
(2003) 09 JH CK 0123

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4130 of 2003

Asgar Alam

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 BC 131 : (2003) 4 JCR 573

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant; Arbind Kumar Singh, for the Respondent

Judgement

M.Y. Eqbal, J.—The petitioner has prayed for quashing the order dated 16.8.2003 issued by the Vice Chairman, Ranchi Regional Development Authority whereby settlement made in favour of the petitioner for collection of parking and entry fee of the Rock Garden has been cancelled.

2. The respondent-Ranchi Regional Development Authority (RRDA) issued a general notice in the newspaper for settlement of various contract jobs including the job of vehicle parking and entry fee contract for Rock Garden. The petitioner's case is that he participated in the open bid and he was declared the highest bidder at Rs. 7,75,000/-. The petitioner deposited 50% of the bid amount i.e. 3,87,000/- and the rest was to be deposited in quarterly installment. It is stated by the petitioner that in terms of the agreement he repeatedly requested the respondents to execute the agreement but the respondent avoided to do the same rather verbally informed the petitioner that he has to deposit a Bank guarantee for the remaining amount. The petitioner's case is that he was allowed to collect the entry fee as well as the parking fee at the old rate from 1.4.2003. Thereafter vide letter dated 22.5.2003 the respondent RRDA informed the petitioner that the agreement shall be executed only upon fulfilling the other terms and conditions. The petitioner was served another notice dated 22.7.2003

calling upon him to show cause as to why he is not maintaining the Rock Garden and not doing cleaning work and further he failed to deposit the first quarter installment. The petitioner submitted his explanation/show cause stating inter alia that those work are not the part of the contract and petitioner is not suppose to maintain the Rock Garden. Thereafter the settlement was cancelled by the respondent vide letter dated 31.3.2003.

3. In the counter affidavit filed by the respondent RRDA it is stated that the petitioner flouted the condition from the very beginning and insisted to increase the rate of entry fee and vehicle parking fee of the Rock Garden. The petitioner also started collection of entry fee and parking fee without agreement on and from 1.4.2001. It is stated that in order to increase the rate the respondent has considered the matter and decided to impose four conditions i.e. payment of half of the electric bills, cleaning of Rock Garden, deposit of bank guarantee and safeguarding the electric equipments. The petitioner did not accept the offer rather went on collecting entry fee and vehicle parking fee without agreement. It is further stated that a fresh public notice was issued inviting offers and commission mechanized swing and other such devices on different varieties at the Rock Garden. Amongst other the offer submitted by M/s. Panchawati Holiday Resort was found very satisfactory and they have agreed to invest 5 to 7 crores in installing musical fountain, water rites ropeway mechanized swing etc. As such on 5.8.2003 the authority decided in its meeting to enter into an agreement for the same which is in process.

4. I have heard Mr. Rajiv Ranjan learned counsel for the petitioner and Mr. Arbind Kumar Singh learned counsel appearing for the RRDA.

5. From perusal of Annexure 1 the general notice published in the newspaper it appears that RRDA invited tenders for settlement of various bus stands including the collection and entry fee of Rock Garden. For the purpose of collection of entry fee and parking fee for the visitors of Rock Garden, the security amount was fixed at Rs. 77,000/- and minimum bid amount was fixed at Rs. 7,70,550/-. Similarly for the settlement of canteen of the Rock Garden and for the settlement of toilet of the Rock Garden different security amount and minimum bid amount was fixed. On the date of the bid the petitioner participated against the settlement of entry and parking fee and he was declared highest bidder at 7,75,000/-. As per the advertisement the petitioner deposited 50% of the bid amount i.e. 3,87,000/-. The rest of the amount was to be deposited in installment. These facts have not been denied or disputed by the respondents. The petitioner's case is that after the bid amount was deposited the petitioner was asked to deposit bank guarantee for the remaining amount whereupon the petitioner protested since that condition was not there in the tender notice. The petitioner also asked for enhancing the entry fee. The respondents RRDA for the first time informed the petitioner vide letter dated 22.5.2003 that the authority have taken a decision to enter into an agreement only after the petitioner fulfills certain other conditions namely payment of half of the electric bill, cleaning and

maintenance of the Rock Garden, deposit of bank guarantee or security in respect of half of the bid amount and safety and security of electric equipments of the Rock Garden. It is stated that if the petitioner accepts these conditions then his further request for enhancement of fee shall be considered. It is worth to mention here that in the tender notice the settlement was only in respect of the entry fee and parking fee. In the tender notice there is no stipulation of these conditions which shall have to be fulfilled by the bidder. Admittedly these are the conditions subsequently put by the respondents but the fact remains that the final agreement has not been executed by the petitioner and the respondents RRDA. In the show notice dated 29.7.2003 issued by the respondent the petitioner was called upon to show cause why the proposed settlement of Rock garden be not cancelled on the ground of non deposit of instalment and not cleaning and maintaining the Rock Garden. The petitioner replied to the said letter stating that he is ready to deposit the installment but it is not the responsibility of the petitioner to maintain the Rock Garden. Finally the proposed settlement was cancelled by the impugned order dated 16th August, 2003.

6. From the pleading of the parties the relevant facts which needs consideration are that admittedly pursuant to the general notice the petitioner participated in the bid for settlement in respect of only vehicle parking and entry fees. There was no condition in the tender notice that the successful bidder will have to maintain the Rock Garden and shall be liable for safety and security of the equipment installed or lying in the Rock Garden. The petitioner being the successful bidder deposited half of the bid amount. It is worth to notice that the settlement was for the period of one year i.e. 2003-04. Admittedly the petitioner started collecting entry fee and parking fee from 1.4.2003 and the proposed settlement was finally cancelled by the impugned order date 16th August, 2003. Since a final agreement was not entered into between the parties and the proposed settlement was cancelled, this Court cannot go into the question with regard to legality and validity of cancellation of the proposed settlement. However, on the face of the tender notice it appears that there was no such condition put by the respondents before accepting the tender of the petitioner that he will have to comply other conditions referred here-in-above. The impugned order directing adjustment of the amount towards the expenses and other charges out of the amount deposited by the petitioner is illegal, unreasonable and unjustified and accordingly that part of the impugned order is quashed.

7. This writ application is allowed in part and the impugned order for the recovery of any amount is quashed. However the petitioner will be at liberty to move the appropriate forum challenging the cancellation of the settlement.