
(2012) 07 PAT CK 0052
In the Patna High Court
Case No : CWJC No. 17210 of 2011

Awadhesh Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Citation : (2012) 4 PLJR 865

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Manish Sahay, for the Appellant; Tej Bahadur Singh, for the Respondent

Final Decision : Allowed

Judgement

J.N. Singh, J.—In this writ application, petitioner is aggrieved by rejection of his technical bid by the respondents on the ground that he had not furnished the affidavit that "he is not restrained from taking part in tenders by works department". Since he could not get a copy of the order, he has also prayed for a direction to the respondents to produce the said order and to quash the same. In the counter affidavit filed by respondent no. 5, decision of the Committee has been produced as Annexure-B. In respect of the petitioner, it shows that his technical bid was rejected on the ground that he had not filed an affidavit in respect of

. Tender notice has also been placed on record by the said respondent as Annexure-A with the counter affidavit. Clause 15 of the tender notice reads as follows:-

2. This clause shows that the tenderer had to file an affidavit in either of the respect that he had not been debarred from participating in any tender or he had not been included in the blacklist. In clause 15, two expressions are bifurcated by a slash (/). This Court looked for the true import of slash (/) on the Internet and, on the website "[en.wikipedia.org/wiki/slash-\(punctuation\)#In.English.Text](http://en.wikipedia.org/wiki/slash-(punctuation)#In.English.Text)",

it found definition of slash (/) and its use in English language, which is given as under:--

The slash (/) is most commonly used as the word substitute for "or" which indicates a choice (often mutually exclusive) is present.

3. Thus, it is apparent that two requirements of affidavit, namely, affidavit in respect of contractor not being debarred from participating in a bid and an affidavit to the effect that the contractor has not been included in the blacklist were mutually exclusive and alternative to each other and the contractor had a choice to file affidavit with either of the two stipulations.

4. Petitioner has asserted, which has not been denied by the respondents, that he had already filed an affidavit with his tender papers that he has not been included in the blacklist.

5. Learned Additional Advocate General No. 7 made an endeavour to advance the proposition that the affidavit to the effect that the tenderer was not included in the blacklist was not enough and he had also to file an affidavit that he had not been debarred from participating in the tender.

6. In view of the use of slash (/) in clause 15 between these two expressions and its common use in English language, this Court is unable to accept the submissions of learned Additional Advocate General. This Court finds that putting a slash (/) between two expressions of clause 15 was a clear indication that the tenderer had to File an affidavit with either of the two statements and not necessarily both. Admittedly, petitioner had filed an affidavit that he had not been included in the blacklist. Hence, clearly requirement of clause 15 had been fulfilled by the petitioner. Rejection of the tender of the petitioner, as noticed above, was therefore arbitrary and on non est ground.

7. However, learned Additional Advocate General has pointed out that the technical bid was opened in the matter on 9.9.2011 and financial bid was opened on 14.9.2011. Result of the opening of financial bid was declared on 16.9.2011 and agreement was entered into with the intervener respondent on 19.9.2011. Work order was also issued to the intervener respondent on 20.9.2011 and site was also handed over with clear stipulation to complete the work by 12.9.2012. He submitted that the intervener respondent has already commenced the work. He pointed out that the petitioner had filed this writ application on 26.9.2011 and the same was taken up for the first time on 19.10.2011 when this Court, while directing the respondents to file counter affidavit, stayed further proceedings in respect of the NIT. He points out that till then Agreement had already been executed with the intervener respondent and work order had also been issued and the site had already been handed over to the respondent, who was not a party in the writ application at that time.

8. In the circumstances, though this Court finds that the rejection of the tender of the petitioner was on non est grounds and therefore arbitrary, but in public

interest this Court does not consider it appropriate to quash the work already awarded to the intervener respondent. Hence, it is not necessary and required from this Court to consider the stand of the intervener respondent made out in his voluminous interlocutory application.

9. However, it is clear that the petitioner has been done wrong and he has suffered due to arbitrary action of the respondents and their non-application of mind. Hence, this Court is of the view that he is entitled to cost and compensation in the matter. As such, this writ application is allowed with a direction to the State to pay Rs. 20,000/- as cost and compensation to the petitioner for the wrong caused to him on account of arbitrary action of its concerned officials, which shall be paid to the petitioner within one month from the date of receipt/production of a copy of this order. State will be at liberty to realize the amount from the officials, who may be found responsible in the matter, in accordance with law.