

(2001) 12 PAT CK 0036
In the Patna High Court
Case No : C.W.J.C. No. 14290 of 2001

Ganga Construction Company	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 05-12-2001

Acts Referred:

Citation : (2001) 12 PAT CK 0036

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard learned Counsel for the petitioner and learned Standing Counsel No.2 This writ petition has been preferred with a prayer to issue a writ of mandamus or any other writ or order or direction, commanding the respondent authorities to execute the final agreement with the petitioner for collection of toll tax of Mahatma Gandhi Setu for a period of one year, 2001 inter alia, for the reason that he is the highest bidder.

2. The State Government has levied toll tax on the vehicles using the bridge connecting the township of Patna with that of Hajipur spanning the river Ganga, to across from one side to the other. The State Government has had the option of collecting the same either departmentally or by making a settlement in favour of a private agency for the purpose. So far as the present period, namely 2001-2002 is concerned, the State Government published an advertisement which appeared in a daily newspaper "Aj" on 24-6-2001, a copy of which is Annexure-1 to the writ petition. The important and relevant terms and conditions of the advertisement in the present context were that Rs. 10,86,00,000.CO ten crores eighty six lakh was the floor price for the bid, known in common parlance as Reserve Jama. Clause 5 is to the effect that a sum equivalent to 10% of the highest bid amount shall have to be deposited soon after the bid is over. Clause 6 stated that a sum of Rs. 2,00,000/-(two lakh) will have to be deposited by way of earnest money. Clause 11 stated that the Chief Engineer, Road Construction Department, Government of Bihar, reserved with himself the right to reject a bid absolutely. The bid took place in Patna on 24-7-2001, and a number of persons

participated. The petitioner was the highest bidder and his bid amount was Rs. 7,14,90,000/-, which fell far short of the Reserve Jama and, therefore, authorities decided to hold negotiations with the highest bidder the petitioner, and the bid amount was raised to Rs. 7,31,00,000/-.

3. It was not acceptable to the respondent authorities and, therefore, they cancelled the auction and re-advertised it on the same terms and conditions. Accordingly, the second bid took place on 7-9-2001. The petitioner was once again the highest bidder, the amount being 7,48,50,000/-. It appears from the averments made in paragraph 16 of the writ petition that once again negotiations took place between the petitioner and the respondent authorities after which the petitioner raised his bid amount to Rs. 7,60,00,501/-. It further appears from the averments made in paragraph 17 of the writ petition that soon after the bid was over and the negotiations were complete, the petitioner deposited a sum of Rs. 76,00,000/- (seventy six lakh) with the authorities, apart from his deposit of Rs. 2,00,000/- (two lakh) as earnest money along with the application. In other words, a sum of Rs. 78,00,000/- of the petitioner lies in the deposit with the State Government. It appears from letter No. 1335, dated 17-10-2001 Annexure-A to the counter-affidavit, which is a communication from the Executive Engineer, Gulzarbagh, to the petitioner, that the State Government decided to cancel the second auction also and the petitioner is free to withdraw his amount. It is relevant to state that this order is dated 17-10-2001, the writ petition was affidavited on 18-10-2001, and was lodged in this Court on 1-11-2001. The petitioner did not consider it necessary to bring this order to the notice of the Court.

4. While assailing the validity of the impugned action of the respondent authorities, learned Counsel for the petitioner submits that the petitioner has been the highest bidder on two occasions. He has deposited a huge amount with the State Government without any returns, notwithstanding which the same is not being accepted. He further submits that his stand is vindicated by letter No. 1722. WE, dated 10-9-2001 (Annexure-4), which is an inter-departmental communication from the Superintending Engineer to the Chief Engineer which, in his submission is to the effect that the settlement may be made in favour of the petitioner. The respondent authorities have set the Reserve Jama to an unrealistic level. Learned Counsel also submits that the aforesaid order dated 17-10-2001 Annexure-A to the counter-affidavit, canceling the second auction, is without jurisdiction, inasmuch as the same has been issued under the signature of the Executive Engineer who has no authority to cancel it. He wraps up his argument by submitting that the respondent authorities have made enough efforts, and in view of his position that he has been the highest bidder on two occasions and a big amount of money is in deposit, a writ of mandamus may be issued to the respondent authorities directing them to enter into final agreement with the petitioner.

5. Learned Standing Counsel No. 2 submits in opposition that the writ petition is

not maintainable for the reason that the same has been preferred in purposive suppression of the order of the State Government (Annexure-A), cancelling the second auction. He next submits that the petitioner has no enforceable right, the relies on the judgment of a learned single Judge of this Court reported in 1995 (2) PLJR 669 Charbharan Chaudhary v. Zila Pahshad.

