

A M/S. PRODUCE EXCHANGE CORPN. LTD.

v.

COMMISSIONER OF EXCISE, ASSAM & ORS.

April 17, 1972

B [K. S. HEGDE, A. N. GROVER AND G. K. MITTER, JJ.]

Eastern Bengal and Assam Excise Act (1 of 1910), s. 19 and Rules made thereunder, r. 93—Government's power to refuse tender and enter into negotiations with tenderers.

C The respondent invited tenders for supplying country spirit to retail vendors. In the notification issued by the Commissioner, it was stated that preference will be given to manufacturers of spirit. Several persons submitted tenders including the appellant and the 5th respondent who was a manufacturer of spirit. The appellant offered to supply the spirit at 74 P and the 5th respondent at 95 P. The Government was not satisfied with any of the tenders and the tenderers were called upon to intimate to the Government whether they were willing to reduce their rate. None of the tenderers was willing to reduce the rate, except the 5th respondent who agreed to accept the rate fixed by the Government, and the Government, reduced his rate to 74 P and accepted his tender.

D The appellant challenged the order granting the contract to the 5th respondent, but the High Court dismissed the petition.

E In appeal to this Court, it was contended that: (1) the impugned order could not be sustained because the Government nowhere stated that the tenders were not acceptable, on the ground that none of them, on due considerations, appeared to be satisfactory, as provided in r. 93 of the Rules framed under the Eastern Bengal and Assam Excise Act, 1910; and (2) under the rule, Government could not have entered into negotiations with any of the tenderers.

Dismissing the appeal,

F HELD: (1) It is clear from the letter to the tenderers asking them to reduce the price quoted that the respondent Government considered the tenders to be unsatisfactory and hence unacceptable. [205B-C]

G (2) Rule 93 does not prohibit any negotiations with the tenderers. On the other hand, it authorises Government to negotiate even with persons who have not tendered. In the absence of any rule prohibiting Government from negotiating with the tenderers, Government can fall back on its powers under s. 19. In order to get country spirit at the cheapest possible rates and to have regular supplies, Government can negotiate with the tenderers or others. [205F]

(3) (a) No one has a fundamental right to get a Government contract. In matters like this no question of hearing parties arises. All that is required is fair play. The appellant had an opportunity to submit its tender which was considered and rejected on grounds which are not irrational. [306A]

H (b) Section 19 of the Act undoubtedly confers on the Government very wide powers in the matter of granting the exclusive privilege of manufacturing or of supplying to licensed vendors any country liquor or intoxicating drug within any specified local area. In the absence of a rule prohibiting Government from preferring one set of sellers to others,

Government could rely on the section for such a power so long as the classification made by it is based on rational grounds. Therefore, the Government could exercise that power in the manner most advantageous to it provided it did not infringe any Constitutional guarantee. [205G]

(c) It is true that the Government granted the contract to the 5th respondent at the rate quoted by the appellant and thus preferred the 5th respondent. But the Government, as the purchaser, can prefer one seller to another for good reasons, though, it cannot show any undue favour to any one.

(d) In the notification calling for tenders it was mentioned that preference will be given to manufacturers; and there was justification for preferring a manufacturer to others, because, there would be a reasonable guarantee in the matter of supply of country liquor. [205C]

CIVIL APPELLATE JURISDICTION : C.A. No. 15 of 1972.

Appeal by Special Leave from the judgment and order dated December 16, 1971 of the Assam and Nagaland High Court in Civil Rule No. 431 of 1970.

C. K. Daphtary and *D. N. Mukherjee*, for the appellant.

S. N. Chowdhury, for respondent Nos. 1 to 4.

M. C. Setalvad and *K. P. Gupta*, for respondent No. 5.

The Judgment of the Court was delivered by—

Hegde, J.—In this appeal by special leave the appellant challenges the decision of the High Court of Assam and Nagaland in refusing to set aside the order of the Assam Government dated June 16, 1970 granting a contract to Respondent No. 5 for wholesale supply of country spirit to Tinsukia and North Lakhimpur warehouses for three years from July 1, 1970 to June 30, 1973.

