(1994) 04 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10360 of 1993

Gopal Narayan Singh (Government and Railway Contractor) APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 01-04-1994

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (1994) 2 PLJR 26

Hon'ble Judges : Nagendra Rai, J;I.P. Singh, J

Bench : Division Bench

Advocate : Subodh Kumar and Sanjay Prasad, for the Appellant; Bhanu Pratap Singh, for Private Respondent No. 4 and S. Ali Khan, for State, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The Petitioner has filed the present application challenging the allotment of contract work to the Respondent No. 4 with regard to two items of work, which are as follows:

1) Periodical renewal work by 20 mm thick premix carpet with min. Hot Mix plant in 1, 14, 31 (500) 32, 34, 45 (500) of NH 30 for the year, 1993-94.

2) Periodical renewal work by 20 mm thick premix carpel with min. Hot Mix. plant in K.M. 57, 58, 61, 64 and 65 of NH 30 for the year, 1993-94.

2. Admittedly, the Petitioner is a registered firm as Class I Contractor in Road and Building Department Government of Bihar bearing Registration No. 1-127 of 1983.

3. On 8.7.1993 a short lender notice was issued from the office of the Executive Engineer, NH Division Koches at Sasaram with regard to six items of work. The last date for filing the tender papers was 29.7.1093. A copy of the short lender notice has been annexed as Annexure-2. According to item No. 4 the lender

papers were to be sold only to the registered contractor on production of following documents:

i) Certified copy of the letter of registration.

ii) Certified copy of the up-to-date In come Tax & Sales Tax certificate.

iii) Certified copy of the up-to-date labour licences certificate.

iv) Certified copy of the ownership of Mini-Hot-Mix-Plant Tar Boiler and roller etc.

Item 5(a) of the tender notice provided that copy of the aforesaid documents were also to be filed alongwith tender otherwise their tender will be treated as incomplete and liable to be rejected.

Item No. 56 of the lender notice provided that tenderers will have to arrange their own plants and machineries such as Mini-Hot-Mix-Plant, road roller, tar boiler and bitumen mechanical sprayers etc.

4. The case of the Petitioner is that he and Respondent No. 4 both participated in the said lender and submitted their lender papers alongwith all its relevant papers. Rules given by him and Respondent No. 4 were same but in an arbitrary manner the said work was allotted in favour of Respondent No. 4. According to the government circular in cases where rates given by the tenderers are equal the preference should be given to a contractor who has been registered earlier and in the present case the Petitioner being registered earlier than Respondent No. 4, he should have been allotted the contract work. According to learned Counsel for the Petitioner Respondent No. 2 had arbitrarily favoured the Respondent No. 4 and managed to get the work order issued in his favour because Respondent No. 2 has always been hostile towards him. The Petitioner has annexed all the documents, which were required to be submitted in terms of tender notice with the writ petition and the supplementary petition in support of his case. Annexure-3 is the certificate of registration, Annexure-3A is the sale paper of road roller executed in favour of the Petitioner, Annexure-3B. is the Commercial Taxes Clearance Certificate given by the department upto 31st December, 92 though it is dated 2.4.1993, Annexure-3C is the Income Tax Clearance Certificate upto 31st of March, 1994 and Annexure-3D is up-to-date Labour Licence Certificate valid upto 20th of December, 1992. Later on Petitioner filed Labour Licence certificate as Annexure-SD which shows that the labour licence was valid upto 29th of December, 1993 and the same was filed alongwith tender papers and by mistake Annexure-3D was filed with the writ petition.

5. Separate counter affidavits have been filed on behalf of Respondent Nos. 2, 4 and from the same, it appears that the allegation made against Respondent No. 2 has been denied and it has been stated that work was not allotted to the Petitioner on the ground that the documents filed by the Petitioner were incomplete. It has been asserted that the sales tax clearance certificate was valid upto 31st of December, 1992 in place of 30th of June, 1993. The labour licence certificate was submitted up to December, 1992 in place of December, 1993. The

Certificate filed by the Petitioner with regard to purchase of road roller also showed that he was not the owner of same and on the other hand Surjit Singh was the proprietor of the same. It was given to him on hire. It was also stated that his claim of having a road roller is falsified by the fact that while he was doing a work in N.H. Division, Sasaram, he had utilised the road roller of the department for which the department deducted hire charges from his bills. A copy of the bill has been annexed as Annexure-C to the counter affidavit filed on behalf of Respondent No. 2.

