

SUPREME COURT OF GEORGIA

International Business Machines Corp. v. Evans

265 Ga. 215 (1995) · Decided February 20, 1995

OPINION

FLETCHER, J.

Fletcher, Justice. International Business Machines sued the Georgia Department of Administrative Services (DOAS), and David Evans, in his official capacity as commissioner of DOAS, seeking to enjoin DOAS's award of a state contract for a computer system to Hitachi Data Systems or, in the alternative, to have DOAS re-bid the contract.

The trial court dismissed IBM's complaint on the ground that sovereign immunity barred the action. We reverse and remand. DOAS issued a Request For Proposal (RFP) pursuant to OCGA § 50-5-67 (a) for the procurement of a mainframe computer. According to the terms of the RFP, the contract award would be made to the "responsible offeror(s) whose proposal(s) is determined in writing to be the most advantageous to the State, taking into account all of the evaluation factors set forth in this RFP.

No other factors or criteria shall be used in the evaluation." The RFP detailed the evaluation criteria and provided a range of points to be given to a proposal if it met specified requirements. A team of technical experts from DOAS would evaluate each proposal and award points based on that evaluation.

The DOAS technical team awarded Hitachi's proposal the most points and DOAS awarded the contract to Hitachi based on the recommendation of the technical team. IBM's primary complaint is that the technical team did not award IBM a certain number of points that IBM alleges the RFP issuing officer orally told IBM it would *216receive and that the failure to award these points violated the terms of the RFP.

IBM contends that if the points had been awarded in accordance with the oral representation of the issuing officer, IBM would have received the highest number of points and should have been awarded the contract.¹ 1. DOAS and the commissioner both contend that sovereign immunity protects them from injunctive relief.

We disagree. This court has long recognized an exception to sovereign immunity where a party seeks injunctive relief against the state or a public official acting outside the scope of lawful authority. See *Chilivis v. Nat. Distrib. Co.*, 239 Ga. 651, 654 (238 SE2d 431) (1977) (citing cases); *Irwin v. Crawford*, 210 Ga. 222, 224 (78 SE2d 609) (1953) ("if the actions of [public corporations,

boards or commissions] are illegal or contrary to law, the courts will intervene in order to prevent [an action] illegal or contrary to law”).

To avoid the harsh results sovereign immunity would impose, the court has often employed the legal fiction that such a suit is not a suit against the state, but against an errant official, even though the purpose of the suit is to control state action through state employees. See *Undercofler v. Seaboard Air Line R. Co.*, 222 Ga. 822, 827 (152 SE2d 878) (1966) (suit seeking to enjoin assessment of property taxes was not suit against the state because complaint alleged tax commissioner was acting contrary to state and federal constitutions).

In other instances, the court has scrutinized the challenged act and if the act is legal, found sovereign immunity applies; on the other hand, if the act is illegal, then the court has held that sovereign immunity is no bar. See *Evans v. Just Open Government*, 242 Ga. 834, 843-844 (251 SE2d 546) (1979) (Hill, J., concurring specially) (noting that holding that sovereign immunity barred suit was dicta because it depended upon analysis that officials had not violated any laws); *Cannon v. Montgomery*, 184 Ga. 588, 591-592 (192 SE 206) (1937).

The underlying, though often unstated, premise in these cases is that the executive branch of government cannot cloak itself in the mantle of sovereign immunity when an injured party seeks to enjoin an illegal action.

However, the use of such legal fictions and circular reasoning has contributed greatly to the confusion that exists regarding the proper application of sovereign immunity. Recognizing a suit for injunctive relief to restrain an illegal act as an exception to sovereign immunity will permit a more logical analysis.² *2172.

The 1991 amendment to the State Constitution does not negate this long-standing principle of law. See Ga. Const. of 1983, Art. I, Sec. II, Par. IX. Rather, the 1991 amendment changed the way in which the state waived its immunity, by removing the insurance waiver that existed under the prior law. See *Curtis v. Bd. of Regents*, 262 Ga. 226, 228 (416 SE2d 510) (1992) (intent of 1991 amendment is to “redraw and redefine the terms of the state’s waiver of sovereign immunity”); *Donaldson v. Dept. of Transp.*, 262 Ga. 49, 50 (414 SE2d 638) (1992) (discussing background of 1991 amendment).

The 1991 amendment is not implicated in this case because sovereign immunity has never applied to bar this type of action seeking injunctive relief. See also *City of Thomasville v. Shank*, 263 Ga. 624, 625 (437 SE2d 306) (1993) (long standing exception to sovereign immunity that a municipality may be held liable for creating a nuisance was not abrogated by 1991 constitutional amendment).

Therefore, sovereign immunity does not stand as a bar to IBM’s complaint, and injunctive relief may be granted if DOAS acted without lawful authority and beyond the scope of its official power

in the manner in which it evaluated IBM's proposal.^{3 3}.

The burden on the party seeking to challenge a decision of the state or one of its officials is a heavy one. A court may not substitute its judgment for that of the state or its employees. Rather, a court may interfere with an exercise of the state's statutory and regulatory authority only where the state has acted wholly outside its authority; has acted arbitrarily and capriciously in its decision-making; has rendered a decision that is clearly erroneous; or has acted in violation of constitutional rights.

See *Bentley v. Chastain*, 242 Ga. 348, 352 (249 SE2d 38) (1978); see also OCGA § 50-13-19 (h) (applying similar standard for judicial review under the Administrative Procedures Act). In this case, the terms of the RFP provide the limits of the authority of DOAS to award the contract. See *Amdahl Corp. v. Dept. of Admin. Svcs.*, 260 Ga. 690, 696 (398 SE2d 540) (1990) (DOAS and its *218 commissioner are bound by the terms of the RFP).

The trial court did not address IBM's allegation that DOAS violated the terms of the RFP in its evaluation of IBM's proposal. Therefore, we remand the case to allow the trial court to consider, in light of this opinion, IBM's arguments that the alleged violation of the RFP entitles IBM to injunctive relief. Judgment reversed and case remanded. All the Justices concur, except Benham, P. J., and Hunstein, J., who concur in part and dissent in part.

We need not reach whether the issuing officer had the authority to change the terms of the RFP or whether IBM was entitled to rely upon his representations. But see *State of Ga. v. U. S. Oil Co.*, 194 Ga. App. 1, 2 (389 SE2d 498) (1989). Immunity under Ga. Const. of 1983, Art. I, Sec. II, Par. IX (d) is not an issue in this case, as the dissent suggests, because that provision deals with official immunity, rather than *217 sovereign immunity.

See *Gilbert v. Richardson*, 264 Ga. 744, 752 (452 SE2d 476) (1994). Official immunity is not implicated in this case because IBM has not sought to hold the DOAS commissioner personally liable, but rather seeks to control the commissioner's actions in performing his official duties. Official immunity comes into play only when a suit is brought against a public official in his personal capacity.

Donaldson v. Dept. of Transp., 262 Ga. 49, 56 (414 SE2d 638) (1992) (Hunt, J., concurring) ("suits against public employees in their personal capacities involve official immunity"); see also *Gilbert*, 264 Ga. at 750 (basis for official immunity is to "preserve independence of action without deterrence or intimidation by the fear of personal liability and vexatious suits") (emphasis supplied) quoting Restatement (Second) of Torts, § 895D, comment b. Because sovereign immunity does not bar IBM's complaint, it is unnecessary to decide whether sovereign immunity would bar a suit based on the alleged violation of a constitutional right.

