
(2002) 01 PAT CK 0068
In the Patna High Court
Case No : L.P.A. No. 94 of 2002

Bihar Computer Software and Diagnostics Ltd.	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 18-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2002 Patna 74 : (2002) 2 PLJR 245

Hon'ble Judges : Ravi S. Dhavan, C.J

Bench : Single Bench

Advocate : Ram Janam Prasad, for the Appellant; P.K. Sahi, Senior Standing Counsel C.G., A.P. Jittu, S.C. II, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J.—A petition was filed by the appellant numbered as

C.W.J.C. No. 15634 of 2001. It was by an order of 8 January, 2002 for the reason that the petition did not disclose any enforceable right. The order on the writ petition is reproduced below:

"Heard learned counsel for the petitioner, learned S.C. 2 for the Bihar Government, and learned Sr. SCCG for the Union of India.

The writ petition does not disclose any enforceable right. In that view of the matter, this writ petition is dismissed."

2. A Letters Patent Appeal has been filed challenging the order. In the grounds of appeal the contention of the appellant is that the learned Judge, while passing the impugned judgment and order, has completely failed to appreciate the issues involved in the present case: that the learned Judge has failed to consider the fact that the respondents after due consideration of offer of petitioner and reasonable conclusion has asked the petitioner-appellant to submit nine projects for modernisation of the health care system of all hospitals in the State of Bihar

from Referral Hospitals to Medical College Hospitals level; that the learned Judge has failed to understand the difference between model plan and projects; that the learned Judge has failed to appreciate the appellant's offer not to charge the cost over preparation of the project reports and it made the project reports available without charge to the respondents on the condition that the charge would be made after execution of the projects as the advice rendered, in effect, would be gratis; that the learned Judge without elaboration or assigning any reason as to whether there is any enforceable right or not has rejected the writ petition; that the learned Judge was misled by the respondents' lawyer who had referred to various correspondence between the petitioner and respondents but by omitting certain Annexures; that the learned Judge has not considered the position that in case the State of Bihar was not willing to modernise the health services, it was not necessary to ask the petitioner to submit his project reports; that the learned Judge was prejudiced only on the cost of the projects; that the learned Judge overlooked that the Central Government is to be referred to for the projects; that the learned Judge has forgotten that the cost of the project reports made by the petitioner, is to be borne by the World Bank and not by the Union of India or the State of Bihar.

3. In the writ petition the reliefs sought are, in effect, a writ of mandamus for the execution of the nine projects estimated at a cost of Rs. 16,650/- crores and for a direction for the immediate payment of Rs. 4.05 crores, in effect, as the consultancy charges payable to the appellant-petitioner. Other reliefs have also been sought to the effect, that a direction be issued that the State of Bihar promptly avail the schemes of the World Bank and the Financial Institutions. A writ of direction is sought that the projects prepared by the petitioner-appellant be not abandoned and not assigned to any other agency except the petitioner-appellant.

4. It is clear that the petitioner-appellant desires the Court to spell out a contract and, thereafter, consequentially issue a direction to the State of Bihar that the petitioner be paid (a) the consultancy charges amounting to Rs. 4.05 crores and (b) the consideration of the contracts standing at Rs. 16,650 crores.

5. The Court has heard learned counsel for the petitioner Mr. Ram Janam Prasad. The only issue to be examined is whether a contract has indeed been spelt out and that also between the petitioner-appellant and the State of Bihar so that the Court may in its prerogative writ jurisdiction send for records upon a certiorari and, thereafter, issue a writ or a direction whatever be its nature directing the State of Bihar to execute the contracts which the petitioner-appellant claims. The petitioner-appellant desires that the High Court certify a contract and that the State is obliged to award such a contract to the petitioner-appellant.

6. On submissions, reliance has been placed upon Annexures-2, 10 and 11 of the writ petition. The Court will take up these Annexures on which the Court's attention has been drawn. In chronology, Annexure-10 is a letter dated 4 September, 2000. It has been written by the Managing Director of the petitioner-

appellant and has been addressed by name to one Mr. S. P. Saha, I.A.S., Commissioner and Secretary, Department of Health, Medical Education and Family Welfare, Government of Bihar. Patna. The subject of the letter is for execution and implementation of the World Bank Projects. It appears that the petitioner-appellant has forwarded some reports for the projects. The petitioner-appellant mentions "now we like to confirm you again and again that previously we have not charged any cost for preparation of project neither we have claimed untill now". The petitioner-appellant further contends in the letter "we are ready to prepare all these schemes according to your demand and as such in the interest of the State, we are not going to charge any amount for these works". The petitioner-appellant also states that "We are also ready to execute directly and implement all the nine health projects after approval of the World Bank if the State of Bihar will have to select our company and assign the job for improvement and modernisation of health sector in Bihar" (Emphasis). A copy of this letter was endorsed to the Hon'ble Minister of Health, Medical Education and Family Welfare Department, Government of Bihar, Patna.

