
(2004) 06 JH CK 0004

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1010 of 2004

Himanchal Construction Co. Pvt. Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 BC 139 : (2004) 3 JCR 391

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Dilip Jerath, for the Appellant; A.K. Sinha, A.G. and S.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In the instant writ petition, the petitioner seeks a mandamus commanding upon the respondents to issue the work order in his favour for construction of 10 Kms Road from Ketunga to Badheda via Madhupur under Nimdih Block, pursuant to tender No. 3/2003-04, issued by the Rural Engineering Organization Works Division, Saraikela-Kharsawan.

2. A short term tender notice No. 3/2003-04 was issued under the signature of the Executive Engineer, REO, Works Division, Saraikela-Kharsawan inviting tender for construction of 10 Kms Road from Ketunga to Badheda via Madhupur under Nimdih Block. The petitioner being eligible in all respect said to have submitted his tender on 12.1.2004. It is contended that, the Government of Jharkhand through Finance Department took a decision on 24.1.2002 that the individual bidders will not deposit the Earnest Money/Security Deposit by way of Bank Guarantee. The facility of Bank Guarantee will be available to a Company/Firm.

3. Petitioner's case is that although respondent No. 7 has not deposited Earnest Money in terms of the Finance Department's circular, rather deposited the

Earnest Money by way of Bank Guarantee, which is not permissible as per the circular, but the tender papers of respondent No. 7 has been entertained. It is alleged that in spite of all these lapses the concerned respondents have called only respondent No. 7 for negotiation, without calling the petitioner and a decision has been taken for allotment of work in favour of respondent No. 7. By filing amendment petition, the petitioner further prayed for cancellation of the allotment alleged to have been made in favour of respondent No. 7 and agreement to that effect has been executed in his favour.

4. A counter-affidavit has been filed by respondent No. 6, the Executive Engineer, Rural Engineering Organisation Works Division, Saraikela-Kharsawan stating, inter alia, that in terms of tender notice No. 3/2003-04, Bank Guarantee is also acceptable and, therefore, acceptance of Security/Earnest Money in the form of Bank Guarantee deposited by respondent No. 7 is regular and justified. It is further stated that respondent No. 7 has fulfilled all the terms and conditions and has furnished a certificate about the ownership of machineries. It is further stated that as per circular dated 13.09.1991, issued by the Vigilance Department, in case same rates are quoted by the tenderers, preference shall be given to the local tenderers.

5. A separate counter-affidavit has been filed by respondent No. 7. It is stated that the petitioner has suppressed material facts as the writ petition was filed on 20.2.2004, It is stated that the work order was issued and agreement was executed on 9.2.2004 and the work was duly commenced and major portion of the work has been completed. It is stated that the respondent No. 7 has fulfilled all the terms and conditions of the tender notice and the work was allotted to him after considering all the circulars and guidelines.

6. I have heard Mr. Dilip Jerath, learned counsel appearing for the petitioner, Mr. A.K. Sinha, learned Advocate General and Mr. S.K. Sinha, learned counsel appearing for responding No. 7.

7. Mr. Jerath, firstly, contended that in gross violation of the terms of the tender notice, respondent No. 7 deposited the Earnest Money by way of Bank Guarantee instead of National Saving Certificate or Post Office Term Deposit Receipt, but in spite of all these irregularities, his tender document has been considered.

8. The propriety of this clause of the tender notice, insisting the tenderer to deposit money only through NSC and not by way of Bank Guarantee, has been decided by a Division Bench of this Court in the case of Bigla Kachhap v. State of Jharkhand, 2002 (1) JLJR 386 : 2002 (1) JCR 253 (Jhr). Their Lordships observed :--

"5. The concept of the requirement relating to the payment of earnest money by a tenderer is to secure the interests of the Government. The depositing of earnest money alongwith the submission of the tender document is insisted because of Government or for that matter, any other contracting party might like to secure its interest one way or the other. Why can not such interests be duly

secured if the tenderers are asked to deposit the earnest money in cash, through a Bank Guarantee, or by submitting FD Rs. valid for the duration of the contract or till its conclusion, also by containing a stipulation of the same being automatically renewed if the contract period is extended for any reason? We are of the considered opinion and view that the insistence on the earnest money being deposited only through NSC is both irrational, illogical and has no nexus with the object sought to be achieved."

It was further observed :

8. Such a stipulation as compulsorily requires buying of NSCs and only through them the furnishing of the earnest money directly hits Article 19(1)(g) of the Constitution of India because it is a very, very unreasonable restriction on the right of a tenderer to carry on his occupation, trade or business, Apart from directly violating Article 19(1)(g) it also violates the basic principle behind Article 14 of the Constitution because such a stipulation apart from being unreasonable, irrational and unworkable, is very, very arbitrary."

9. Following the ratio decided by the Division Bench as quoted here-in-above, I am also of the view that the deposit of Earnest Money/Security Money by respondent No. 7 does not amount to violation of the tender notice.

10. So far the other points raised by learned counsel appearing for the petitioner is concerned, this Court in exercising writ jurisdiction is not supposed to go into the facts of the case minutely and to substitute its own decision. The power of judicial review is limited as held by the Supreme Court in catena of decisions. It is well-settled that judicial review will not mean to review the merit of the decision rather to review the decision making process. It has not been disputed by the petitioner that the work order was issued and the agreement was executed before filing of the writ petition and major portion of the work for repairing of road has been completed. Taking into consideration these facts, no relief can be granted to the petitioner.

11. For the aforesaid reason, there is no merit in this writ petition which is accordingly dismissed. Petition dismissed.