
(2005) 04 JH CK 0029

In the Jharkhand High Court

Case No : Writ Petition (C) No. 334 of 2005

Krishna Kumar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2005) 3 JCR 154

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

Bench : Single Bench

Advocate : Ritu Kumar, R.K. Singh and Niki Sinha, for the Appellant; Manjul Prasad, SC (L and C), for the Respondent

Judgement

M.Y. Eqbal, J.—In this writ petition the petitioner has prayed for quashing the order dated 4.1.2005 passed by the Deputy Commissioner, Palamu by which settlement of Sairat done in favour of the petitioner has been cancelled without hearing the petitioner and further for a direction to the respondents to settle the Sairat No. 15/2004-05 in favour of the petitioner for which the entire process has been completed. A further prayer has been made for initiation of a proceeding u/s 340 of the Code of Criminal Procedure against respondent Nos. 4 and 5.

2. Petitioner's case is that respondent No. 3, the Circle Officer, Hussainabad issued a general notice dated 27.5.2004 for settlement of Sairat No. 15/2004-05 for construction of temporary road on Koel River, Mohammadganj for the period 2004-05 and the date of auction was fixed on 12.6.2004. Since the price offered by the participants was low, notice was published and the date was fixed for auction on 31.7.2004. Petitioner's further case is that on 31.7.2004 auction was held in which five persons, namely, the petitioner, respondent No. 4, respondent No. 5, Shri Vijay Singh and Shri Law Kumar Singh participated. Shri Law Kumar Singh was the highest bidder who quoted Rs. 91,500/- and Rs. 3,50,000/-. The second highest bidder was the petitioner who quoted Rs. 91,100/- and Rs. 1,00,600/- whereas respondent No. 4 quoted Rs. 87,000/- Rs. 96,000/- and

respondent No. 5 quoted Rs. 90,000/- and Rs. 1,00,000/-. The highest bidder namely, Shri Law Kumar Singh refused to take the work. The petitioner being the second highest bidder, approached the Circle Officer for allotment of work to him. The respondents, therefore requested the petitioner to take settlement of the Sairat. In the meantime respondent Nos. 4 and 5 made objection and requested for cancellation of settlement. When the Sub-Divisional Officer, Hussainabad, after holding enquiry submitted a report before the Deputy Commissioner stating that the allegations made by respondent Nos. 4 and 5 are without any basis then respondent Nos. 4 and 5, suppressing all the facts, moved this Court by filling W.P.C. No. 5991/2004 stating that they were the second and third highest bidders. They made false statements in the said writ application that in the auction respondent No. 4 gave his auction of Rs. 1,25,000/-. On the basis of the statement made in the writ petition this Court disposed of the writ petition with a direction to the Deputy Commissioner to consider the grievance of the petitioners (Respondent Nos. 4 and 5) and take decision after giving opportunity of hearing to the present petitioner also. By memo No. 1892 dated 31.4.2004 the Deputy Commissioner called upon the petitioner and respondent Nos. 4 and 5 fixing 3.1.2005 as the date of hearing. Petitioner's case is that the said letter was received by him only on 4.1.2005 and the Deputy Commissioner, although handed over charge to the incumbent Deputy Commissioner on 4.1.2005, passed the impugned order cancelling the settlement made in favour of the petitioner on the ground that respondent No. 3 made allegation of offering Rs. 1,25,000/- as the bid amount.

3. This Court, by order dated 7.2.2005, issued notices to respondent Nos. 4 and 5 and directed the respondents to maintain status quo. On 9.3.2005 this Court passed the following order :

"Heard the counsel for the parties. In this case serious allegation has been made that although the petitioner was the second lowest bidder, the work was allotted to respondent Nos. 4 and 5 after the first lowest bidder refused to execute the work.

This Court, by order dated 7.2.2005, passed the following order.

"Let the case be put up along with W.P.C. No. 5991 of 2004. Issue notice to respondent Nos. 4 and 5 for which requisites etc. must be filed under registered cover with A/D within 11.2.2005.

Put up this case on 18.2.2005 under the heading "for orders." In the meantime, status quo, as existing today, shall be maintained. The counsel appearing for the State will file counter affidavit specifically stating as to who was the second lowest bidder, namely, the petitioner or respondent Nos. 4 and 5."

Till date the respondents 4 and 5 have neither appeared nor filed counter affidavit and even the respondent-State has not filed its counter affidavit informing this Court as to who was the second lowest bidder. Learned State counsel submitted that the order of this Court was communicated to the Deputy

Commissioner, Palamau by Fax on 23.2.2005 but till date no one contacted him nor any instruction was sent.

In such circumstances, issue notice to the Deputy .Commissioner, Palamau to show cause as to why a proceeding for contempt be not initiated against him for non-compliance of the order passed by this Court. He shall appear in person before this Court on 21.3.2005.

In the meantime, the respondent Nos. 4 and 5 are restrained from executing the work. Let a copy of this order be handed over to the learned State Counsel for needful."

