

(2008) 02 JH CK 0115
In the Jharkhand High Court

Autari Paswan

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-02-2008

Acts Referred:

Citation : (2008) 3 JCR 96

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the notice for inviting application for re-tendering of Dulki Water Tank, Hunterganj, District Chatra by Letter No. 1119 dated 24th October, 2007, after taking decision for settling the said tank with the petitioner and accepting the earnest money from him for settlement.

2. It has been stated that the petitioner earlier responded to the NIT for settlement of the said tank. The petitioner had participated and had quoted his bid, which was found to be the second highest. The first highest bidder failed to deposit the earnest money. According to the term of the bid, the petitioner, being the second highest bidder, was invited by the respondents by notice dated 20th July, 2007. The petitioner was asked to deposit earnest money of his bid. The petitioner deposited the same and receipt thereof has not been denied by the respondents. The petitioner was, thereafter, asked to submit a draft agreement which he also did, but suddenly, the Chief Engineer, Water Resources Department, issued the impugned order dated 24th September, 2007, whereby he has decided to call for fresh bid.

3. It has been stated that after having done the required formalities for taking settlement, the petitioner has also purchased seeds of fish and put fish-fry in the said tank and deposited the earnest money, but in the meantime, the impugned order has been issued and that too without giving prior notice or opportunity of

hearing to the petitioner. It has been submitted that once the bid was decided in favour of the petitioner and the earnest money was deposited and the petitioner has also performed the other required parts, the tank is not available for the fresh bid. Thus, the impugned order is wholly arbitrary and illegal. It has, further been submitted that the respondents having offered the bid to the petitioner and accepted the earnest money cannot go behind and change the decision to the prejudice of the petitioner. It has been stated that after the earnest money was accepted, the petitioner in bona fide belief of execution of agreement in his favour put fish-seed into the tank amounting to Rs. 2,10,500/- (rupees two lacs ten thousand five hundred). The impugned decision of re-tendering the tank without any notice and opportunity of hearing is violative of principle of natural justice and is not sustainable in law.

4. A counter-affidavit has been filed on behalf of the respondents, stating, inter alia, that one Md. Sarif Ansari made a written complaint with regard to forgery committed by the first highest bidder, father of the petitioner and, the second highest bidder (the petitioner herein). The petitioner, being the second highest bidder, has obtained the bid in connivance. It has been stated that the petitioner's bid is not reasonable and proper. The matter was examined by the Chief Engineer, Water Resources Department, who, on consideration, has directed for fresh tender, incorporating certain new conditions. It has been stated that the decision for re-tendering the tank has not been taken in view of the said complain and the same is not arbitrary.

5. I have heard learned Counsel for the parties and considered the facts and materials appearing on record.

6. It has been admitted by the respondents that the petitioner was the second highest bidder and that according to the term of the tender, on failure of the highest bidder, the petitioner was called by the respondents to inter into the bid agreement and to deposit the earnest money. The petitioner responded to the said offer and deposited his earnest money. The petitioner also submitted the draft agreement and performed all that required on his part. The petitioner after depositing the earnest money has further invested a considerable amount in purchasing and putting fish fry (seed) in the tank. The respondents had to execute the agreement, but the same was not done, rather the decision was taken for re-tendering the tank. Before taking the said decision, no notice was served on the petitioner assigning reason for taking decision for re-tendering the tank, which was earlier finally decided to settle with him and required formalities were also completed on his part. On acceptance of the earnest money, the petitioner was made to believe that the agreement will be executed in his favour and in legitimate expectation, he further invested a heavy amount and put fish seeds in the tank.

7. From the above, it is evident that the petitioner has completed all required formalities on his part and the agreement was only to be executed and signed by the respondents. The petitioner is, thus, not at fault for the same. In legitimate

expectation that the agreement will be executed and other formalities will be done by the respondents, the petitioner has further invested heavy sum in putting fish fry in the tank.

8. In view of the above, the respondents cannot deny settlement in favour of the petitioner in such arbitrary manner without giving any notice or opportunity of hearing to the petitioner. The impugned notice dated 24th October, 2007 in effect denying settlement to the petitioner without complying with the requirement of the principle of natural justice cannot sustain and is, hereby, quashed This writ petition is, accordingly, allowed.