
(2006) 07 JH CK 0109

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2565 of 2006

Nawal Kishore Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Citation : (2007) 2 BC 123 : (2006) 4 JCR 18

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Ritu Kumar and L.C. Roy, for the Appellant; M.S. Anwar, General, for the Respondent

Judgement

M.Y. Eqbal, J.—In this writ petition, the petitioner has prayed for quashing the order issued by the Superintending Engineer, Irrigation Department, Madhupur in the district of Deoghar dated 21.4.2006 whereby the contract has been allotted to respondent No. 8 and further for a direction to allot the said contract to the petitioner.

2. The Department of Irrigation, Govt. of Jharkhand issued notice inviting tender No. 2/2005-06 dated 7.3.2006 for three different construction work in Ajay Main Canal. The petitioner along with others including respondent No. 8 submitted their tenders. The petitioner said to have offered his rate below 15% of the scheduled rate for the work mentioned in Item No. 2 of the tender notice. 3. According to the petitioner, preference was to be given to the contractors who are either displaced person or belong to Deoghar district. The rates offered by all the tenderers except one were the same. The petitioner claims to be displaced person and also of the district of Deoghar. It is alleged that ignoring the criteria fixed in the tender notice, the contract work has been allotted to respondent No. 8 who is neither displaced person nor belongs to the district of Deoghar.

4. Respondent No. 6, the Executive Engineer, Irrigation Department, filed counter affidavit stating, inter alia, that there were altogether 7 tenderers, who have

quoted the same rate below 15% of the scheduled rate. Since the petitioner is not displaced person and so, question of allotting the work to the petitioner does not arise in view of the Clause 28 of the notice inviting tender. It is stated that agreement has already been executed on 28.4.2006 with respondent No. 8 but the work has been stopped because of the interim order passed by this Court. It is further stated that none of the conditions of the tender notice has been violated by the respondents.

5. In the counter affidavit filed by the respondent No. 8, it is stated, inter alia, that the petitioner has not filed any document or any certificate of his being displaced person issued by the competent authority, namely, Rehabilitation Officer, Deoghar. It is stated the agreement has already been entered into between the respondent-authorities and respondent No. 8 and the work has been started.

6. The only question that falls for consideration is as to whether allotment of work to respondent No. 8 by the respondents is in accordance with the criteria fixed in the notice inviting tender and whether the decision making process is legal and valid.

7. Mrs. Ritu Kumar, learned Counsel appearing on behalf of the petitioner, submitted that out of seven tenderers, six of them including the petitioner are the local persons belonging to the same district of Deoghar, while respondent No. 8 is not local person residing in the district of Deoghar, rather respondent No. 8 belongs to and resides in Ranchi. Learned Counsel further submitted that the petitioner is a displaced person which is evident from the certificate issued by the authority. According to the learned Counsel, allotment of work to respondent No. 8 is absolutely illegal, arbitrary and against the conditions fixed in the notice inviting tender.

8. Mr. A.K. Sinha, learned Advocate General, on the other hand, submitted that the petitioner is not displaced person inasmuch as his name does not appear in the list of the persons declared as displaced persons. However, learned Advocate General does not dispute the fact that the petitioner is a local person belonging to the same district of Deoghar. Learned Advocate General further submitted that there is no document on record maintained by the State Government to show that respondent No. 8 is a local person.

9. Mr. M.S. Anwar, learned Sr. Counsel appearing on behalf of respondent No. 8, firstly submitted that there is no mention that preference shall be given to local persons. Learned Counsel submitted that the condition fixed in the tender notice that "Preference shall be given to local persons" is unconstitutional. However, learned Counsel has not disputed the fact that respondent No. 8 is not local person i.e. belonging to the same district. Learned Counsel relied upon a decision of the Supreme Court in the case of Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, .

10. Before appreciating the submission of the learned Counsel appearing for the

parties, I would like to refer Clause 28 of the Notice Inviting Tender (annexure-1) for the reason that the Executive Engineer, in his counter affidavit, has stated that the condition fixed in Clause 28 of the tender notice has not been violated by the respondents. Clause 28 of N.I.T. reads as under:

Nividit Dar Saman Rahne Ki Isthti Me Bibhagiya Nirdesh Ke Anurup Sthai Yojna Se Bisthapit Nividadata, Asthai Deoghar Zila Avam Satte Zilo Ke Nividadata, Jharkhand Ke Nividadata Tatha Anya Nividadata Ko Uprokta Kram Me Prathmikta Di Jayegi.

