case where the writ petition can be entertained directly in this Court. The Writ Petition is transferred to the High Court, so that it can be registered as a Writ Petition to be dealt with and disposed of in accordance with law. Ordered accordingly.