
(2009) 01 JH CK 0042
In the Jharkhand High Court

Kamala Construction Co.

APPELLANT

Vs

Steel Authority of India Ltd. and Others

RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:

Citation : (2009) 1 JCR 620

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Prayer in this writ application, as made by the petitioner, is for issuance of a direction to the respondents to allow the petitioner to participate in the tender/tenders issued or to be issued by the respondents and to accept the tender submitted or to be submitted in respect of any notice inviting tender, without acting upon any sort of alleged order of suspension, if any.

2. The facts which had led the petitioner to file this writ application, in brief, are that the respondent company had floated a global tender inviting interested parties to submit their respective tenders for executing the work indicated in the tender notice. The petitioner's tender was received along with the tenders submitted by the several other parties. The petitioner's tender was finally accepted and selected. However, there was delay in allotment of the work order to the petitioner by the respondents. The petitioner was toying with the idea as to whether he should proceed with the work, since the delay was of considerable time and the petitioner was left with very less time to conclude the job within the period stipulated. The petitioner had also felt that on account of the delay caused, there has been escalation of the prices of the construction and other materials, thereby increasing the cost of executing the work. The petitioner thereafter requested the respondents to increase the payment of amount of the work order and subsequent thereto, negotiations were held between the parties, but ultimately, they could not reach at any mutually agreed terms. In the meantime, the period within which the contract was to be executed, as Indicated

in the tender notice, was fast approaching. Considering these aspects and taking umbrage against the petitioner's conduct for not complying with his assurance given by him through his letter, the respondents took a decision to rescind the contract and had communicated such decision to the petitioner through the impugned letter (Annexure-5).

3. The grievance of the petitioner is that while rescinding the contract, the respondents had also taken a unilateral decision to suspend all business dealings with the petitioner for a period of one year. Such unilateral decision, according to the petitioner, was arbitrary and mala fide without either informing the petitioner the reasons for suspending the business relationship with him, nor giving any opportunity to the petitioner to submit his stand in his defence.

The petitioner entertained an apprehension that by the decision of suspending all the business dealings with him, he was perhaps black-listed and debarred from participating in the future tenders and also from undertaking works under the respondents in future. This Impression gathered further emphasis on account of the fact that against the subsequent tender floated by the respondents, the petitioner had submitted his tender and though the respondents had opened the tender submitted by the other parties, but had refused to open the petitioner's tender at all. This lead the petitioner to file the instant writ application, seeking prayer as aforementioned.

4. A counter-affidavit has been filed on behalf of the respondents. Shri G.M. Mishra, learned Counsel appearing for the respondents, would want to explain that the respondents have genuine and bona fide reasons for suspending the business relationship with the petitioner for a period of one year. Referring to some of the correspondences exchanged by and between the petitioner and the respondents, learned Counsel would explain that the petitioner's conduct has left much to consider as to whether the petitioner was a fit party to indulge in business relationship at all. However, the concerned authorities of the respondents had left it better to observe the performance and conduct of the petitioner for some more time before taking a final decision whether to severe finally all business relationship with him. Learned Counsel however assures that no final decision as such has been taken against the petitioner to debar him from entering into any business relation with the respondents forever. Rather, the decision not to indulge in business relation with him is for a limited period of one year. Learned Counsel assures that in view of the present stand taken by the respondents, the petitioner has not been debarred from submitting and participating in the tender floated by the respondents in future and the petitioner shall be at liberty to submit his tender against invitation which may be floated by the respondents in future. Learned Counsel further explains that the issue relating to petitioner's tender, referred to by him as having not been opened, cannot be raked up now because the work pertaining to which the tenders were received, has already been allotted to another party. Learned Counsel however informs that the petitioner is also engaged in execution of other contract jobs

under the respondents which he had undertaken in the past and the respondents would certainly keep a close watch and observation regarding the nature of work executed by him and take an appropriate decision, if they find the work executed to be not satisfactory. Learned Counsel reiterates his assurance nevertheless that the petitioner shall not be debarred from submitting and participating in the future tenders and the decision of the respondents not to enter into any business dealing with the petitioner for a limited period of one year, shall not attach any stigma to the petitioner's reputation. The submission made by the learned Counsel for the respondents, appears to be absolutely in good faith which reflects certainly that the respondents do not have any grudge, malice or bias against the petitioner on account of any purported unbecoming conduct of the petitioner.

5. Considering the submissions of the learned Counsel for the respondents, the petitioner should find sufficient assurance from the side of the respondent which, in terms, has the effect of allaying the petitioner's fear and anxiety regarding his right to participate in the future tenders and undertake contract jobs under the respondents.

6. Considering the above facts and circumstances and the assurances given on behalf of the respondents, there appears no further need to pass any specific order in terms of the petitioner's prayer.

7. Accordingly, this writ application is disposed of at the stage of admission itself.