11. From perusal of aforesaid Clause 28 of N.I.T., it is manifestly clear that a condition was fixed that in case the rates offered by the tenderers will be the same, then preference shall be given to the displaced person or the tenderers of the same district of Deoghar or adjoining districts or the tenderers of Jharkhand State in order of preference. In other words, firstly preference will be given to the displaced person. Secondly, if displaced person is not available, then preference will be given to the tenderers of the district of Deoghar. If even such tenderers of the same district are not available, then preference will be given to the tenderers of the adjoining districts. In the absence of all such types of tenderers, lastly preference is to be given to the tenderers of the Jharkhand State.

12. Learned Advocate General produced before me a chart showing comparative statements of the tenderers and the decision taken by the authority. In the comparative statement, respondent No. 8 has been shown as the contractor residing at Bariyatu Housing Colony. The other seven tenderers have been shown as residents of the district of Deoghar. Although, out of 8 tenderers, seven have offered the same bid amount, i.e. Rs. 29,84,042=82, but the Superintending Engineer, in his notings dated 21.4.2006, arbitrarily took decision that since the bid amount offered by the tenderers are different no case of preference to the local tenderers is made out and therefore, the work should be allotted to respondent No. 8.

13. It is really surprising as to how the Superintending Engineer has mentioned in his decision that the bid amount offered by the tenderers are different when, as a matter of fact, out of 8 tenderers, all the seven tenderers including the petitioner of the district of Deoghar have offered the same bid amount as Rs. 29,84,042=82. It is also surprising as to how the tender of respondent No. 8 was accepted when respondent No. 8 is neither displaced person nor a contractor of the same district of Deoghar. In my view, therefore, the decision making process of the Executive Engineer and the Superintending Engineer, Irrigation Department, Deoghar is not only illegal and whimsical, but the same is arbitrary and mala fide also just to favour respondent No. 8 for the reasons best known to them.

14. Mr. Anwar, learned Sr. Counsel appearing on behalf of respondent No. 8, relied upon a decision of the Supreme Court in *Air India's* case (supra) and

submitted that the Court cannot interfere with the decision taken by the Evaluation Committee in the matter of grant of tender. There is no dispute with regard to the principle laid down by the Supreme Court that Court cannot interfere with the decision taken by the Tender Committee, but it can interfere with the decision making process on the ground of mala fide, unreasonableness and arbitrariness.

15. I am also conscious of the law that only the decision making process and not the merit of the decision itself is reviewable as Court does not sit as appellate Court by exercising power of review as held by the Supreme Court in the case of *Tata Cellular v. Union of India* (1994) 6 SCC 651. It is equally well settled that the decision making process should be transparent, fair and open. Any abuse of power for extraneous reason would make the authorities concerned liable to appropriate punishment. Reference may be made to the decision of Supreme Court in the case of *Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others*, .

16. As noticed above, the Superintending Engineer whimsically and arbitrarily allotted the work to respondent No. 8, although he is neither displaced person nor is a person of the same district.

17. Although in the counter affidavit, the Executive Engineer has said that he has not violated Clause 28 of the tender notice, but it is a clear case where the respondents not only violated Clause 28 of the N.I.T., but also acted arbitrarily and malafidely in exercise of discretion. No reason has been assigned for deviating from the terms of N.I.T. particularly Clause 28 of the tender notice. I have, therefore, no hesitation in holding that the action of the respondent in allotting the work to respondent No. 8 is illegal, arbitrary and mala fide and, therefore, the same is liable to be quashed.

18. For the aforesaid reasons, this writ petition is allowed in part and the allotment of work to respondent No. 8 is quashed. The matter is remitted back to the Allotment Committee headed by the Superintending Engineer to act fairly and take fresh decision for allotment of work strictly in accordance with the terms and conditions of the tender notice.