

(2004) 02 PAT CK 0050
In the Patna High Court
Case No : C.W.J.C. No. 13748 of 2001

Dhanpat Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 299

Citation : AIR 2004 Patna 80 : (2005) 1 CTLJ 82 : (2010) 2 PLJR 240 : (2004) 1 PLJR 696

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Satyapal Narottam, for the Appellant; A.P. Jittu, S.C. II, Binod Kumar, J.C. to S.C. II, Chandra Shekhar and Shant Kumar Sharma, for the Respondent

Judgement

Radha Mohan Prasad, J.—In this writ petition, prayer is to quash letter No. Bhavarn, Moc(C)Yoj. VI-Vidhi-B-133/2001-1617(bha) Anu, dated 24-9-2001 (Annexure-9) by which the proposed construction of hundred bedded minority Hospital for boys at Nawada has been given to the Contractor (Respondent No. 5) and further to direct the respondents to allot the said work to the petitioner.

2. It seems that earlier also on apprehension that his case would not be considered by the respondent-authorities, petitioner moved this Court by filing C.W.J.C. No. 9393 of 2001 and this Court finding that till the date of the order admittedly no final decision in pursuance to the tender notice had been taken and that there was nothing in the tender notice to give any cause of action, found the writ petition to be premature and vide order dated 16-8-2001 (Annexure 1) permitted it to be withdrawn with a liberty to the petitioner to agitate the matter, if aggrieved, before the appropriate forum. Pursuant to the said order the petitioner agitated his grievance before the authority by filing a petition on 22-9-2001, which was not considered at all, and even though the petitioner is seniormost Contractor and eligible to take the proposed work, but

has been denied the work on the sole ground that registration with Building Construction Division is the basic required eligibility which the petitioner does not possess. According to the case of the respondent-Officials in the counter-affidavit, after bifurcation of the Public Works Department in Road Construction Department and Building Construction Department by notification No. 3205(B), dated 28-6-1983 (Annexure A) the respondent-State had made the registration in the bifurcated Building Construction Department compulsory for Contractors to execute work in that very Department. However, those Contractors were exempted from such registration, who were registered with erstwhile Public Works Department before 31-3-1982, and, those, who were registered during the period 31-3-1982 to 28-6-1983 were given three months" time for registration in the Building Construction Department. It is stated that the registration of the petitioner with P.W.D. is of a period beyond this deadline, and, as such, he is not eligible to take up the work in question which is in the Building Construction Division. It is further stated that before allotment of work to respondent No. 5, the tender of all participants including the petitioner were considered and after proper scrutiny the work were not allotted to the petitioner, who failed to satisfy the authority to be suitable amongst the tenderers for the execution of the work, However, except regarding the eligibility no other reason has been furnished as to why the petitioner has failed to satisfy the authority to be suitable amongst the tenderers for the execution of work.

3. According to the case of the petitioner, he is registered category "A" Contractor in Building and Road both, which is apparent from perusal of registration certificate (Annexure 4), and the same has been renewed vide Annexure 5. It is stated in the reply affidavit that the petitioner was given/ allotted so many contract works in the Building Construction Department up to the value of Rupees three crores including the work of construction of Civil Courts Building at Nawada, which he had done satisfactorily up to the satisfaction of this Court and handed over. As regards letter contained in Annexure A, it is stated that the same was not notified in the Gazette at all. However, according to the learned counsel for the petitioner that is not relevant as the petitioner had registration for road and building both vide Annexure 4 and renewed vide Annexure 5. It is not disputed that the petitioner is the seniormost Contractor and that by virtue of the said registration he was allotted many contract works in Building Construction Department including one relating to construction of Civil Courts Building at Nawada, which he satisfactorily completed. According to the learned counsel for the petitioner, by virtue of the provision, contained in Annexure 7, if the rate quoted by the Contractors are same then the work is to be given to the seniormost Contractor, but, in the instant case the petitioner has wrongly been denied of such preference on the sole ground that he is not registered with Building Construction Department, which is wholly arbitrary and mala fide in the facts and circumstances of the case.

