
(2011) 05 JH CK 0106

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1269 of 2011

ABC Construction

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Citation : (2011) 3 JCR 166

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present writ petition has been preferred mainly for the reason that the Petitioner is one of the bidders for construction of two godowns having capacity of 2500 metric tones, for storage of foodgrains and fertilizers and one more godown having a capacity of 1000 metric tones in the campus of Agricultural Produce Market Committee, Pakur. The tender notice is at Annexure-1 to the memo of the petition, which is dated 22nd November, 2010.

2. It has been submitted by the counsel for the Petitioner that the Petitioner has offered the price for the construction of the aforesaid godowns at Rs. 1,72,12,207/- against the estimated cost of the godowns published in the tender, which is at Rs. 2,02,66,400/- . Thus, against the aforesaid estimated cost, the Petitioner is ready and willing to construct the aforesaid godowns with 15% lesser amount in competition with other bidders. The Petitioner was selected and the Petitioner was also given the work for constructing godowns by order dated 22nd January, 2011(Annexure-3 to the memo of the petition). The Petitioner was also directed to start the construction work with effect from 22nd January, 2011 and the time period allotted for construction of the aforesaid three godowns was eleven months, but, to the utter surprise of the Petitioner without cancelling the aforesaid contract and without assigning any reason to the Petitioner and without giving any notice to the Petitioner abruptly, arbitrarily and unilaterally, the notice inviting tender dated 22nd November, 2010 (Annexure-1) was cancelled and a

fresh notice inviting tenders was published on 2nd March, 2011, which is at Annexure-4 to the memo of the petition, which is under challenge in this writ petition mainly on the ground that the Petitioner is ready and willing to complete the work against estimated cost of Rs. 2.02,66,400/- for Rs. 1,72,12,207/- .

3. Counsel for the Respondents-State submitted that a detailed counter affidavit has been filed and as stated in the counter affidavit, filed by Respondent No. 1 especially, in paragraph Nos. 13, 14, 15 and 18, it has been stated that if the Petitioner would have quoted Rs. 1,72,12,208/-, the Petitioner would have entitled to get the contract. The gist of the counter affidavit, filed by the State, appears to be that if the Petitioner could have quoted one rupee more to complete the aforesaid three godowns, he would have fallen within the criteria stated at condition No. 18.

4. The condition No. 18 reads as under:

Tenderers should quote his rate on overall items in percentage above or below Both in figure and words over amount of approved BOQ. Rate quoted 15(fifteen) percent lessor above the BOQ will be rejected.

5. It further appears that the Respondents have No. objection so far as the efficiency of the present Petitioner is concerned. Likewise, the Respondents-State has No. complain about financial capacity of the present Petitioner. Except the aforesaid condition, No. other condition has been violated looking to the counter affidavit, filed by the Respondents-State.

6. Counsel for Respondent Nos. 2 and 3 has submitted that they are abide by the decision taken by the Respondents-State. The godowns are belonging to the Government. The finance is coming from the Government and the present Respondent Nos. 2 and 3 have to store the foodgrains and/or fertilizers in the aforesaid godowns. Thus, Respondent Nos. 2 and 3 are the beneficiaries of the construction and they are accepting the arguments, canvassed by the State.

7. Having heard counsel for both the sides and looking to the facts and circumstances of the case, I hereby, quash and set aside Annexure-4 i.e. notice inviting tender No. 4 for the year, 2010-2011 dated 2nd March, 2011 issued by Respondent No. 3 so far it relates to the construction of godowns at Pakur, mainly for the following facts and reasons.

(i) It appears that initially, on 22nd November, 2010, notice inviting tenders was published and the following construction work for the Pakur District, was to be done:

Construction of 2 Nos. 2500 M.T. Godown storage for food grain and fertilizers and 1 No. godown having the storage capacity of 1000 M.T. with electrification for seed and P.C.C. Road, with parking in the campus of APMC Pakur.

Thus the aforesaid construction work was to be done and the estimated cost of the work was at Rs. 2,02,66,400/- .

(ii) The Petitioner alongwith others applied for the construction work to be done by them. Petitioner having one of the bidders offered Rs. 1,72,12,207/- and he is ready and willing to complete the work within the aforesaid amount. Petitioner being the lowest bidder and was found otherwise suitable and capable, the work was allotted to the present Petitioner.

(iii) The work order given to the Petitioner is dated 22nd January, 2011 and it is mentioned that the Petitioner will have to complete the construction work of the aforesaid three godowns for Rs. 1,72,12,207/- and the work will be commenced by the Petitioner from 22nd January, 2011 and it will be completed within a period of eleven months. The said order is at Annexure-3 to the memo of the - present petition. Thus, already a contract entered into between the Petitioner and the Respondents, which has not yet been terminated.

(iv) Looking to the counter affidavit, filed by the State especially in paragraph Nos. 13, 14, 15, and 18, it appears that some dissatisfied soul must have applied to the Government that there are some irregularities and Government also, without application of mind come to a conclusion that as the Petitioner has quoted lesser amount for the construction work to be done, the Petitioner cannot be given a contract instead of Rs. 1,72,12,207/- . If the Petitioner would have quoted one rupee more, he would have fallen within the criteria of 15% of the estimated cost.

(v) The condition which has been wrongly interpreted by the Respondents reads as under:

Tenderers should quote his rate on overall items in percentage above or below Both in figure and words over amount of approved BOQ. Rate quoted 15(fifteen) percent lessor above the BOQ will be rejected."

Looking to the aforesaid condition, it appears that if the estimated cost is Rs. 100/- then the bidders can offer the cost of construction ranging from Rs. 85/- to Rs. 115/-, but, if anybody is quoting Rs. 84/- or Rs. 116/- he will be disqualified. This is a gist of the counter affidavit, filed by the Government of interpretation of the condition, especially at paragraph Nos. 13, 14, 15 and 18.

In view of the aforesaid condition and the interpretation made by the Respondents, it appears that if the Petitioner would have quoted one rupee more, he would have given a contract. This reflects non-application of the mind by the Respondents.

(vi). Counsel for the Petitioner, in presence of his client, voluntary invites supervision by any of the Committee appointed or constituted by the Respondents and the work of the construction of the godowns will be completed within the aforesaid amount to the satisfaction of the Respondents and /or to the satisfaction of the Committee appointed or constituted by the Respondents over and above, regular supervision by the Committee appointed or constituted by the Respondents so that within the; aforesaid amount (which is 15% lesser than

estimated cost, published by Respondents) all the three godowns will be completed. This condition, the Petitioner is inviting, over and above, the regular conditions.

(vii) Such type of non-application of mind happens only with the governmental contracts. If a Petitioner would have quoted one rupee more the Respondents have No. objection, but, the Government has not appreciated the fact that the Petitioner is completing the work to the satisfaction of the Respondents and/or to the satisfaction of the Committee appointed or constituted by the Respondents within the aforesaid rupees i.e. Rs. 1,72,12,207/- .

(viii) without terminating contract, fresh notice inviting tenders have been issued on 2nd March, 2011.

8. As a cumulative effect of the aforesaid facts and reasons, I hereby, quash and set aside Annexure-4 i.e. notice inviting tender No. 4 of the year, 2010-2011 dated 2nd March, 2011 so far it relates to Pakur District. After appointing or constituting the Committee, new date for commencement of the contract will be given by the Respondents in consultation with Respondent Nos. 2 and 3 so that within a period of eleven months thereafter, the work can be completed.

9. Accordingly, this writ petition is allowed and disposed of.