(2006) 04 PAT CK 0022

In the Patna High Court

Case No : CWJC No. 966 of 2006

Mithilesh Kumar Choubey APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:

Citation : (2006) 2 PLJR 382

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : J.P. Shukla, Vinod Kr. Kanth and Ashutosh Ranjan Pandey, for the Appellant; Manindra Kishore Singh for the State and Mr. Y.V. Giri for the Respondent No. 10, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr Vinod Kumar Kanth for the petitioner, Mr. Manindra Kishore Singh, learned Govt. Pleader No. II for respondent Nos. 1, 2 and 8, Mr. J.P. Shukla for respondent Nos. 3, 4, 5, 6, 7 and 9, and Mr. Y.V. Giri for respondent No. 10 (Fazle Akbar Khan Warsi). According to the writ petition, respondent No. 3 (Bihar State Forest Development Corporation Limited) (hereinafter referred to as "the Corporation'') had published a general notice in 2004 for settlement of Kendu leaves for Sasaram and Rohtas ranges. The petitioner and respondent No. 10 had submitted their offers. It passed through a series of vicissitudes and has ultimately been allotted to respondent No. 10, by the impugned order dated 26.12.2005 (Annexure 9). The offer of respondent No. 10 at the inception was for Rs. 570/- per standard bag and has by a continuous process of manipulation been reduced and settled at the rate of Rs. 307 for Sasaram, and Rs. 257/-, plus godown rent, for Rohtas. The petitioner complains before this Court that the impugned order is an act of conspiracy between the functionaries of the Corporation and respondent No. 10, to ensure that the petitioner''s cause is defeated and the settlement is made in favour of the latter. The petitioner submits that respondent No. 10 had initially made the offer of Rs.

570/- per standard bag, the settlement was made in his favour which he failed to execute leading to forfeiture of his security amount and proposed blacklisting notwithstanding which the settlement for the same lots have been made in his favour at much lower rates. It is, therefore, submitted that the impugned order of settlement is bad in law because the petitioner is in default.

2. Respondent No. 10 has filed affidavits in opposition and has opposed the writ petition. Relying on various clauses of the notice inviting tenders (Annexure 1), learned counsel for respondent No. 10 submits that the offer of godown rent in terms of clause 6(ii) had to be specifically made accompanied with the requisite affidavit. The petitioner did not do so and, therefore, his tender was fit to be rejected at the threshold. In his submission, the respondent authorities were more than generous to the petitioner in overlooking these defects in his candidature and considered his offer on merits. He next submits that the petitioner has not come with clean hands. Respondent No. 10 has really never been in default. He also submits that respondent No. 10 was constrained to withdraw his initial offer of Rs. 570/- because of the delay attributable to the respondent authorities. He submits in the same vein that the recurring delay entirely attributable to the respondent authorities has led to the scaling down of the offer of respondent No. 10. He has already deposited a sum of Rs. 7,21,000/-. He lastly submits that the writ petition raises issues beyond the permissible and the recognized parameters of judicial review. He relies on the following reported judgments:-

a. 1987 BLJ 491 [: 1987 PLJR (NOC)64] (Para 5) (Hakim Mian vs. Commissioner, Bhagalpur Division & Ors.),

b. 1995(2) Supp. SCC 650 (Para 2) (S.B. Mathur, the resident Commissioner & Anr. vs. Mattiullah),

c. 1995(3) Supp. SCC 709 (Para 2) [Prakash Wati (Smt.) & Ors. vs. R.L. Kapur],

d. National Highway Authority of India Vs. Ganga Enterprises and Another, ,

e. Union of India (UOI) and Another Vs. S.B. Vohra and Others, ,

f. Tata Cellular Vs. Union of India, .

3. The respondent Corporation has filed its affidavits in opposition and has opposed the writ petition. In pursuance of the order dated 15.2.2006, learned counsel for the Corporation has produced the original records with respect to the subject matter of this writ petition maintained in the Corporation''s office and was made available to the learned counsel for the petitioner and respondent No. 10 for their inspection and perusal. Mr. Shukla, learned counsel for the Corporation, submits that the offer of respondent No. 10 is distinctly higher than that of the petitioner. The latter did not make the offer for the godown rent which was in violation of Class 6(ii) of the notice inviting tenders. The petitioner at no stage made an offer higher than respondent No. 10. He lastly submits that this is a commercial transaction which should best be left to the judgment of the

authorities. The leaves are perishable objects, are deteriorating, and any interference by this Court will result in deprivation of the vital revenue of the State Government. He has relied on the following reported judgments:-

a. Trilochan Mishra, etc. Vs. State of Orissa and Others, ,

b. State of Orissa and Others Vs. Harinarayan Jaiswal and Others, ,

c. State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, ,

d. State of Punjab Vs. Yoginder Sharma Onkar Rai and Co. and Others, ,

e. Judgment Today 1997(1) SC 309 [Asia Foundation & Construction Ltd. vs. Trafalgar House Construction (I) Ltd.].

4. Learned counsel for the petitioner has in reply submitted that he has been subjected to hostile discrimination. He was not invited for negotiations and respondent No. 10 was clearly favoured.