7. The next letter is Annexure-2 dated 20 November, 1999. This is a communication from the Commissioner and Secretary, Government of Bihar, Department of Health, Medical Education Family Welfare, Govt. of Bihar, Patna to the Secretary, Health and Family Welfare, Ministry of Health and Family Welfare, Govt. of India, New Delhi. This is a discussion between the two Governments on the improvement of Hospitals and refers to grant-in-aid from World Bank and other Financial Institutions. Of any plan which may have been made out, in Paragraph 4 of this letter it is suggested, "For this purpose, we are sending herewith a model plan of CSD Corpn. which may form the basis for consideration and sanction of requisite fund". The letter also mentions "It is made clear that we are recommending this firm/organisation for this purpose". This letter dated 20 November, 1999 (Annexure 2) is a facsimile of a copy endorsed to the firm M/s. C.S.D. Corporation, Kankarbagh, Patna, with a remark "for information and necessary action".

8. Then, there is a letter Annexure "11" dated 1 November, 2000 written by an Additional Secretary. It was addressed to the Managing Director of M/s. C.S.D. Corporation. Kankarbagh, Patna; the latter is the petitioner. The letter is in Hindi in three paragraphs. The first paragraph mentions that as directed the petitioner may make out the nine project-reports in accordance with the World Bank guidelines. An aspect needs to be taken note of that the letter is addressed to one M/s. C.S.D. Corporation whereas the petitioner before the writ Court was M/s. Bihar Computer Software & Diagnostics Limited. The second paragraph of the letter mentions that the party addressed may proceed to prepare the projects in reference to it's letter of 4 September, 2000. But it qualifies that nothing will be payable for the preparation of the projects. The third paragraph of the letter requests that the requisite project be prepared within 15 days.

9. The Court has reservations to record that the Additional Secretary to the

Government of Bihar, could not have made a recommendation in a matter of such a magnitude and if by mistake his recommendation would have been accepted then this would have had the making of another scam to award a contract without going into the modalities that these are public contracts which have to be awarded scrupulously under norms required for assigning public contracts.

10. Upon submission the Court did make inquiries from the learned counsel addressing the Court that the context of the matter must be very clear on what the petitioner-appellant is seeking. It was submitted, there is a contract between itself and the State of Bihar and, consequentially, it is seeking a direction from the High Court for the enforcement of the contract. The Court then inquired on what would the requisites be on which a contract is being spelt out. There is no invitation to make an offer to the petitioner-appellant so that he could make an offer which was accepted and that also upon consideration. These relevant facts are missing. Then, it was understood that any project report which the petitioner-appellant would generate nothing would be charged. In effect, the petitioner-appellant was making the reports gratis. It was explained to the Court from Annexure "10" dated 4-9-2000 that the petitioner-appellant had in no uncertain terms indicated that should it be selected for executing the contracts then the consultancy fee of Rs. 4.05 crores would not be charged. It was explained to the Court that the award of a contract of Rs. 16,650/- crores was dependent and contingent on the petitioner's report and if the services were assigned in that case the consultancy fee for making the projects would not become the subject-matter of payment. Counsel for the petitioner-appellant accepts that the modality of a contract being spelt out is dependant on the other facts.

11. If the matter is so complicated that underlying facts will need to be seen to spell out a contract, then this is not a matter for a writ Jurisdiction. Then, on behalf of the petitioner, counsel acknowledges that the acceptance of a gratis report was a contingency, an arrangement without consideration. It may be a solicitation of the petitioner. But there was no public invitation to make an offer, in the facts and circumstances of the present case.

12. Looking at this matter any other way the situation remains that there was no invitation of making an offer for the contract which the petitioner-appellant claims. The question of acceptance does not arise. No consideration passed let alone adequate consideration. An agreement in writing is not on record so that other formalities to register a contract follows. Then, could a contract of Rs. 16,650/- crores be awarded to the petitioner-appellant just for the askance merely because a correspondence was being engineered and the petitioner-appellant was (sic) unsolicited offering its conditional concessions and rebates that should the services be assigned to the firm the consultancy charge would be forgone. Contracts of such magnitude in today's context must necessarily be by a national if not a global tender.

13. In the winding of arguments learned counsel conceded that the service

offered to generate the report were without charge and in fact even submitted that this relief is being dropped.

14. With these facts and circumstances, this Court is of the opinion that the learned Judge has committed no error in dismissing the petition that no cause has been disclosed as an enforceable right to issue a writ in the High Court's writ jurisdiction under Article 226 of the Constitution of India. The Court is not inclined to interfere on the order of the learned Judge and the reasons which the petitioner-appellant desires from the Court are sufficiently provided in this order.

15. Dismissed.