4. Learned counsel for the State as well as Mr. Chandra Shekhar, learned senior counsel appearing for respondent No. 5 have submitted that the Government

notification dated 28th June, 1983 (Annexure A) clearly shows that for getting work in the Building Construction Division registration with Building Construction Department is essential except such Contractors, who were originally registered in the then Public Works Department before 31st March, 1982, in whose case fresh registration in Building Construction Department would not be required. Those, who were registered after 31st March, 1982 were given three months' time to get themselves registered with the Building Construction Department to get work. They submitted that the petitioner got registration on 5-11-1983 vide Annexure 4 i.e. after 31st March, 1982, and, as such, he was required to get fresh registration for Building Construction separately within three months of the date of notification (Annexure D), which admittedly was not done, and, as such, according to them, the petitioner is not even eligible for getting the contract work in question.

5. With reference to Annexure 4, in reply, learned counsel for the petitioner submitted that the petitioner had applied for registration in both the Departments and since the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, was the same for both the Departments he was granted registration on 5-11-1983 vide Annexure 4 for both the Departments, namely, Road and Building and the same was renewed vide Annexure 5 and by virtue of the same he was always allotted work in both the Departments which fact has not been disputed by the respondents.

6. This Court vide order dated 12-1-2004 after noticing the fact that Annexure 4 has been issued by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department registering the petitioner as registered contractor for road and building both and also the contention of the learned counsel for the petitioner that, in fact, the petitioner filed application for registration in both the Departments and since the Engineer-in-Chief was common for both the Departments after bifurcation its registration (Annexure 4) was issued under his signature for both, namely, Road as well as building, considered it expedient to direct the State authorities to produce the file relating to registration of the petitioner. Thereafter, the matter was adjourned on 14-1-2004 for listing on 21-1-2004 and passed over on number of occasion, but till the matter was finally heard and order was reserved on 29-1-2004, the State Counsel failed to produce the application filed by the petitioner for registration in both the Departments. He, however, produced two registers; one of which only indicates "Pratham A", which, according to the learned counsel for the State belongs to Road Construction Department and another of Building Construction Department since June, 1983. The Register of the Building Construction Department apparently was opened in the year 1983, but, it bears no date. Moreover, page 44 of the said register shows that only M/s. Yogendra Rai, sole proprietor of Gopalganj is registered as Category "A"-63 (Bhavan) 1986, and, then again from the entries made at page 48 onwards shows that all registrations have been made in "Bhavan", insofar as the register "Pratham A" is concerned, it shows that all Contractors up to serial No. 160, which includes the

petitioner are registered as Contractor for road and building both by indicating "R and B 83", and, thereafter, from 161 up to 313 have been registered only in road by indicating "R" and again from serial No. 715 onwards are shown to be registered for "Path"/"Road".

7. Thus, in the facts and circumstances of aforementioned, this Court finds it difficult to accept the submission advanced on behalf of the respondents that the petitioner was registered only with Road Construction Department, and, as such, he was not eligible for awarding of the contract work in Building Construction Department. In my opinion, denial of the contract work in question to the petitioner on the ground that he was not registered with Building Construction Department, and, thus, not eligible and grant of contract to respondent No. 5 by ignoring his preferential claim in the light of Annexure 7 is wholly arbitrary and mala fide. It appears that vide order dated 13-11-2001 this Court directed that the respondent-authorities shall not allot the work in question to anybody, if not already allotted, and, further, that if the work on date has been allotted, the respondent No. 5 shall not proceed with the work until further orders of this Court.

8. In the result, this writ petition is allowed. The impugned order of allotment of work in favour of respondent No. 5, contained in Annexure 9 is quashed. The respondents are directed to consider the case of the petitioner vis-a-vis others keeping in view the Government Resolution contained in Annexure 7 afresh and dispose it of within two weeks. In the facts and circumstances, however, there shall be no order as to costs.