4. Again the matter was placed on 21.3.2005 but respondent Nos. 4 and 5 did not appear. This Court, therefore, directed issuance of fresh notices upon respondent Nos. 4 and 5 and further directed the State Counsel to produce the entire record of Settlement case along with dispatch register on the next date. It was only thereafter, the respondent Nos. 2 and 3, namely, the Deputy Commissioner and the Circle Officer filed counter affidavits. In the counter affidavit it is stated that in compliance of the order passed by this Court in WPC No. 5991/2004 the Deputy Commissioner fixed 3.1.2005 as the date of hearing but the petitioner did not appear. The Deputy Commissioner, thereafter, passed order for re-auction of the Sairat. It is further stated that fresh auction was held on 29.1.2005 and all concerned including the petitioner were given notice.

5. Admittedly auction was held on 31.7.2004 and the petitioner, respondent Nos. 4 and 5 along with others offered the bid amount. Thereafter a chart was prepared which was signed by all concerned persons including the petitioner and respondent Nos. 4 and 5. The contents of the chart kept in the original record submitted by the State Counsel is as under :

Names of participants	Amount quoted	Signature
1. Sri Satya Narain Singh, s/o Late Mundrika	87,000/-	Signed Singh Vill-Baridaha, PS-Hussainabad, Distt 96,000. Palamau
2. Sri Arvind Kr Singh, s/o Sri Keshav	90,000/-	Signed Singh, Vill- Morvey
3. Sri Bijay Singh, s/o Late Bhuneshwar	91,000/-	Signed Singh, Vill- Sonbarsa, PS-Mohammadaganj, Distt- Palamau
4. Sri Krishna Kr. Singh, s/o Yamuna	91,000/-	Signed Singh, Vill- Bharariya, PS-Manjhion, Distt-Garhwa
5. Sri Lav Kumar Singh, s/o late	91,500/-	Signed Mukutdhari Singh Vill-Sonbarsa, PO-Mohammadganj

6. Since the petitioner was the second highest bidder the work was allotted to the petitioner but in the meantime respondent Nos. 4 and 5 filed a writ petition being WPC No. 5991/2004 for cancellation of auction which was settled in favour of the petitioner (respondent No. 6 therein). In the told writ petition respondent Nos. 4 and 5 made false statement that the, offered Rs. 1,25,000/- and 1,10,000/- but the settlement was made in favour of the petitioner. On the basis of these statements made by respondent Nos. 4 and 5 this Court disposed of the writ petition on 10.11.2004 directing the Deputy Commissioner to consider the grievance of the petitioners and take a decision after giving opportunity of

hearing to the present petitioner. The order dated 10.11.2004 reads as under :

Heard the parties.

Petitioners' case is that pursuant to the notice inviting tender for settlement of Sairat for construction of temporary road on Koel river, they along with others submitted tenders. One Law Kumar Singh quoted Rs. 3.50,000/- as bid amount and the contract was allotted to him but he withdrew his tender. Thereafter, at the request of respondent No. 6, (Krishna Kumar Singh), the contract was awarded to him at a bid amount of Rs. 1,00,600/- although the petitioners were the second bidders having quoted Rs. 1,25,000/-.

The petitioners, in this regard have filed a written representation to the Deputy Commissioner, Palamau to inquire into the matter and take decision. The contention of the petitioners is that till date the representation filed by the petitioners has not been considered.

Without going into the merits of the case of the petitioners I direct the Deputy Commissioner, Palamau to consider the grievance of the petitioners and take a decision after giving opportunity of hearing to respondent No. 6 also along with the petitioners. Such decision shall be taken within a period of six weeks from the date of receipt of a copy of this order.

In the meantime if the work has not yet commenced, then status quo shall be maintained till any decision is taken on the representation of the petitioners."

Curiously enough the then Deputy Commissioner inspite of the report submitted by the Sub Divisional Officer that no participant ever offered Rs. 1,25,000/- the Deputy Commissioner issued notice to the present petitioner fixing 3.1.2005 as the date of hearing. The said letter was served on the petitioner only on 4.1.2005 and on the same day the then Deputy Commissioner, although he was transferred and the new Deputy Commissioner had joined in his place, hurriedly passed the impugned order cancelling the settlement made in favour of the petitioner merely on the ground that there is allegation made by respondent Nos. 4 and 5 that they quoted Rs. 1,25,000/-.

8. In course of argument Mr. Manjul Prasad, learned counsel appearing for the State very fairly admitted that when the New Deputy Commissioner joined on 4.1.2005, the outgoing Deputy Commissioner ought not to have passed the impugned order hastily without considering the chart which was duly signed by all the participants including respondent Nos. 4 and 5 admitting that they did not offer Rs. 1,25,000/-

Notwithstanding all these facts, no relief can be granted to the petitioner for the reason as stated in the counter-affidavit filed by respondent Nos. 2 and 3 that in compliance of order passed in W.P. (C) No. 5991 of 2004 the Deputy Commissioner took a decision for re-auction and accordingly a fresh auction was held on 29.1.2005. In which one Shri Raj Kumar Gupta became the highest bidder who offered Rs. 1,15,000/and deposited the whole amount. It is further

stated that notices were issued to all concerned including the petitioner and in response to the said notice petitioner's brother participated in the bid. In the instant writ petition, the said Raj Kumar Gupta has not been impleaded as party respondent although this fact is disclosed in the counter-affidavit.

10. Be that as it may, the conduct of the erstwhile outgoing Deputy Commissioner cannot be appreciated the way he conducted the auction sale and I express my displeasure for the same.

11. With the aforesaid observation, this writ petition is disposed of.