The appellant is a Public Limited Company. Under a contract entered into between it and the Government of Assam, it had the exclusive privilege of supplying country spirit to the two warehouses in the District of Lakhimpur for the period from July 1, 1967 to March 3, 1970. Sometime before that contract came to an end, the Commissioner of Excise, Assam invited tenders in sealed covers for the privilege of supplying the country spirit to retail vendors in the Upper Assam area comprising of the District of Lakhimpur and Sibsagar including Mikir Sub-Division of the United Mikir and North Cachar Hills for the period of three years commencing from April 1, 1970. In the notification issued by the Commissioner, it was stated that preference will be given to the manufacturers of the spirit. In pursuance of the tender notice, the appellant, the 5th respondent and several others submitted tenders for the grant of the contract in question followed up by necessary licences. The appellant offered to supply the spirit at 74 P. per London proof litre. Respondent No. 5 quoted the

- A price at 95 P. per London proof litre. Another tenderer namely Rampur Distillery and Chemicals Company Ltd. offered the lowest rate of 60 P. per London proof litre. The tender of Rampur Distillery and Chemicals Co. Ltd., was found to be defective and therefore it was rejected. The Government was not satisfied with any of the tenders. Thereafter by a letter dated February 28, 1970, it called upon all the tenderers to intimate to the Government whether they were willing to reduce their rate and if so, to what extent. They were required to send their replies by March 10, 1970. None of the tenderers excepting the 5th respondent was willing to reduce the rate quoted by them. The Managing Director of Respondent No. 5, by his letter dated March 4, 1970 informed the Government that his concern was willing to reduce the rate and he left it to the Government to fix any rate which it considered reasonable. He agreed to accept the rate fixed by the Government. The Government reduced the rate fixed by Respondent No. 5 to 74 P. per London proof litre and accepted its tender. Aggrieved by this decision, the appellant moved the High Court of Assam and Nagaland under Art. 226 of the Constitution to quash the Government Order granting the contract to the 5th respondent and for issuing a direction to the concerned respondents not to give effect to the impugned order. The High Court rejected that application. Hence this appeal.

- E At the very outset, it is necessary to mention that no allegation of *mala fides* is made against the Government. The only question that we have to consider in this appeal is whether the impugned order was made in violation of any statutory provisions.

- F It was urged on behalf of the appellant that the impugned order violates Rule 93 of the Rules framed under the Eastern Bengal and Assam Act No. I of 1910 (Eastern Bengal and Assam Excise Act, 1910) (to be hereinafter referred to as the Act). Before reading Rule 93, it is necessary first to refer to the relevant provisions in the Act i.e. s. 19. That section reads :

- G "The Provincial Government may grant to any person, on such conditions and for such period as it may think fit, the exclusive privilege of manufacturing or of supplying to licensed vendors or of manufacturing and supply to licensed vendors any country liquor or intoxicating drug within any specified local area.

No grantee of any exclusive privilege under this section shall exercise the same until he has received a license in that behalf from the Excise Commissioner."

- H The validity of this provision was not challenged before us. This provision undoubtedly confers on the Government very wide powers in the matter of granting exclusive privilege of manufacturing or of supplying to licensed vendors or of manufacturing

and supplying to licensed vendors any country liquor or intoxicating drug within any specified local area. In the absence of any rule, the Government could have exercised that power in the manner most advantageous to the State so long as it did not infringe any of the constitutional guarantees. In understanding the nature of the power under Rule 93, we have to bear in mind the fact that rules were framed by the Government itself in the exercise of the powers conferred on it under s. 36 of the Act. Having said that much we may now proceed to consider the rules relating to contract for supplying the country spirit to warehouses. The rules relevant for our present purpose are Rules 91 to 93. We may now read those rules.

