
(2002) 02 JH CK 0058

In the Jharkhand High Court

Case No : Writ Petition (C) No. 492 of 2002

Debashree Construction (India) Pvt. Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Citation : (2002) 02 JH CK 0058

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A.K. Sinha, Anil Kumar and Saurav Arun, for the Appellant; Binod Poddar, AAG and N. Thakur, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Petitioner M/s. Debashree Construction (India) Private Limited, has prayed for quashing the Tender Notice dated 13.1.2002. whereby respondent No. 6. Executive Engineer. National High Way Division. Jharkhand. Gumla invited Tender again for the same work i.e. for widening of National High way No. 23 at Kms. 123 to 134. although petitioner was found to be the lowest bidder in the earlier Tender dated 1.12.2001.

2. Petitioner's case is that on 1.12.2001 respondents invited Tender for four items of works. Item No. 2 was for widening of National High Way No. 23, in which petitioner participated and was found lowest bidder. The Road Construction Department vide letter dated 7.1.2002 invited petitioner for negotiation. Petitioner, thereafter, vide letter dated 9.1.2002 informed respondent No. 2 that, he is fulfilling all the terms and conditions. However, without any valid reason, respondents by notice dated 13.1.2002 re-tendered the work.

3. A counter-affidavit has been filed by the respondents stating inter alia that against the earlier Tender notice dated 1.12.2001 three tenderers namely. M/s Sarda Construction. M/s Debashree Construction and M/s Priambada Construction participated. The tender of M/s. Sarda Construction was rejected by

the Department on the ground that there is an inquiry pending against this contractor for doing sub-standard work. So far petitioner is concerned her tender was duly considered and the Tender Committee came to the conclusion that petitioner is a proxy firm of M/s Sarda Construction and the owner of Sarda Construction is the husband of the writ petitioner. A copy of the proceeding of the Tender Committee has been annexed as Annexure-A to the counter affidavit. It is further stated that list of Key Personal submitted by the petitioner and the Sarda Construction is totally same which is evident from the list and the affidavit submitted by the petitioner -

4. Heard Mr. A.K. Sinha, learned senior Counsel appearing for the petitioner and Mr. Binod Poddar, learned Addl. Advocate General appearing for the respondents.

5. From perusal of Annexure-A to the Counter-affidavit, which is minutes of the proceeding of the Tender Committee. It appears that members of the Tender Committee consisted of Financial advisor. Chief Engineer. Engineer-in-Chief and Secretary of Road Construction Department. Out of four members only two members signed the minutes. It was resolved by the Tender Committee that the tender of M/s Sarda Construction could not be considered because an inquiry is going on against the said contractor. The Committee also refused to consider the tender of the petitioner on the ground that it is a proxy firm of M/s Sarda Construction. It was further resolved that after rejecting two tenderers, only one contractor left and therefore it needs fresh notice inviting tender for the same work. The Committee took a decision on 10.1.2002 and it was signed by only two members of the Committee. Petitioner in the supplementary affidavit has very categorically stated that the action of the respondents is absolutely mala fide which is evident from the fact that the earlier tender was invited for altogether four works, out of which item No. 3 and 4 has been allotted to M/s Sarda Construction but tender of the petitioner in respect of item Nos. 1 and 2 has been denied on the ground that there is an inquiry pending against M/s Sarda Construction and the Petitioner is a proxy firm of M/s Sarda Construction. This statements made in para 8 of the supplementary affidavit have not been denied or disputed by the respondents in their rejoinder to the supplementary affidavit. The Executive Engineer, sworn the rejoinder to the supplementary affidavit has stated that Item Nos. 3 and 4 of the work was below the value of one crore and as per provision it was within the competency of the Chief Engineer who allotted the work to M/s Sarda Construction. Prima facie therefore, re-tender of the work by the respondents as per their own admission is illegal and malafide. This Court is conscious of the settled law that normally Court should not interfere in the matter of decision of the Tender Committee in the matter of allotment of work but if it is found that the action of the Tender Committee is malafide and for extraneous consideration then the Court should not allow such illegality to continue. The malafide of the respondents is evident from the fact that this Court by order dated 18.1.2002 instead of staying the impugned tender notice, gave liberty to the petitioner to participate in the bid without being prejudiced to the present case. Mr. A.K. Sinha learned senior Counsel submitted that pursuant to

the Court's order petitioner submitted second tender and he was found lowest bidder.

6. In the facts and circumstances of the case. I allow this writ application and quash the second tender notice and direct the respondents to negotiate with the petitioner who was found lowest bidder against first tender notice and if the petitioner fulfills all the term and conditions then a decision must be taken by the respondents for allotment of work to the petitioner in accordance with law.