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(2005) 03 PAT CK 0010

In the Patna High Court

Case No : CWJC No. 2079 of 2005

Debashree Construction (India) Pvt. Limited — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

Citation : (2005) 2 BLJR 1019

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Mihir Kumar Jha and Akhilesh Kumar Sinha, Navniti Prasad Singh, Raj Kishore Prasad and Tej Bhadur Roy, for the Appellant; Priyadarshini, JC to SC I, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The petitioner is a registered company incorporated under the Companies Act. It is represented before the Court through its Managing Director.

2. The petitioner company, that is registered as a Class I Government contractor, has come to the Court with the grievance that due to the strike of the Non-Gazetted Government employees at the material time and some undue favour shown by he concerned authorities to someone else, a situation had arisen where the petitioner was denied a chance to bid for a contract but another private party was provided with the means and the opportunity to do so.

3. The facts of the case are brief and may be stated thus. The Executive Engineer, National Highway Division, Aurangabad issued a notice inviting tenders for I.R.Q.P. work for the year 2004-05 on Patna-Aurangabad section of National Highway No. 98 between Km. 90 to Km. (127) 52. The estimated cost of the work was shown as Rs. 408.95 lacs, the amount of security deposit was Rs. 8.18 lacs and the Bill of Quantity (B.O.Q.) for making the bid was priced at Rs. 10,000/-payable by a Bank draft made in favour of the Executive Engineer. The B.O.Q. was available at the offices of (i) the Chief Engineer, National Highway

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Wing, Patna, (ii) the Superintending Engineer, National Highway Circle, Dehri-on-Sone and (iii) the Executive Engineer, National Highway Division, Aurangabad and it could be purchased from any one of the three places. The last date for purchase of the B.O.Q. was 19.1.2005 till 1 in the afternoon. The last date for submission of tenders was 20.1.2005 till 3 in the afternoon and the tenders were to be opened on the same date at 3.30 in the afternoon.

4. It is stated on behalf of the petitioner and not denied by anyone that the Non-Gazetted employees of the State Government were on strike from December 10, 2005 to January 22, 2005 and thus the date on which the tender notice was issued and the last dates for the purchase of the B.O.Q. and for submitting the tender all fell during the strike period.

5. The admitted facts of the case end here and from this stage what is stated on behalf of the petitioner is hotly controverted by the other side. The case of the petitioner company is that it intended to make a bid in response to the tender notice. It, therefore, obtained a Bank draft for Rs. 10,000/- drawn in favour of the Executive Engineer, N.H. Division, Aurangabad. A copy of the Bank draft is at Annexure 2 from which it appears that it was obtained from the State Bank of India, Dehri-on-Sone on 18.1.2005. It is stated on behalf of the petitioner that on the same day (18.1.2005) a person from the company went to the office of the Executive Engineer, Aurangabad with the Bank draft to purchase the B.O.Q. but the office of the Executive Engineer was locked and closed and there was no one there. A person from the company again went to the office of the Executive Engineer on 19.1.2005 but on that date too the office was completely closed and no one was present there for selling the B.O.Q. On enquiry it was learnt that the office was closed and no Governmental work was taking place due to the strike of the Government employees and the work would resume only after the strike was called off. It is then alleged that the petitioner further came to learn that notwithstanding the closure of the office and the non-availability of the B.O.Q. to the petitioner, the Executive Engineer had surreptitiously given it to some other contractors with a view to favour them unduly. On coming to learn the aforesaid facts the petitioner tried to send a letter to the Executive Engineer on 19.1.2005 requesting him to extend the date of sale of the B.O.Q. The letter was sent through a private courier called D.T.D.C. but it was returned to the sender with the remarks "Lene Seh Inkar Kiya, Hartal Par Hai."

6. On the basis of the aforesaid allegations the petitioner filed this writ petition on 10.2.2005 praying for the Court''s intervention and seeking a direction to the respondent authorities either to re-tender the contract or to extend the last date for submission of tenders.