6. It is also stated on their behalf that the tender papers of Respondent No. 4 were found in order and thereafter an agreement was executed for two works on 11.9.1993 and the work orders have been issued on 16.9.1993 and thereafter Respondent No. 4 has started the work. In the counter affidavit of Respondent No. 2 it is specifically stated that work has been started and completed in KM 30.31 (500) and 32 with regard to agreement No. 3F2/93-94. Regarding the other agreement it is stated that the collection of materials and levelling works are in progress. He has received the first bill of more than five lacs for each work and further works of about four lacs have already been done. Photo copy of the bills received by Respondent no, 4 has been annexed as Annexure-3 series to the counter affidavit.

7. The Petitioner has filed reply to the counter affidavits filed on behalf of Respondent Nos. 2 & 4 and has reiterated the same facts which have already been stated in the main writ application and further stated that it was wrongly stated in the counter affidavit that the labour licence was valid upto December, 1992, on the other hand it was valid upto December, 1993 and the Respondents have arbitrarily rejected the Petitioner''s tender for allotment of the work.

8. During the pendency of this writ application this Court by order dated 24.12.1993 had restrained Respondent No. 4 from proceeding with the contract work up to 5th of January, 1994. When the matter was taken up on 7.1.1994 a complaint was made by the Petitioner that inspite of the said order of stay granted by this Court the Respondent No. 4 is going ahead with the contract work. We directed the Chief Engineer National Highway Division Patna to make an enquiry and submit a report. He has submitted his report that no work has been done by Respondent No. 4 after the order of stay by this Court. Another report has also been filed by the Engineer-in-Chief in pursuance of our order from which it appears that no work was being done by Respondent No. 4 after passing of the stay order (sic) by this Court.

9. The only question which falls for determination in this case is as to whether the authorities have acted arbitrarily and on irrelevant grounds in rejecting the lender of the Petitioner and allotting the contract work to the Respondent No. 4

10. Now it is well settled that if the government intends to enter into a contract with private person then it has to follow certain precepts and principle. The public interest is of paramount (sic). The State and its instrumentalities have to meet

the requirement of Article 14 of the Constitution of India. It cannot accept or reject the offer or tender made by a private person extraneous grounds. It has to follow certain standard and norms while accepting or rejecting the tender.

11. In the present case, as noticed above, the tender of the Petitioner has been rejected on three grounds, namely, that he did not own a road roller, the sales tax clearance certificate as not up-to-date and the labour licence submitted by him was also not up-to-date. These documents were required to be filed according to the terms of the notice inviting tender. So far as the labour licence is concerned it appears from the record that the document which was filed before the authorities was valid upto 29th of December, 1993 and as such the said ground given by the Respondents for rejecting the tender is non-est. So far Sales tax clearance certificate is concerned it is clear that was not up to the date in the sense that tender papers were filed in July, 1993. But sales tax clearance certificate was upto 31st of December, 1992. The Petitioner should have filed the sales tax clearance certificate upto June 1993, as such the official Respondents were right in coming to the conclusion that no up-to-date sales tax clearance certificate was filed. So far ownership of road roller is concerned the document which has been annexed in the petition as Annexure-3A by the Petitioner shows that on 25.4.1991, M/s Surjit Singh Engineering Works had issued a sale letter in favour of the Petitioner stating that he has sold the road roller to the Petitioner for Rs. 95,000/- The said document is of the year 1991. The Petitioner did not produce up to date paper to show that after purchasing the road roller it has been registered in his name. The records further show that though the Petitioner claims to have purchased the road roller he used the road roller of the department in doing the other contract work for which hire charges have been deducted from his bills. On the basis of these materials the Executive Engineer doubled the correctness of the said document (Annexure-3A). Thus, it is clear that at least two of the documents filed by the Petitioner were not according to the requirement of the notice. As such it cannot be said that the authorities acted arbitrarily in rejecting the claim of the Petitioner. So far allegation of malafide against Respondent No. 2 is concerned, from the materials on the record the same has also not been proved. Respondent No. 2 in his counter affidavit has specifically denied the allegation and further stated that the Petitioner is also doing contract work under his division. In such a situation, there is no material on the record to hold that Respondent No. 2 was instrumental in getting the tender of the Petitioner rejected especially when it has been found that tender paper of the Petitioner was not in order. This apart it is clear from the records that Respondent No. 4 has started the work in pursuance of the work order and a sufficient portion of the work has been completed by him and as such it would not be proper for this Court to interfere at this stage. Accordingly, we do not find merit in this application and the same is dismissed.

I.P. Singh, J.

12. I agree.

