
(2012) 04 JH CK 0047
In the Jharkhand High Court
Case No : C.M.P. No. 165 of 2012

M/s. National Printers

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Citation : (2012) 3 JCR 576

Hon'ble Judges : Prakash Tatia, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : B. Poddar, Anil Choudhary, Darshana Poddar, S. Berlia and Piyush Poddar, for the Appellant; R. Krishna, Saurav Arun and A. Sinha, JC to AG, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Learned Counsel for the petitioner. Learned Counsel for the petitioner vehemently submitted that Division Bench of this Court passed interim order in L.P.A. No. 180 of 2012 on 27th March, 2012 that respondents shall consider the bid of the petitioner provisionally and finalization of the bid shall not be taken without leave of the Court. This order dated 27th March, 2012 was again taken note of in order dated 2nd April, 2012. Against the said order dated 2nd April, 2012 whereby the respondents were directed to provisionally issue the tender documents in fresh tender process, after cancellation of earlier tender process, to the present petitioner and accept his tender documents, the State preferred SLP (C) No. 11935 of 2012. Said SLP was dismissed by the Hon"ble Supreme Court and the Hon"ble Supreme Court refused to interfere in the order dated 2nd April, 2012 and Hon"ble Supreme Court also clearly observed and made it clear that:

...while issuing and accepting the tender documents from the respondent No. 1, the petitioner herein will be entitled to proceed further and finalise the tender process, but shall not award the contract to the successful tenderer, without leave of the Division Bench of the High Court.

2. Learned Counsel for the petitioner vehemently submitted that in view of the above orders passed by the Division Bench of this Court (by us) which is not only upheld by the Hon''ble Supreme Court but the Hon''ble Supreme Court also passed the specific order that respondent shall not award contract to the successful tenderer without leave of this Court. It is further submitted that in gross violation of the orders passed by this Court as well as by the Hon''ble Supreme Court, the respondent immediately after final decision passed in L.P.A. No. 180 of 2012 and W.P.(C) No. 961 of 2012 vide judgment dated 19th April, 2012 finalize the bid in favour of other bidders without leave of this Court, Learned Counsel for the petitioner submitted that in fact direction of this Court and Hon''ble Court are the final direction.

3. In our opinion, Civil Miscellaneous Petition is misdirected and has been wrongly filed. Firstly, we do not find any force in the submission of Learned Counsel for the applicant and so far as order of this Court in L.P.A. restraining the respondent from finalizing the tender process and awarding the contract without leave of the Division Bench of this Court is concerned, that was interim order passed in a proceeding arising out of the Miscellaneous Proceeding for obtaining interim order in the form of stay and injunction by way of Interlocutory Application resulting into consequential L.P.A. against refusal of interim order and ultimately reached to the Hon''ble Supreme Court in S.L.P., wherein the Hon''ble Supreme Court passed the order referred above on 10th April, 2012. The order passed in such of proceeding which were of interim nature have emerged in the final judgment and cannot survive beyond the final decision delivered in writ petition No. 961 of 2012 dated 19th April, 2012. Therefore, the contention of the Learned Counsel for the applicant that the interim order is final order has no legal basis.

4. Not only this but if, petitioner is aggrieved against the action of the respondent amounting to violation of the order of this Court, then also the Civil Miscellaneous Petition is not a proper application as in this application, as per Learned Counsel for the petitioner, the petitioner is seeking direction upon the respondent to produce the entire records of tender in question to find out whether the petitioner's bid has been considered or not and if considered whether it has been considered properly or not and process has been completed malafidely with ill motive. Examination and deciding of such issue can not be the scope as Miscellaneous petition filed in any decided case:

5. Miscellaneous Petitions can only be in circumstances where the parties seek some further direction in consequence and in the light of the final decision or any party wants to seek some modification in the order. If scope of Civil Miscellaneous Petition is enlarged to the extent which has been sought to be enlarged by the applicant then virtually there will be no end of any case and finality of any order. Not only this but the entire nature of the litigation which was started by filing original petition and decided by final Judgment will stand either reopened or will change totally because of moving only Civil Miscellaneous

Petition, which is not the proper procedure nor desirable procedure. Upon accrual of fresh cause of action, the parties can move appropriate petition may be in the form of writ application, or in the form of suit etc., whatever may be. If party has grievance that the order has not been complied with, the proper remedy is by moving contempt petition. In any manner, this Civil Miscellaneous Petition is not maintainable.

6. In view of above, this application is dismissed with liberty to the petitioner to avail legal remedy in accordance with law. We are making it clear that none of the observations made in this application be treated to be decision of any of the issue raised by the writ petitioner in the Civil Miscellaneous Petition and it will not prejudice or favour anybody except about the nature of interim order passed by this Court and passed by Supreme Court. Hence, the Civil Miscellaneous Petition is dismissed.