"91. Tenders for a contract for the exclusive privilege of supplying country spirit from a distillery to licensed vendors within a specified area for a specified period will be called for by the Excise Commissioner 18 months before the date from which the contract will take effect.

Provided that the Provincial Government may, if circumstances so require, direct that tenders be called for by the Excise Commissioner within a lesser period than 18 months specified above.

92. Any person tendering for a license specified in rule 91 shall apply in writing to the Excise Commissioner furnishing the following particulars :

(1) The name or names of the person or persons applying, if a firm, the name of every partner of the firm, and, if a company, the registered name thereof :

(2) The applicant (if he is other than the existing contractor) shall also state in his tender that he is willing to take over under the provisions of rule 102 of these rules the existing vats and other permanent apparatuses in the warehouses within the area to be supplied and shall furnish a list of these in his application.

93. The Excise Commissioner shall forward the tenders with his recommendations to the Provincial Government which reserves to itself the right to accept any tender. If none of the tenders are accepted by the Provincial Government on the ground that none of them, on due consideration, appear to be satisfactory, they reserve also the right to grant the licence to any person who has not tendered and is considered suitable in all respects;

Provided that when a license is cancelled or suspended during the currency of the license, the Provincial Government further reserves the right to grant the license to any one without calling for tenders."

A It was urged on behalf of the appellant that the impugned order cannot be sustained firstly because the Government has nowhere stated that the tenders made were not acceptable to it "on the ground that none of them on due consideration, appear to be satisfactory". Secondly under Rule 93, they could not have entered into negotiations with any of the tenderers. Neither of these contentions are sound.

B From the facts stated earlier, it is clear that the Government considered the tenders to be unsatisfactory and hence unacceptable. That is clear from its letter to the tenderers asking them to reduce the price quoted. It is true that ultimately it granted the contract to the 5th respondent at the very rate quoted by the appellant. In the very notification calling for tenders, it had been mentioned that preference will be given to the manufacturers. *Prima facie* there is nothing wrong in giving preference to the manufacturers. It must be borne in mind that the Government is the purchaser. On good grounds, it can prefer one seller to another. It is true that being a Government, it cannot show any undue favour to any party; but for good reasons it may prefer one party to another. There was justification in preferring a manufacturer to others. Evidently the idea was that there should be reasonable guarantee in the matter of supply of country liquor. It was not said that this preference was given for any collateral reason. The Government does not require any special power for preferring one class of sellers to others so long as the classification made by it is based on rational grounds. It is true that no rule confers on the Government power to prefer one set of suppliers to others. But what is important is that no rule prohibits it. In the absence of any such rule, s. 19 of the Act confers on the Government such a power.

C It was next said that Rule 93 prohibits the Government to negotiate with any of the tenderers. We are unable to read that rule in that way. That rule does not prohibit any negotiations with the tenderers. But on the other hand, it authorises the Government to negotiate with persons who have not tendered. Here again in the absence of any rule prohibiting the Government to negotiate with the tenderers, the Government can fall back on its powers under s. 19. We are unable to find out any rational basis for prohibiting the Government from negotiating with the tenderers. All that the Government is interested is to get country spirit at the cheapest possible rates and to have regular supplies. For achieving those purposes, it can negotiate either with the tenderers or with others.

D It was faintly argued that before concluding its contract with the 5th respondent, the Government should have given opportunity to the other tenderers to reduce the rates quoted by them. This contention is clearly a misunderstanding of the principles of natural

justice. No one has a fundamental right to get a Government contract. The appellant was not deprived of any of its rights. It was given an adequate opportunity to submit its tender. Its offer was considered. The same was not rejected on irrational grounds. In matters like the one before us, no question of hearing the interested parties arises. All that is required is fair play. **A**

In the result we are unable to accept any of the contentions advanced on behalf of the appellant. Hence this appeal fails and the same is dismissed. But in the circumstances of the case we make no order as to costs. **B**

V.P.S.

Appeal dismissed.