6. Having considered the rival submissions, I am of the view that this writ petition is fit to be dismissed. It is manifest from a plain reading of the aforesaid order dated 17-10-2001 (Annexure-A), which is a communication from the Executive Engineer to the petitioner, informing the latter that the second auction has been cancelled and he is free to take back the amount in deposit. As is obvious, this order was dated 17-10-2001, the writ petition was lodged in this Court on 1 -11 -2001. The petitioner had detained rule of this Court on 9-11-2001, on which date the following order was passed :

9-11-2001. Heard learned Counsel for the parties.

Time till 23-1-2001 is granted to respondents to file counter-affidavit.

Put up at the top of the list on 26-11-2001 in the supplementary cause list. Respondent authorities shall take final decision in the matter before that date and incorporate it in the counter-affidavit.

The petitioner has, therefore, suppressed a material fact essential for adjudication of the writ petition. Had the petitioner disclosed on 6-11 -2001 that final order has already been passed on 17-10-2001, this Court would surely not have issued the rule calling upon the respondents to pass a final order. Law is well-settled that a writ petition is not maintainable if the petitioner has obtained a rule of the Court by suppressing the material facts. The judgment of a Division Bench of this Court reported in (1996) 2 PLJR 345. Baidyanath Mahto v. Agricultural Produce Markets Committee) is relevant in the present context, paragraphs 5 to 7 of which are set out here in below :

(5) Be that as it may, the fact remains that in the writ petitioner there is no whisper of the fact that such agreement was entered into between the petitioners and the said Market Committee. This Court considers that the existence of the said agreement between the said agreement between the parties is a vital and also material fact and the same has been suppressed by the petitioner in the writ petition.

(6) Such conduct on the part of the petitioners disentitled them to any relief under the writ jurisdiction on this Court. This position is well-settled that when an applicant approaches the Court for discretionary and acquitnble relief, he must approach the Court with clean hands and must display utmost candour and clarity. There must not be any misrepresentation of vital facts in the writ petition on the basis of which the jurisdiction of the Court is invoked. This position has been reiterated by the Apex Court in the case of Dr. Vijay Kumar Kathuria Vs. State of Haryana and Others, and again in the case of Welcom Hotel and Others

Vs. State of Andhra Pradesh and Others, In an another recent judgment in the case of T.N. Rugmani and Another Vs. C. Achutha Menon and Others, the Supreme Court was pleased to observe at page 985 in Paragraph-3 as follows : "Even an assailable cause or illegal and arbitrary order may fail to move the conscience of the Court due to inequitable and behaviour of conduct in equitable jurisdiction :

As early as in 1917, the same principles were propounded in the judgment of the King's Bench Division reported in (1917) 1 KB 486 wherein Lord Viscount Reading, C.J., was pleased to observe as follows:

Where an *ex parte* application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the trust facts, the Court ought, for its own protection and to prevent an abuse of its process to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion, a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But, if the result of this examination and hearing it to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.

(7) In this case also, this Court has no hesitation in coming to the conclusion that the suppression of material facts have been deliberately made in order to deceive the Hon'ble Court and obtain an order from this Court without full disclosure of facts. Therefore, this Court without deciding the writ petition on merits dismissed the same on the ground of suppression of material facts. The writ petition is thus dismissed with cost which is assessed at Rs. 5,000/- (Five thousand). Such cost must be paid by the petitioner to the fund of Legal Aid Committee of Patna High Court.

The writ petition proceeds on the footing that the State Government has not taken a final decision in the matter and the petitioner is, therefore, guilty of obtaining a rule of the Court by suppression of material facts. This Court expresses its displeasure on such a dishonest act in the part of the petitioner.

7. The submission advanced on behalf of the petitioner that the letter is unauthorised, inasmuch as the Executive Engineer has no authority to cancel the auction in question is unsustainable on the ground that the same states that the decision has been taken by the State Government in the interest of the revenue of the State. It is thus manifest of the face of it that the Executive Engineer has done the mechanical act of communicating the order of the State Government to

the petitioner.

8. Learned Standing Counsel has taken me through his counter-affidavit and is equally right in his submission that the writ petition does not disclose any enforceable right. I am in this connection reminded of my own judgment reported in 2000 (4) PLJR 6333 Deo Kumar Singh v. State of Bihar with regard to settlement of the same bridge of an earlier year wherein I have held that, according to the prescribed procedure, the bid has to be finally approved by the State Government. There is no concluded contract between the parties. The petitioner's bid has been rejected by the State Government, a material fact suppressed by the petitioner. Reference in this connection may be made to the judgment of the Supreme Court in the case of The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others,

9. Learned Counsel for the petitioner has also submitted that the State Government has raised the Reserve Jama to an unrealistic level. The contention is stated only to be rejected. The requisite factual foundation in this behalf has not been laid in the writ petition. The contention is absolutely unsubstantiated. Secondly, fixing the Reserve Jama for collection of toll tax is entirely an executive action with which this Court is always reluctant to interfere. Thirdly, the Court is equally reluctant to interfere with the economic decisions of the State Government. The contention is, therefore, rejected.

10. This writ petition is accordingly dismissed. This order may be read along with this Court's order dated 3-12-2001.