
(2002) 03 JH CK 0067
In the Jharkhand High Court
Case No : Writ Petition (C) No. 1064 of 2002

Manoj Singh

APPELLANT

Vs

Steel Authority of India and Others

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2002 Jhar 61

Hon'ble Judges : Tapan Sen, J

Bench : Single Bench

Advocate : R.A. Chamaria and Anil Choudhary, for the Appellant; R.K. Merathia and Rajiv Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

Tapan Sen, J.—Heard the parties.

2. In this writ petition, the grievance of the petitioner is that pursuant to a notice inviting tender he was issued a work order on 8-1-2002 relating to maintenance and servicing of different makes of window and split type air conditioners. However, all of a sudden on 17-1-2002 it was withdrawn vide Annexure-8.

3. According to petitioner and only thereafter fully suitable, competent and also lowest bidder and only thereafter on 8-1-2002 by Annexure 4 the work order was Issued in his favour. According to him, he also submitted all the necessary document that were required as per the work order and on 14-2-2002 the petitioner also wrote to the concerned Respondent Informing him about the acceptance of the work order. The petitioner further stated that when he produced the necessary non judicial stamp papers, the same were refused by the concerned Respondent. Thereafter, the petitioner did not hear anything from the Respondents as a result where of on 19-1-2000 the petitioner wrote to the respondent informing them about these developments.

4. However, on 17-1-2000 all of a sudden the respondents sent a letter informing

the petitioner that the work order issued on 8-1-2002 "was withdrawn due to administrative reason with immediate effect." According to petitioner, he sent representation against the aforesaid decision and when nothing was done, thereafter he moved this Court. In the instant writ application.

5. A counter affidavit has been filed on behalf of respondents wherein they have stated that the proper remedy for the petitioner is either to file a suit or go for arbitration and that the writ petition being a contractual matter arising out of the cancellation of contract, a writ Court should not interfere.

6. At para 7(e) to the counter affidavit the respondents have stated that as per Clause 10 of the terms and conditions of the tender as notified by Annexure 1, one of the important point was that a tenderer should have experience of executing work of the value of at least 50% of the total value of the work order or at least not less than Rs. 4.15 lac during any last three financial years. According to them, the petitioner however, had submitted three experience certificates in the following manner :--

For the financial year 1999-2000 (Annexure-B) :- Rs. 50,000/-

For the financial year 2000-2001 (Annexure-B) :- Rs. 1,75,000/-

For the financial year 2000-2001 (Annexure-B) :- Rs. 93,575/-

page 17

For the period 1-4-2001 to 30-9-2001 (Annexure-B) :-- Rs. 1,31,000/-

page 18

7. The respondents have stated that although the petitioner was found not to be fulfilling the aforesaid eligibility criterion but inspite thereof, the tender Committee felt that they would again have to retender the entire process and therefore the Committee in its own wisdom relaxed the eligibility condition and work order was Issued to the petitioner and to one M/s. V.K. Enterprises.

8. The respondents have stated that however, immediately after the work order dated 8-1-2002 was issued and it was realised that the Tender Committee had no power to relax the eligibility condition without approval of the competent authority, therefore, the work order Issued to both the petitioner as also to M/s. V.K. Enterprises was withdrawn vide Annexure 8 of the writ petition.

9. The respondents have stated that M/s. V.K. Enterprises surrendered the work order voluntarily whereas the petitioner has filed the instant writ application. They have also stated that they have initiated a fresh retendering process but the matter has been kept in abeyance because of the pendency of the writ petition.

10. According to learned counsel for the respondents, therefore, there is no mala fide nor is the decision in withdrawing the work order illegal or discriminatory because similar withdrawal has also been effected in so far as M/s. V.K.

Enterprises is concerned. According to learned counsel, this is a case of only correction of a mistake and that the petitioner can very well be compensated.

11. In the case of Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, it has been held that the "award of contract, whether it is by a private firm or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision consideration which are paramount are commercial consideration. The State can chose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons. If the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its Corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedure laid down by them and can not depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interference if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its Corporations, instrumentalities and agencies have the public duty to be fare to all concern. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Art. 226 with great caution and should exercise it only in furtherence of public interest and not merely on the making out of a legal point. The Court should always keep the larger public Interest in mind, in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that over whelming public interest requires interference, the Court should intervene."

12. In the instant case from a perusal of the counter-affidavit and also documents brought on record both by the petitioner as also by the respondents it is apparent that the petitioner obviously did not fulfill Clause 10 of the terms and conditions of the tender. That being the position it cannot be said that the withdrawal of the work order is either arbitrary or illegal or mala fide or discriminatory specially more so in view of the fact that the respondents, also withdrew even the work order issued to M/s. V.K. Enterprises.

13. Keeping in view the judgment of the Hon"ble Supreme Court of India referred to above, this Court, therefore, Is of the opinion that no relief can be granted to the petitioner In this writ petition. Accordingly, the writ petition is dismissed.

14. It goes without saying that if the respondents have initiated the process of fresh tender and if the petitioner is otherwise eligible, they would allow him to participate and take a decision in accordance with law.