7. On notice being issued a counter affidavit was filed by the respondent authorities in which the allegations made by the petitioner were completely denied. It was stated that though the Non-Gazetted Government employees were on strike, the office of the Executive Engineer at Aurangabad was not closed on the relevant dates. The Executive Engineer himself was present in the office and

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the sale of the B.O.Q. was handled by the Gazetted Officer (s). It was further stated that on 19.1.2005 two B.O.Q. were sold from the office of the Executive Engineer.

8. In the counter affidavit it was also stated that Kaushal Kumar Singh, the husband of the Managing Director of the petitioner company came to the office of the Executive Engineer at about 4 p.m. on 19.1.2005 and he wanted to purchase of the B.O.Q. but since the time for the purchase of the B.O.Q. was .over at 1 p.m. it was not given to him. In the counter affidavit it was also stated that no letter sent through any private courier was presented in the office of the Executive Engineer. The respondent authorities also took the stand that the two tenders submitted by other two parties had already been opened and in that situation the petitioner could not be allowed to participate in the bid by extending the last date for submitting tenders.

9. Mr. Navniti Prasad Singh, counsel appearing for the petitioner tried to play upon the statement made in the counter affidavit that on 19.1.2005 two B.O.Q.s were sold from the office of the Executive Engineer. He submitted that the two parties to whom the B.O.Q.s were supplied/sold were in fact one and the same. Both were partnership firms constituted among the members of a single family and in reality both were controlled by the same interests. He further submitted with some force that the sale of only two B.O.Q.s (in reality only one) for such a big contract (of Rs. 408.95 lacs) was quite inconceivable and this circumstance was in itself sufficient to show that the authorities were trying to favour someone by keeping others out of the bid.

10. The submission made on behalf of the petitioner based on the sale of only two B.O.Q.s appeared attractive at the first instance. But the facts and circumstances brought to light in the affidavits filed by the intervenor respondent (one of the parties that submitted its tender within the time laid down in the tender notice) clarify the position and dispel the allegations made by the petitioner.

11. The intervenor fully supports the statement made by the respondent authorities that the office of the Executive Engineer was open and the sale of the B.O.Q. was handled by the Gazetted Officers there. It is stated on its behalf that the B.O.Q. was purchased for the partnership firm legitimately and in due course of office work and without any favour shown by any one. As regards the petitioner it is stated that Kaushal Kumar Singh, the husband of the Managing Director of the petitioner company was contesting the 2005 Assembly elections from Aurangabad constituency on a ticket of National Congress Party (Sharad Pawar faction). He was very busy in the filing of nomination and its scrutiny till 18.1.2005 and, therefore, he went to the office of the Executive Engineer very late on 19.1.2005, after the time for the purchase till 1 p.m. on that date was long over.

12. As regards the endorsement made by the private courier on the envelope

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allegedly sent by the petitioner to the Executive Engineer, it is stated that the office of the petitioner company was situate in Nawajadic Complex, a building owned by Kaushal Kumar Singh. The office of the private courier D.T.D.C. was also situate in the same building and thus Kaushal Kumar Singh was in the relationship of land lord with that out fit. It was, therefore, not difficult from him to obtain such an endorsement from the private courier and according to the intervenor, the endorsement of the delivery boy on the envelope produced by the petitioner was got up and false statement.

13. Coming to the two private firms M/s. Ram Briksh Singh and M/s. Amit Construction that had purchased the B.O.Q.s, it was admitted that in both the partnership firms Sheo Shankar Singh, his brothers and his sons had very substantial interests. But Mr. Mihir Kumar Jha counsel appearing for the intervenor respondent pointed out to the Court something very significant. Learned counsel stated that submission of two or even one tender for the work in question was not at all unusual. Mr. Jha explained that under the tender notice it was essential for the tenderer to have a hot-mix plant on an average distance of 45 Kms or less from the work site. He submitted that hot-mix plant could be set up at a very great cost and that condition in the tender notice greatly reduced the number of eligible renderers. He invited my attention to a statement enclosed with the supplementary affidavit marked as Annexure 3 that gives details of the tenders made for the work of road construction in that area on the past relevant occasions. For the sake of convenience the relevant annexure is reproduced hereinbelow :

