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**(2006) 08 JH CK 0098**

**In the Jharkhand High Court**

**Case No : Writ Petition (C) No. 3586 of 2006**

Nagarjuna Construction Company

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision : 05-08-2006**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2007) 2 CTLJ 25 : (2006) 4 JCR 577

**Hon'ble Judges :** S.J. Mukhopadhaya, Acting C.J.

**Bench :** Single Bench

**Advocate :** K.N. Chaubey and S.K. Dwiedi, for the Appellant; Anil Kumar Sinha, General and Sameer Sourabh, JC to A.G., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S.J. Mukhopadhaya, Acting C.J.

1. The petitioner, having disqualified the 1st stage from taking part in the tender process, has challenged the entire process of selection.

2. It appears that a Notice Inviting Tender was issued by the respondent-State of Jharkhand in October, 2005 for construction of Section-VII of six lane-Ranchi, Ring Road (Katihar 11th NH-75 to Karma 114th Km NH-33) including Bridges, Culverts, Flyovers and Elevated Cross Roads etc. Apart from experience, the following particular construction experience was made one of the pre-condition:

3.3 Experience and Turnover

3.3.1 Experience

(a) The applicant shall provide documentary evidence of having been actively engaged in the civil works construction business during the last five years in the role of prime contractor or partner in joint venture of subcontractor.

(b) Particular construction experience:

The Applicant shall provide evidence that it has successfully completed or substantially completed within the last seven years (commencing from the year 1998-99) at least one Contract pertaining to highways/ airport runway with Hot Mix Plant and other related construction equipments and Bridges/Flyovers/ROBs" whose value is at least Rs. 80.0 Crores including at least Rs. 50.0 Crores worth of Highway component and at least Rs. 30.0 Crores worth of Bridges/Flyovers/ROBs" component Two separate contracts, one contract pertaining to highways/airport runway with Hot Mix Plant and other equipments worth Rs. 50.0 Crores and another contract pertaining to Bridges/Flyovers/ROBs" worth Rs. 30.0 Crores, would also be treated as equivalent to the minimum eligibility criteria mentioned above.

The works may have been executed by the Applicant as prime contractor or proportionately as member of joint venture or sub contractor. As sub contractor, he should have acquired the experience of execution of all types of pavement layers.

Substantially completed works means those works which are at least 90% completed as on the date of submission (i.e. gross value of work done up to the last date of submission is 90% or more of the original contract price) and continuing satisfactorily. For these, a certificate from the employer shall be submitted along with the application incorporating clearly the name of the work, Contract value, billing amount, date of commencement of works, satisfactory performance of the Contractor and any other relevant information.

In case a project has been executed as a JV by two or more firms, weightage towards experience in the Project would be given to the JV partners in proportion to their participation in the Joint Venture.

The escalation factors as mentioned in para 3.2 shall be applied on the cost of completion .

3. The petitioner filed its application paper for pre-qualifying tender but it was not accepted on the ground that petitioner failed to place any evidence that it had successfully completed or substantially completed at least one contract pertaining to highways/airport runway and other related construction equipment and Bridges / Flyovers worth minimum of Rs. 80.00 Crores including at least Rs. 50.00 Crores worth of Highway component and at least Rs. 30.00 Crores worth of Bridges/ Flyovers.

4. Similar plea has been taken by the respondents in their counter affidavit.

5. Learned Counsel for the petitioner relied on enclosures attached to the writ petition, particularly, Annexure-5 (at page-254); Annexure-6 (at page-256); Annexure-7 (at page-259); Annexure-7/A (at page 261) and Annexure-8 (at page-266).

6. Enclosure of Annexure-5 at page 254 is the certificate issued by National Highways Authority of India dated 8th June, 2005. In the said certificate, though

it has been shown that the petitioner along with another Company jointly executed the work, having contract amount of Rs. 146.97 Crores, the respondents have not accepted such certificate as the share of the petitioner has not been shown therein to find out whether petitioner had completed more than 80.00 Crores of work or at least 50.00 Crores of National Highways work. Annexure-6 is another certificate (at page-256), purportedly to have been issued by National Highways Authority of India. This has been discarded by the respondents, as neither any memo number has been shown nor any date of issuance of such certificate has been shown. This certificate has also been disbelieved by the respondents as the signature shown therein, which was made by the Project Director, does not show that the said signature has been made by the Project Director, National Highways Authority of India. On the other hand, it appears that the signature of Team Leader has been shown in the left side. In fact, this Court is also of the opinion that no reliance can be placed on such certificate, where there being a little doubt regarding the genuinity of such enclosure. So far as Annexure-7, a certificate dated 18th October, 2003 issued by National Highways Authority of India is concerned, the respondents have not accepted the same, as the amount shown therein include Pile Foundation work (construction of bridge work apart from road). The agreement amount for construction of work has been shown worth Rs. 811.00 millions i.e. Rs. 81.10 Crores and if 51% share of the petitioner is concluded then it cannot be stated to be a work wholly done by it worth of Rs. 51.00 Crores for the road work. So far as the letter dated 10th January, 2002 (Annexure-7/A) is concerned, therein the work order shows that the petitioner completed work of worth Rs. 36.5 Crores. Learned Counsel for the petitioner submitted that if escalation amount is added then it would be evident that the work order is of more than 53.00 Crores. But such finding cannot be given by this Court, as this Court, under Article 226 of the Constitution of India, cannot make calculation relating to escalation to find out whether the work of Rs. 36.5 Crores, on escalation has come to more than Rs. 53.00 Crores or not.

7. In view of the fact that no specific evidence was placed by the petitioner to suggest that it has completed National Highways work worth more than Rs. 50.00 Crores of its own, even if the petitioner has placed some evidence relating to construction of Bridge work of more than Rs. 30.00 Crores, one of the conditions having not been fulfilled, it was open to the respondents to disqualify the petitioner, no ground has been made out to interfere with the process of selection of tender.

8. There being no merit, the writ petition is dismissed.