

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 1057 of 2008

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHAPURA ENTERPRISE THROUGH KAMLESH GANATRA - Petitioner(s)
Versus
FOOD CORPORATION OF INDIA THROUG GENERAL MANAGER & 2 -
Respondent(s)

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Appearance :

MR MAULIK G NANAVATI for Petitioner(s) : 1,
 MR.MIHIR JOSHI WITH MR SHAKEEL A QURESHI for Respondent(s) : 1 - 2.
 M/S THAKKAR ASSOC. for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 30/06/2008

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article 226 of the Constitution is the decision of respondent No.1 - Food Corporation of India ("FCI" or the "Corporation" for short) awarding Handling and Transport Contract for FSD Bhavnagar on regular basis for a period of two years.

2. The FCI invited tenders in January 2008 for the above contract for the estimated value of Rs.1.04 crores. The petitioner and respondent No.3 submitted their respective tenders. Respondent No.3 was considered to be eligible and the petitioner was dis-qualified on the following grounds:-

- I) The power of attorney is not furnished for particular H&T contract at FSD Bhavnagar.
- II) The revised partnership deed dated 08.02.2007 has not been registered with Registrar of firms under "Form No.G".
- III) Property including nos. of trucks of partner is not shown in the revised partnership deed dated 08.02.2007.

The above grounds were communicated to the petitioner vide F.C.I.'s letters dated 21.01.2008 at Annexure P-3 to the petition.

3. Mr.S.N. Shelat, learned counsel with Mr.Maulik Nanavati, for the petitioner has challenged the above decision on the ground that the FCI has ignored the relevant criteria and has taken into account the irrelevant material. As regards ground No.1, it is submitted that when the petitioner had produced the power of attorney in favour of its authorised representative, (one of the partners) it was not necessary for the power of attorney to mention the particular H&T contract at FSD Bhavnagar. General power of attorney was for all contracts to be entered into by the partnership firm and it can never be said that the power of attorney must be executed in respect of each contract.

4. As regards the second ground, it is submitted that the partnership firm was registered on 27.12.2005 and merely because there was a change in the partnership by another partner called

Dashrathsingh Gohil joining the firm, non-registration of such change in composition of the firm does not change the status of the firm as a registered partnership firm. It is also submitted that in any view of the matter, after the tenders were submitted, the said change in composition of partnership firm has also been registered.

5. As regards the third ground, it is submitted that Mr.Dashrathsingh B. Gohil owns five trucks and that the photostat copies of the registration certificates in respect of these five trucks produced with tender form indicates that Dashrathsingh Gohil is the owner of the trucks, that was sufficient for complying with the tender conditions and sufficient assurance that the trucks are available with the partnership firm for the purpose of the contract in question, if awarded to the partnership firm.

6. On the other hand, Mr.Mihir Joshi with Mr.Kureshi for the F.C.I. has opposed the petition and relying on the affidavit-in-reply filed by the Assistant General Manager of the Corporation has sought to justify the decision of the Corporation. It is submitted that Dashrathsingh Gohil having only 2% share in the profit and loss of the firm is shown to be the owner of five trucks and that fact cannot indicate that the partnership firm itself has all the five trucks in its common stocks.

7. Mr.Pahwa, learned counsel for respondent No.3 has also opposed the petition and submitted that respondent No.3 has been the existing contractor with the F.C.I. for the last 2 ½ years at Bhavnagar and that respondent No.3 is also operating similar contracts with F.C.I. at other places at Wadhwan, Rajkot, Bhavnagar and Vadodara and has been rendering satisfactory services. It is also submitted that last year, the F.C.I.'s contractor at Bhavnagar had committed the default and respondent No.3 agreed to take over the transport operations at a much lower rate, even

incurring loss, only to see that the F.C.I. is not put into difficulty and at that time, respondent No.3 was informed that satisfactory performance of that contract at a much lower rate would be taken into consideration while taking future decisions. Mr.Pahwa has submitted that though the rate quoted by respondent No.3 was 95% above the estimated rate and F.C.I. has also taken the decision to award the contract to respondent No.3, respondent No.3 is prepared to reduce the rate to 86% above the estimated rate and that looking to the cost analysis, it is not possible for respondent No.3 to reduce the rate any further. It is also submitted that the cost of diesel has substantially gone up in the last six months and in absence of any escalation clause, respondent No.3 will also have to bear any additional increase in the cost of diesel which is likely to rise again in future.

8. After hearing the learned counsel for the parties, we called for the rates at which similar contracts were awarded by F.C.I. In the year 2008, in Saurashtra as well as some other regions of the State, the rates varied from 36% to 60% above the estimated value of contract in February, 2008. The rates at which the contracts were awarded in June, 2008, varied between 150% and 170% above the estimated value of contract.

9. Having heard the learned counsel for the parties, we appreciate the contention urged on behalf of the petitioner regarding the first ground on which the petitioner was disqualified. The same could not have been held out against the petitioner, as the power of attorney produced by the partnership firm was wide enough to bind the firm in all matters pertaining to the contract in question. We do not propose to express any opinion on the second ground because in our opinion, the third ground which was held out by the Corporation for disqualifying the petitioner appears to have been sufficiently borne out by the record of the tender proceedings.

10. As indicated earlier, the contract is for Handling and Transporting of the food grain bags at the food storage depot, Bhavnagar and, therefore, the contractor is required to operate trucks. One of the tender conditions is that the contractor shall have ownership proof of four trucks at least three months old prior to the date of opening of tenders supported with legible xerox copies of RC books and road tax paid up-date. The condition further requires that in case of partnership firm, the property/trucks of the partners should be thrown in common stocks.

11. All that the petitioner had done in the instant case, while submitting the tenders, was to produce the xerox copies of the Registration Certificate in respect of the five trucks belonging to Dashrathsingh Gohil, one of the partners of the firm, but no other material was submitted along with the tender papers to show that Dashrathsingh Gohil had thrown his trucks in the common stocks of the partnership firm. We find considerable substance in the objection raised by the Corporation that production of xerox copies of registration certificates of trucks in the name of a partnership firm was not sufficient compliance with the tender conditions. The submission urged by Mr.Shelat for the petitioner that in such cases, partnership deed need not indicate or describe the assets of the partnership firm, may not be considered as unreasonable but at least some authenticated document ought to have been produced with the tender papers to show that Dashrathsingh Gohil had thrown the trucks in question in the common stocks of the partnership firm. A mere statement by the power of attorney holder of the petitioner firm stating that these trucks were available to the partnership firm was not sufficient to bind Dashrathsingh Gohil.

12. The learned counsel for the petitioner submits that Dashrathsingh Gohil is now prepared to submit on affidavit that the

trucks will be treated as common stocks of the partnership firm. That could not be accepted at this stage in the facts and circumstances of the case particularly in view of the fact that monsoon has already set in Bhavnagar region and there would be definite urgency for the FCI to see that the contract awarded by the Corporation to respondent No.3 gets implemented at the earliest.

13. While dismissing the petition, we record the statement made by Mr.Pahwa, learned counsel for respondent No.3 that respondent No.3 agrees to carry out the contract at 86% SOR as against 95% above SOR which was the rate previously offered by respondent No.3.

Notice is discharged.

(M.S. SHAH, J.)

(D.H.WAGHELA, J.)

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