
(2015) 12 JH CK 0002
In the Jharkhand High Court
Case No : L.P.A. No. 749 of 2015

GKC Projected Limited

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Citation : (2015) 12 JH CK 0002

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Sunil Kumar, Sr. Advocate and Sumeet Gadodia, Advocate, for the Appellant; Ajit Kumar, A.A.G, for the Respondent

Final Decision : Disposed Off

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been preferred against an order of adjournment, passed by learned Single Judge in W.P.(C) No. 6000 of 2015 dated 15th December, 2015. The said order reads as under:

"The respondent state is directed to file counter affidavit by 05.01.2016.

List this case on 07.01.2016."

2. The appellant (original petitioner) is one of the bidders in the process of finalization of contract for "Improvement and Upgradation of Rangamati-Tikar-Hazam-Banta-Silli Road (MDR-025) (From Chainage 8.80+ Km to 46.37 Km, Length - 37.57 Km.)".

3. This Letters Patent Appeal has been preferred, mainly for the reason that after Notice Inviting Tender, which is having most important clause viz 2.2.8 of Request for Qualification for Engineering, Procurement and Construction of the aforesaid road, as argued out by the learned counsel repeatedly, the appellant had submitted its bid and though the order passed by the learned Single Judge appears to be one line order, nonetheless, as submitted by the learned counsel appearing for appellant (original petitioner), it shall affect the vital and valuable

rights and will cause serious injustice to this appellant, because by virtue of an order, passed by the Principal Secretary Road Construction Department, Govt. of Jharkhand, Ranchi, dated 8th December, 2015, the technical bid of this appellant may be rejected, at the time of evaluation of technical bid, which may take place at any time, may be before 7th January, 2016 and, therefore, adjournment affects this appellant adversely.

4. Arguments canvassed by the learned counsel for the appellant:

? It is submitted by the learned counsel for the appellant that either the further evaluation of technical bid may be stayed till 7th January, 2016 or for few days more or, on merits, this Court may decide about the applicability or otherwise of clause 2.2.8, assigning Request For Qualification for Engineering, Procurement & Construction for the aforesaid road.

? Learned counsel appearing for appellant has taken this Court to various orders, passed earlier, including termination of contract by Bihar State Road Development Corporation Limited (hereinafter to be referred as "BSRDCL" for the sake of brevity) with this appellant and its joint venture and about the matter, pending before the learned Arbitrator.

Learned counsel for the appellant has also taken this Court to other orders, passed with regard to earlier contract.

5. Arguments canvassed by the learned counsel for the respondents:

? Learned counsel appearing for the respondent-State submitted that against the order of adjournment, no Letters Patent Appeal is tenable at law, especially looking to clause 10 of the Letters Patent Appeal, and in support of the aforesaid argument, he has relied upon a decision rendered by Hon'ble the Supreme Court, in the case of Shah Babulal Khimji Vs. Jayaben D. Kania and Another, , especially paragraph 115 thereof.

? It is further submitted by the learned counsel for the respondent-State that earlier termination of contract by BSRDCL is under arbitration process and the prayer for stay, sought for by this appellant, has been rejected by the Arbitrator and thus, termination of contract by BSRDCL has neither been stayed by the Court nor by the Arbitrator and hence, looking to clause 2.2.8, this appellant may not be qualified for the bidding process for the contract, in question, which will be decided at the time of opening of the technical bid.

6. REASONS:

Having heard learned counsel appearing for both the sides and looking to the facts and circumstances of this case, it appears that:

(i) The respondents have not yet finalized the opening of technical bid at all and, thus, no question of evaluating price bid whatsoever arises, because price bid evaluation will be after the technical bid evaluation is over.

(ii) It further appears from the argument canvassed by learned counsel for both the sides that W.P.(C) No. 6000 of 2015 is already adjourned on 7th January, 2016, in which the order passed by the Principal Secretary, Road Construction Department, Govt. of Jharkhand, Ranchi dated 8th December, 2015, which is at Annexure 15 to the memo of this Letters Patent Appeal, is under challenge. As the writ petition is pending, we are not going much into the details about the merits of this case. Nonetheless, suffice it will be to direct the respondents not to open the technical bid till the writ petition bearing W.P.(C) No. 6000 of 2015 is finally decided by the Learned Single Judge or at least the prayer for stay is finally decided by the learned Single Judge, otherwise it will affect the vital and valuable right of this appellant and will cause serious injustice to the appellant. Even otherwise also, no final date has been fixed by the respondents for opening of technical bid.

(iii) Notice Inviting Tender is dated 30th July, 2015. Prima facie, evaluation of technical bid has taken place on 18th September, 2015. Thereafter, writ petition has been preferred and ultimately an order has been passed by the Principal Secretary, Road Construction Department, Govt. of Jharkhand on 8th December 2015. Thus, since last more than four months nothing has been finalized by the State Government and, therefore, no much prejudice is going to the State also, in staying its hands for finalization of the technical bid, till the writ petition bearing W.P. (C) No. 6000 of 2015 is finally decided or at least, the prayer for stay is decided by the learned Single Judge.

7. We, therefore, direct the respondents not to finalize any technical bid for the contract, in question, till the writ petition bearing W.P.(C) No. 6000 of 2015 is finally decided by the learned Single Judge or till the prayer for stay in the said writ petition is finally decided by the learned Single Judge or whichever is earlier.

8. Accordingly, this Letters Patent Appeal is disposed of, in view of the aforesaid direction.