Sl. No. Name of the work NIT issued by Year Name of purchaser of B.O.Q. Tender allotted to

1. Aurangabad-Daud Nagar-Arwal Road Km. 67 to 116 Road Construction Division 1998-99 1. M/s. Ram Briksh Singh 2. M/s. Sharda Construction M/s. Ram Briksh Singh

2. I.R.Q.P. from Km. 75 to 89 NH Division Aurangabad 2001-02 1. M/s. Ram Briksh Singh 2. M/s. Deo Construction 3. M/s. Bikash Construction M/s. Ram Briksh Singh

3. I.R.Q.P. From Km. 65 to 74 NH Division Aurangabad 2001-02 1. M/s. Ram Briksh Singh 2. M/s. Deo Construction 3. M/s. Bikash Construction M/s. Ram Briksh Singh

4. FDR to NH-98 in Km. 75 to 128 NH Division Aurangabad 2002-03 1. M/s. Ram Briksh Singh 2. M/s. Deo Construction M/s. Ram Briksh Singh

5. SR To SRGU in Km. 1 to 6 Road Construction Division, Aurangabad 2003-04 1. M/s. Ram Briksh Singh 2. M/s Chandi Enterprises M/s. Ram Briksh Singh

6. SR to Km. 15-P, 16, 17, 18-P and 35 Road Construction Division, Aurangabad 2003-04 1. M/s. Ram Briksh Singh 2. M/s. Deo Construction M/s. Ram Briksh Singh

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7. SR to Km. 2 Road Construction Division, Aurangabad 2003-04 1. M/s. Ram Briksh Singh 2. M/s. Deo Construction M/s. Ram Briksh Singh

8. SR to old GT Road in Km. 3rd Road Construction Division, Aurangabad 2003-04 1. M/s. Ram Briksh Singh 2. M/s Deo Construction M/s. Ram Briksh Singh

9. SR working Km. 4 of old GT Road Road Construction Division, Aurangabad 2004-05 M/s. Ram Briksh Singh M/s. Ram Briksh Singh

10. SR work in Km. 1 2-P, Road Construction Division, Aurangabad 2004-05 M/s. Ram Briksh Singh M/s. Ram Briksh Singh

11. MR in Km. 90 to 127.52 NH Division, Aurangabad 2004-05 1. M/s. Ram Briksh Singh 2. M/s Debashree Construction (India) Pvt. Ltd. M/s. Debashree Construction (India) Pvt. Ltd.

14. From the statement above it is apparent that out of the eleven occasions from 1998-99 to 2004-05, only on two occasions (in the year 2001-02) there were three renderers. On seven occasions there were two tenderers and on two occasions there were only one tenderer. 1t is, therefore, manifest and clear that the circumstance that only two B.O.Q.s were sold on 19.1.2005 cannot be sued as. a conclusive evidence suggesting that the authorities had given the B.O.Q.s to the two parties as undue favour and were trying to keep the petitioner out of the bid. It is, therefore, clear that the relief prayed by the petitioner was based on incorrect facts and fanciful allegations that the authorities trying to unduly keep it out of the bid.

15. At this stage Mr. Navniti Prasad Singh contended that in any event the submission of only two or one tender made it clear that such a huge contract was being cornered in a monopolistic way and prayed for the Court''s intervention to prevent the contract being cornered by the single party.

16. I am not inclined to accept the submission because there is nothing before the Court to suggest that the concerned authorities shall not themselves take into consideration this important fact. The Court feels that firstly it is for the concerned authorities to Judge whether having regard to the local conditions, the past experiences, the importance of the work, the large amount of money involved and relevant facts and circumstances they would deem it fit and proper to proceed on the basis of the two tenders submitted by two partnership firms that admittedly have overlapping interests or whether they would wish to cancel the earlier notice and issue a fresh one.

17. It is made clear that this Court is not making any observation in this regard and it is for the concerned authorities to take an objective decision in accordance with the rules.

In the result, this writ petition is dismissed with the aforesaid observations but with no order as to costs.

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