5. I have perused the materials on record and considered the submissions of learned counsel for the parties. I must at the very threshold observe that I feel very unhappy at the manner in which the respondent Corporation has dealt with the matter. While the Corporation has been emphasising before this Court that Kendu leaves are perishable objects, the issue relating to its settlement has been dragging its feet ever since 2004.

6. Respondent No. 10 is a defaulting purchaser in terms of Clause 4 of the notice inviting tenders (Annexure 1), notwithstanding which the settlement has been made in his favour. Clause IV is set out hereinbelow for the facility of quick reference:-

The first offer of respondent No. 10 for Rs. 570/- per standard bag was accepted by letter dated 14.6.2004 (Annexure 3). Respondent No. 10 perhaps thought that he could have succeeded by offering a lower price, he did not deposit the requisite amount indicated therein leading to the order dated 1.8.2005 (Annexure 4), whereby acceptance of his tender was cancelled, the deposit of Rs. 80,000/- of security money was forfeited with the proposed action of recovery of the losses to the Corporation from him and also to black-list him. I, therefore, see no justification on the part of the respondent authorities to turn around, completely overlook the same, and proceed with negotiations with respondent No. 10. The first offer of respondent No. 10 of Rs. 570/- per standard bag was accepted by the Corpn., reduced and sought to be settled in favour of respondent No. 10 for Rs. 307/- per standard bag for Sasaram range, and Rs. 257/- per standard bag for Rohtas range, and after negotiations has been raised to a little higher amount and finally settled in favour of respondent No. 10. Learned counsel for the respondent Corporation has not made any attempt to satisfy this Court as to why Clause 4 has not been applied, and conveniently overlooked to favour respondent No. 10. There appears to be some kind of organised machination in the Corporation''s office to act in collusion with respondent No. 10

to promote his case. The spirit of favouritism in favour of respondent No. 10 is writ large on the face of the records of the case. Such conduct on the part of the Corporation and its functionaries has resulted in decline of revenue.

7. Learned counsel for the petitioner has relied on Clause 19 of the tender notice tender (Annexure 1) which is as follows:-

He submits that the occasion for negotiations may have arisen had the offers of the petitioners and respondent No. 10 been the same. The petitioner may or may not be right, and I would not, in a commercial venture like the respondent Corporation, like to go as far as the petitioner intends to go. If the respondent authorities were of the view that the offers of the parties were not adequate, and a higher offer were possible after negotiations, then such a liberty should be available to the Corporation. The difficulty arises on a different plane. Once the decision to negotiate is taken, then it must be done in a most transparent and objective manner, and no attempt should be made to subject one or the other to hostile discrimination. 1 he negotiations that went on in the present case after respondent No. 10 did not honour the acceptance of his tender by the Corporation''s letter dt. 14.6.2004 (Annexure 3), then the petitioner should have equally been taken into confidence and given equal opportunity to negotiate. The Regional Chief Conservator of Forest-cum-Member, Sales Committee, in his minutes dated 8.2.2006 (Annexure 13), has stated in unmistakable terms that the petitioner has been subjected to hostile discrimination. In his own words.

I have therefore, no manner of doubt that the impugned order is tainted with mala fides and is fit to be set aside.

9. After conclusion of the arguments, learned counsel for the petitioner submitted that in order to wrest the settlement, he is prepared to offer a sum of Rs. 1 lac higher than the offer made by respondent No. 10, apart from his offer of godown rent read with clause 6(H). This was followed by the offer of respondent No. 10 that he is prepared to add Rs. 50,000/- to the offer made by the petitioner. The petitioner then raised it to Rs. 2.50 lacs.

10. In that view of the matter, the impugned order and the consequential orders are hereby set aside, and the petitioner''s offer is accepted. It is hereby directed that the petitioner shall deposit the entire amount as well as the godown rent in terms of clause 6(ii), on or before 27.4.2006, failing which the impugned order shall automatically stand revived, the settlement in favour of respondent No. 10 shall subsist alongwith the added offer of Rs. 1.50 lacs, so that the Government revenue does not suffer. It is further made clear that if the petitioner defaults in depositing the amount as per the terms of the present order, he shall stand black-listed in the records of the Corporation for settlement for a period of five years henceforth. Respondent No. 10 shall be visited with identical disqualification in case the impugned order is revived and he fails to carry out this order.

11. Before I part with the records, I must state that the affairs of the respondent Corporation seem to be in a state of disarray and needs revamping. Machinations

and favouritism must come to an end forthwith, it must deal with its affairs expeditiously and in a transparent manner. It will bear repetition that a settlement of the year 2004 with respect to a perishable item has been concluded in 2006, and such an unsatisfactory manner. Secondly, the Corporation seems to be possessed of feet of clay. The State of Bihar has created a specialised body like the Corporation with full autonomy to conduct the affairs entrusted to it as per its best judgment. Instead of dealing with the matter in a transparent manner and taking its own decisions, it had referred the present matter most needlessly to the State Government. It speaks of abdication of essential duties and functions, delays matters, harass the parties seeking to deal with it, and may result in decline of revenue. Such an approach on the part of the Corporation defeats the very object and purpose of its creation.

12. This writ petition is accordingly allowed. Let this judgment be brought to the notice of the Commissioner-cum-Secretary, Department of Forest, Govt, of Bihar, who shall ensure remedial measures after obtaining appropriate orders of the State Government. Let copies of this order be handed over to the learned counsel for the parties forthwith.