
(1988) 05 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 637 of 1988

Kamakhya Prasad Mozika

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-05-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1988) 1 GLJ 507

Hon'ble Judges : A.Raghuvir, C.J. and J.M.Srivastava, J

Bench : Division Bench

Advocate : A.K.Maheswari, Sk.Chand Mahammad, C.Barua, Advocates
appearing for Parties

Judgement

1. Kamakhya Prasad Mozika is the writ petitioner. He is aggrieved as he was not delivered tender papers for the construction work of 48 Type III Qrs. Building portion, internal water supply and sanitary installation at Doom Dooma. When Mozika approached the concerned authority for tender papers he was informed orally on 3rd or 4th February, 1988 as he did not submit a ?Certificate? showing ? fresh experience? in works therefore he was not eligible to tender for the work. Even later no written order was communicated. Mozika thereafter approached the concerned Chief Engineer who no doubt stated he would consider the question but Mozika over he did not get any relief from him. Finally he approached this Court for relief.

2. The Respondents have filed counter affidavit in opposition and reiterated Mozika did not submit experience certificate further it is added as required Mozika did not execute three works of each of the value of Rs 15 lakhs. Therefore he is not eligible to tender papers. As respects the latter condition it is averred the certificate submitted by him in this regard is not clear and was of doubtful authenticity. For the said two reasons Mozika was considered ineligible to obtain tender forms. Pending the instant writ petition, the tender papers were opened on the 4th February, 1988. One among the tenderers N K. Birmiwala was

found the lowest tenderer for whom the learned counsel S. Birmiwai represented the work is not allotted yet but negotiations are being held. These are the facts in the case. The question at issue is whether in the circumstances any interference by the Court is called for.

3. The learned counsel for the petitioner argued there was no delay in filing the writ petition. The petitioner has approached this Court with expedition. As to the merits of the case he argued the tender papers were not delivered to Mozika for no ostensible reason thus he was not fairly dealt by the authorities. His rights are violated and he may be directed to be delivered the tender papers.

4. The learned Senior Central Govt. Standing Counsel, however, argued that what operated in the mind of the authorities was Mozika did not satisfy the following clause incorporated in the tender notice "the contractors Registered in P.& T/H E.S./ Railways or State P W D. should have done satisfactorily at least three works each costing at least Rs. 15 lakhs or more". The authorities were not satisfied Mozika had executed contract works to the tune of Rs. 45 lakhs as indicated above. The document filed by him in this regard is not clear. Therefore, he was not entitled to the tender papers. Curiously Mozika was not communicated the ground on which he was denied with the tender papers. We have looked into the records which submitted in this case.

5. The document of February 2nd. 1988 does not record Mozika failed to furnish the required certificate of the execution of three works. It is needless to mention the respondents are not entitled to argue a ground which is not borne out by the record. All the record bears out from the record is fresh experience Certificate was not filed. We have not understood the words fresh experience are terms of art. If experience in the context should mean Mozika did not execute work to the tune of Rs.45,00,00/ such a Certificate was submitted. The respondents, however, argue the Certificate is of doubtful authenticity. If that is the ground or issue Mozika was not informed that document submitted as proof of that fact is doubted. We may repeat that was not informed to him as a ground it is not open for the respondents to argue in opposition of the writ petition.

6. We have also heard the learned counsel for the contractor with whom negotiations are in progress. In more than one sense the case brings forth a difficult situation, what proper order should be passed in the case does not suggest easy solution. While we are conscious that unnecessary inconveniences should not be put in the execution of the work. We are on the other hand aware that a citizen's rights should not be trampled in a cavalier manner. It is in this stance we deem it expedient the Respondents authority should be directed to issue fresh notices, inviting tenders to be filed and then finalise the matter.

7. The learned Senior Central Govt. Standing Counsel, however, argued adoption of such a course not only delay but would cause inconvenience to the authorities. For causing such a statement the authorities have to thank themselves. The respondents are directed to issue fresh tender notice, the authorities should

inform him in specific terms in writing so that he may work out his remedies at the appropriate forum.

8. In the result, the writ petition is allowed as indicated. The Respondents are directed to issue fresh notices. No costs.