

(2019) 08 JH CK 0074

In the Jharkhand High Court

Case No : Writ Petition (C) No.6089 Of 2017 & Writ Petition (c) No. 6089 Of 2017

Chandramani Pandey

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 08 JH CK 0074

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Ajay Kumar Pathak, Abhijeet Kr. Singh, Sweta Kumari

Final Decision : Disposed Off

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder a direction has been sought for upon the respondents to allow the petitioner to get the work of construction of Panchayat Bhawan at Village & Panchayat - Chiru under Chhatarpur Block from which the petitioner has illegally been deprived from making construction and subsequent thereto, the addition has been made to the prayer after the appropriate order having been passed by this Court in I.A. No.7023 of 2018 which pertains to quashing of the tender notice dated 13.07.2018 as contained under Annexure-11 to the interlocutory application.

2. The brief facts of the case of the petitioner as per the pleading made in the writ petition is that in pursuance to the notice inviting tender as contained under Annexure-1 dated 25.03.2017, applications have been invited from one or the other bidders for consideration of their candidature for allotment of the work for construction of Panchayat Bhawan at Village & Panchayat - Chiru under Chhatarpur Block, in which, apart from the petitioner, others have also participated and on comparative assessment of the candidature of one or the other candidates, the petitioner has been found to be successful and accordingly, the work order has been issued, in pursuance thereto, the petitioner has started

executing the work and invested substantial money, at that juncture, the public complaints have been made regarding location of the Panchayat Building over the site, therefore, the Government has taken decision to shift the building to construct it over another plot and therefore, the petitioner has stopped the work.

In pursuance to the work order passed by the competent authority and when the alternative plot has been arranged, even though the petitioner was ready to execute the work but he has not been allowed to do so rather a tender notice has been issued on 13.07.2018 inviting fresh applications from one or the other bidders and therefore, the authorities have committed gross illegality in coming out with the fresh tender without providing an opportunity to execute the work in entirety in pursuance to the earlier tender as contained under Annexure-1.

Learned counsel for the petitioner has submitted that he has invested substantial amount upon the plot which originally was allotted for construction of Panchayat Building and therefore, the petitioner has been made to suffer without any fault lying on his part.

3. Counter affidavits have been filed on behalf of the State-respondent. Pressing the same, Mr. Abhijeet Kr. Singh, learned counsel appearing for the State-respondent has submitted by referring to the stand taken by the State-respondent, more particularly at paragraph-15 thereof, that after the alternative plot having been arranged and by taking a decision in this regard to construct the Panchayat Building by the Director, NEP, Palamau and letter was issued on 09.10.2017 as contained in Letter No.1255 to start the work over the new site on the grounds of population, accessibility, utility etc., and subsequent thereto, vide the letter issued on 10.10.2017 as contained in Letter No.1164 issued by District Engineer, Palamau asking the subordinate authority of the contractor to start the work at new site pertaining to Khata No.131, Plot No.2384 but the work has not been started by the petitioner, and therefore, even waiting for about a year, the work has not been commenced by the petitioner and a new tender has been issued on 13.07.2018 which has been assailed by way of interlocutory application, having been allowed by this Court.

4. The question herein is that the petitioner is questioning the subsequent tender dated 13.07.2018.

This Court after going across the pleading made in the writ petition as also the counter affidavits filed on behalf of the State-respondent has found that admittedly the petitioner has been declared to be successful bidder for construction of the Panchayat Bhawan in the plot which has been provided and earmarked for construction of the aforesaid building as has been submitted by the petitioner, the work has been started but in course thereof, due to public complaints being made by local people, a decision has been taken by the authority for shifting of the plot for construction of the Panchayat Bhawan vide decision taken in this regard on 09.10.2017/10.10.2017 as has been referred at paragraph-15 to the counter affidavit filed on 06.04.2018 wherefrom it is evident

from the stand taken by the State-respondent that the agency/contractor has not started the work on the new site.

The said statement made at paragraph-15 has been supported by Annexure-A.

This Court has examined the Annexure-4 wherefrom it is evident that the copy of the notice to start the work has not been communicated to the petitioner, even accepting the aforesaid fact that there is no communication about the said copy to start the work over the new plot but the question herein is that when the petitioner has spent money in construction of the Panchayat Building over the earlier plot earmarked for that and the petitioner has been prohibited for making construction over the same by virtue of decision taken by the competent authority and a decision has been taken by the authority, subsequent thereto, a fresh decision has been taken on 09.10.2017 but the petitioner has failed to bring on record any document showing the fact that he has approached to the authority showing his interest in executing the work in entirety.

Further, the new tender has been issued after about one year from the date of said decision taken on 09.10.2017 since a new tender has been issued on 13.07.2018 but during the period of about one year, the petitioner has not shown his bona fide by showing his interest for execution of the work and if the authority has come out with an advertisement after lapse of about one year by issuing fresh notice inviting tender for allotment of the said work in favour of other bidders for completion of the Panchayat Building, it cannot be said to be an arbitrary decision for the reason that the building is in the nature of a Panchayat Building to be used by the public and therefore, considering the urgency if the authority have come out with fresh tender, the same cannot be said to be illegal.

5. The Court has also considered the fact that a fresh tender was issued on 13.07.2018 and it is almost one year after issuance of the fresh tender, and considering the period of completion of work as per the notice inviting tender which was to be completed within a period of six months, therefore, this Court is not inclined to interfere with the fresh tender dated 13.07.2018.

6. So far as the contention of the petitioner that since he has already invested substantial amount in the plot which has been earmarked earlier to the subsequent one and as such, the authority may be directed to disburse the amount which has already been incurred over construction.

7. Mr. Abhijeet Kr. Singh, learned counsel for the State-respondent has submitted that for that the petitioner needs to approach before the competent authority who if on examination finds that the work has been initiated and the same has been recognized by the competent authority/engineers, the necessary decision would be taken.

8. Having considered the aforesaid arguments, this Court is of the view that the petitioner is required to approach before the competent authority by showing the initiation of the work and part of its execution on the earlier plot by filing a

representation to that effect within a period of three weeks from the date of receipt of copy of the order.

9. The competent authority, Deputy Development Commissioner-cumChief Executive Officer, respondent No.5 shall examine the matter by calling upon the record and if required by visiting the site and going across the entry made in the measurement book by the concerned, decision would be taken with respect to the claim of the petitioner within a period of eight weeks from the date of receipt of such representation.

10. In view thereof, the writ petition stands disposed of.

11. Pending interlocutory application(s), if any, also stands disposed of.