

(2004) 02 JH CK 0058

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 5732 of 2003

Mr. Avinash Dubey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 176

Hon'ble Judges : P.K. Balasubramanyan, C.J.; Tapen Sen, J

Bench : Division Bench

Advocate : D. Jerath, Manoj Tandon and Sanjeev Mishra, for the Appellant; A.K. Sinha, General, A.K. Mehta and Suraj Samdarshi for respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J. and Tapen Sen, J.—This writ petition said to be filed in public interest by a social worker seeks to challenge the norms for tenders set out by a notice inviting tenders for construction of a water supply project estimated to cost about rupees 88 crores for supply of drinking water to Dhanbad. The challenge of the petitioner is to the prescription that ductile iron pipes are to be used and that the tenderers should have experience in laying of at least 10 kilometres of ductile iron pipes of a diameter not less than 600 millimetres: that the pipes shall conform to I.S.-8329/2000 with latest amendment and the pipes should have ISI mark. The sourcing of pipe material should be from a reputed company having manufacturing experience of not less than 3 years and their pipes laid in any project should have performed satisfactorily in India for a period of not less than 2 years. According to the petitioner, the selection of ductile iron pipes, the insistence on pipes bearing ISI mark and the insistence on having completed a project in India are intended to eliminate competition, especially international competition and it was also intended to unduly favour a particular manufacturer in India who alone was

manufacturing ductile iron pipes. The petitioner points out that even though there are two companies in India manufacturing ductile iron pipes, M/s. Electro Steel Corporation Limited and M/s. Lanco Kala Hasthi, both the companies were under the same management and the choosing of ductile iron pipes was unduly to favour these manufacturers. It is also contended that whereas foreign competitors had quoted only Rs. 12,500/- per ton for the ductile iron pipes, the price quoted by the Indian competitors was Rs. 30,000/- per ton approximately showing a difference of Rs. 17,500/- per ton leading to a difference in value of Rs. 29.75 crores, since the tonnage required would be 17,000 M.T. The petitioner has also attempted to point out with reference to some materials said to have been gathered from outside the country that ductile iron pipes had not been found to be as successful as the respondents have held out and the claim that they will serve for 80 years as against the cast iron pipes and M.S. pipes which would have life of only about 20 years is made without any basis. It is submitted that public interest was involved in that, unnecessarily almost a one-third of the proportionate amount of the project was being wasted by going in for D.I. pipes from Indian manufacturers and also without considering the performance level of such pipes as against the conventional pipes normally used in India.

2. On behalf of the respondents 1 to 4, the State of Jharkhand and the authorities concerned. It is contended that no public interest was involved in this writ petition; that this writ petition was filed at the instance of some tenderers or manufacturers of pipes and that the writ petition lacks bona fides. It is also submitted that the ductile iron pipes were suggested in the Project Report and their use in the scheme was also justified by the Consultant, the Water Power Consultancy Service (India) Ltd., Pune. According to the information gathered by respondents, ductile iron pipes had a longer life and they would require no maintenance for considerably more period than the other conventional pipes and the use of ductile iron pipes was now in vogue in various countries, including India, and there was no absence of bona fides in the decision, to use ductile iron pipes for the project. Some technical reasons said to be justifying the decision to use ductile iron pipes are also pleaded. It is contended that the Court cannot sit in appeal over the decision to use ductile iron pipes for the project and there was no reason for this Court to interfere, since respondents 1 to 4 have considered all the relevant aspects before going in for the use of ductile iron pipes. It is contended that the insistence on ISI marking was to ensure quality and there was no intention to exclude any tenderer by stipulating that the pipes should have an ISI marking. The qualification that some projects should have been undertaken in India and pipes should have been installed, at least two years before was also intended to ensure that the tender was awarded to a qualified tenderer. As regards the difference in the price, it is stated that the tenderer whose tender was to be accepted was free to procure pipes from anywhere and the only insistence was that it must conform to ISI standards and should have an ISI marking. This is not a litigation that should normally be entertained by the Court as a public interest litigation.

3. Respondent 5, M/s. Electro Steel Casting Limited has filed an affidavit denying that the management of that company and that of Lanco Kala Hasthi, Hyderabad, is the same. They were two distinct companies. It is pleaded that the State of Gujarat has been using ductile iron pipes from 1984 onwards and they are found to be working satisfactorily till this date. The said pipe has an edge over other pipes like CI pipes and MS pipes. Its counsel also contended that respondent No. 4 was only the second lowest tenderer and was not really concerned with the writ petition and has been unnecessarily impleaded.

4. At best, this Court is only concerned with the question whether respondents 1 to 4 considered whether they could opt for ductile iron pipes or should go in for other conventional pipes. In other words, at best, this Court can scrutinise the decision making process. So scrutinised, we find that respondents 1 to 4 have got prepared a project report with the recommendation that ductile iron pipes could be used with advantage and have also got concurrence of the Institute at Pune as a consultant for use of the ductile iron pipes. It is thereafter that the decision was taken. No doubt, some literature relied on by the writ petitioner indicating that the performance of this pipe had not been found as a advantageous as it was originally thought, has not been specifically answered in the counter-affidavit. But at the same time, it is seen that this aspect was considered and then the decision was taken. In this situation, in a so-called public interest litigation of this nature, we do not think that adequate reasons exist for interference with the proposed work taken up for supply of water to Dhanbad from the Maithon Dam.

5. But we find some merit in the contention that the stipulation that the tenderer should have had installed some projects in India and they should have been in place at least for two years does tend to restrict the competition in the process of tendering. It is one thing to say that a pipe to be used should conform to ISI standards and it is another thing to say that it must have an ISI marking. Even a foreign competitor possibly may be in a position to make available a pipe conforming to the ISI standards insisted upon. He may also be able to get an ISI marking before using the pipe. But to confine the competition to those who have installed projects in India which had worked for two years is likely to keep out the competitors from other countries who probably have equal, if not more, expertise in the field. The difference in the price quoted cannot also be brushed aside if such a difference does exist. It is submitted that the tendering process has not been completed and the work has not been awarded. We may in public interest be concerned with the question whether the expenses now envisaged is really needed and whether the project could not be completed at a lesser cost. But these thoughts do not enable us to interfere with a notice inviting tenders, unless we are able to find something positively illegal or unconstitutional in it. Having found that no grounds are available for interfering with the notice inviting tenders, we have necessarily to dismiss the writ petition. The writ petition is dismissed. Writ dismissed.