
(2010) 05 PAT CK 0012

In the Patna High Court

Case No : CWJC No's. 7998 and 8129 of 2010

Hes Infra Pvt. Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Citation : (2012) 2 PLJR 66

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Rajeev Kumar Singh, for the Appellant;
P.K. Shahi and Vikas Kumar for the Respondent Corporation, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Both the writ applications have been filed by the same petitioner seeking common kind of directions upon the respondents Bihar Rajya Pul Nirman Nigam Limited, an instrumentality of the State. The petitioner is seeking a direction that the Corporation should be directed to award the work of construction of certain bridges on the basis of the negotiated settlement reached between the parties and the action of the respondent Corporation to go for a re-tender ought to be interfered with, if not quashed. A notice inviting tender was issued by the respondent Corporation dated 18.2.2010 for construction of a bridge over river Ganges linking two districts of Arrah with Chapra and another over river Kosi at what is known as Vijay Ghat in the district of Bhagalpur. Both these bridges have significance for the residents of the area. It is a kind of prestigious project for the State of Bihar having a substantial outlay of resources on the two bridges. NIT begot responses from the interested parties. Tenders were filled up but it so happened that at least four of the other participants suffered disqualification for one reason or the other. All those details are not required to be looked into or recorded looking at the nature of the relief which have been prayed for by the petitioner. The outcome of the exercise pursuant to the NIT was that the respondent Bridge Corporation was left with only one valid

tender in all respect and that is of the petitioner for both the projects.

2. It seems that there was some deliberations on this issue amongst the Tender Committee of the respondent Corporation taking the basic fact that there was only one tenderer and it was only his rate available to the Bridge Corporation to deliberate. From the pleadings it is evident that the respondents authorities decided to proceed with the single tenderer, invited the petitioner for negotiation, deliberations were made at various levels and a kind of negotiated settlement according to the petitioner was reached. The petitioner offered to beat down his price on the basis of such a negotiation but it was not a final decision as no order was passed or proposed to award the work. The matter was stopped in its tracks.

3. The outcome of the exercise with regard to this tender was placed before the Board of Directors of the Bridge Corporation. The Board of Directors were of the considered opinion that the nature of the award of contract being such which is on a Turn-key basis (design and building). The basic price indicated in the notice inviting tender was a tentative price and in absence of any other rate being available, the respondent Corporation is not in a position to judge whether they have got the best bargain for implementation of these two projects. They decided, therefore, to go for re-tendering to generate better competition amongst the tenderers and to enable the Corporation to get the best price for the two tenders. The details of the decision of the Board of Directors have been brought on record in the counter affidavit filed on behalf of the respondent Corporation.

4. Submission of the learned Senior Counsel appearing on behalf of the petitioner is that if the respondents had rejected the prayer of the petitioner to open the financial bid on the ground that he is the lone competitor or if the Corporation had decided not to open the financial bid and had not proceeded with the award of contract, may be the petitioner had no case but in the present situation a serious prejudice has been caused to the petitioner's commercial and financial interest because the financial bid has been opened. He was called by the respondents for negotiated settlement. He is forced to beat down his price quoted in the financial bid and after all exercises having been done, the petitioner has been left in the lurch by going for re-tendering. There is serious prejudice created against the petitioner and that too for no fault of his. The petitioner had gone a long with the dictates of the respondents and now it is too late in the day to say that the tender will not be awarded to him and a fresh tender is required to generate competition. Yet another submission in furtherance of the first part is that now the rates of the petitioner are open and the prospective competitors are aware then the re-tendering will surely affect his interest.

5. Submission of the learned Advocate General representing the respondent Corporation is that the writ applications have been filed by the petitioner with regard to a commercial transaction between the parties which had not even reached any finality. He does not deny that there was deliberations and

negotiations but all these exercises were carried out at a particular level and it need to be ratified by the Board of Directors. The decision or the negotiations carried out by the subordinates was considered by the Board of Directors but the Board of Directors were of a definite opinion that the whole object of issuing a notice inviting tender was for generating competition and getting the best rate had not been achieved. Even if the petitioner had agreed to lower his rate they were still not sure as to what would be the correct estimated cost for execution of such project. The respondent Corporation was handicapped in this regard because the estimated value of the project was only a rough estimate and the entire execution of the project was to be left in the hands of the successful bidders. Obviously, looking at the volume of the contract and the public money which was going to be spent on the execution of the two projects, the respondents authorities decided in their wisdom to go for re-tender. According to him there is no hide and seek on this issue and the decision has been taken bona fiddly taking the interest of the Corporation and the people of the State even at the cost of whatever discomfort caused to the petitioner in this regard.

6. The Court does not want to investigate on the wisdom of the respondent Corporation in going for a negotiated settlement which the petitioner after they realised that he was the lone tenderer. May be some quick thinking was required to be done at that stage and a decision ought to have been taken instead of prolonging the issue by inviting the petitioner for a negotiated settlement and then allowing scope for litigation which has traveled to the present Court. But the facts stand that the whole object of going for open tender to generate competition amongst the bidders and getting best bargain was frustrated.

7. The State or its agencies should utilise its resources with the least outlay on any welfare measure including award of contract of the two bridges of the kind. The Court has reservation whether any offer made by the petitioner to beat down his rate or the price despite his financial bid would reflect the actual state of affair because there is no corresponding rates available before the respondent Corporation to make a comparative analysis and facilitate correct estimate of the price which the Corporation is required to pay for completion of the project. In fact, negotiated settlement of the kind is always frowned upon by Courts and also viewed with suspicion as there is no scope for any other view on this score between the parties.

8. In the above stated circumstances, it is not disputed that the offer of the petitioner or the so-called deliberations on the negotiated rates had culminated into any legal right. A legal right only accrues provided the contract was awarded and the agreement entered into. Whatever has been indicated in the writ application is part and parcel of reaching an agreement. These are pre-agreement stage and certain deliberations have to be allowed before a tender is finalised or an agreement executed. It is also a fact that the Tender Committee was only a recommending authority and the final decision had to be taken by the Board of Directors. The reasons furnished by the respondents in their counter

affidavit as well as the deliberations which have been produced alongwith the counter affidavit of the Board of Directors per se cannot be said to be arbitrary or irrational. There are cogent reasons for the respondents to reconsider the matter and if they have decided to go for re-tendering, the same cannot be interfered with. The petitioner has not made out a case for interference as no legal right had accrued in his favour and no direction can be given on the basis of the deliberations or the negotiations which was made by the Tender Committee.

9. Before parting, the Court can only observe that the instrumentality of the State and its functionaries ought to be more cautious in this regard while faced with the situation of the present kind. Both the writ applications are dismissed being devoid of merit.