
(2010) 03 PAT CK 0083
In the Patna High Court

Rajendra Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Citation : (2010) 03 PAT CK 0083

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—Heard learned Counsel for the parties.

2. Petitioner wants quashing of the resolution dated 30.12.2006 in so far as it relates to him. The said resolution is annexure-6 to the writ application. By virtue of this resolution the petitioner has not only been blacklisted but even his security money stands forfeited. The background to the said decision is settlement of Balu Ghat located in the district of Nalanda.

3. A notice inviting tender dated 7.12.2006 for settlement of various Balu Ghats was issued by the respondent State. 19th of December, 2006 was the date fixed for holding of the auction. Petitioner was one of the bidders along with one Rajendra Prasad Singh. The said Rajendra Prasad Singh was stated to be the highest bidder and the petitioner was placed at the second position. The highest bidder namely, Rajendra Prasad Singh withdrew from the tender by not depositing or responding within the time frame fixed by the respondents. Petitioner thereafter decided to express his lack of interest in the said tender vide a communication dated 26.12.2006 and the same is annexure-5 to the writ application.

4. Parallel to the above exercise faced with the situation created by the conduct of Rajendra Prasad Singh as well as the present petitioner a meeting dated 30th December, 2006 was held under the chairmanship of the District Magistrate of Nalanda and other representatives of various departments also participated.

Taking note of the conduct of the petitioner they decided to blacklist him as well as ordered for forfeiture of the security money. From the records it also emerges that similar decision was also taken with regard to the highest bidder as well.

5. Aggrieved by the said decision the petitioner has now filed the present writ application seeking quashing of the said decision.

6. His first contention is that the decision has been taken without giving him any opportunity of hearing or show cause in this regard. No obligation was created upon this petitioner in view of the fact that he was not given any offer being the second highest bidder to meet the obligation of the tender. He had already expressed his lack of interest on 26.12.2006. Any subsequent decision of the respondents to give him an offer on 5th January, 2007, fixing 8th January, 2007 for compliance and thereafter again declaring forfeiture of the security of the petitioner and his blacklisting as an after thought to justify the earlier decision taken on 30th December, 2006. It is his contention that the petitioner cannot be punished first and then punishment justified by subsequent action.

7. In support of the above submissions learned Counsel for the petitioner has brought a communication on record which is letter dated 3rd January, 2007 issued by the Assistant Director, Mines, addressed to the District Magistrate, Nalanda. This communication is annexure-11 to the supplementary affidavit. By virtue of this communication the official of the Mines Department has informed the District Magistrate that the liability upon the second highest bidder shall arise provided an offer is made to him in the first place. If no offer was made in the first place then the action taken against him was uncalled for.

8. Learned Counsel representing the respondent Mines Department have filed counter affidavit and justified the action. It is their stand that the petitioner was the second highest bidder. He knew that in case of failure of the highest bidder the settlement will accrue in his favour and merely because he wrote a letter to the department on 26th December, 2006 when the highest bidder did not respond, it does not mean that he was absolved of the liability. Failure of the highest bidder will entail the second highest bidder to fulfill the obligation of the tender. It is also submitted that there was a kind of collusive action between the highest bidder and the petitioner and when the highest bidder withdrew, this petitioner also found ways and means to get out of the settlement, causing heavy loss of revenue to State exchequer.

9. The Court is not inclined to investigate the allegations or the conduct of the highest bidder or the petitioner. What has been stated on behalf of the respondents could be true but the question is whether the respondents have followed the right procedure before taking any action against the petitioner. In the normal course of things failure of the highest bidder would entail that the second highest bidder will have to step into shoes but for that a proper offer has to be made to the second highest bidder. It should have been done in the first place the moment the highest bidder did not comply with the deposit of bid

amount within the time frame instead the respondents went for fresh notice inviting tender on 29.12.2006 as contained in annexure-5.

10. The respondent cannot make offer to petitioner after they first decided to blacklist him on 30th December, 2006 and then to cover up the omission an offer was made on 5th January, 2007. Since a decision to blacklist the petitioner had already been taken a subsequent notice to him and offer has no consequence. It is as ways and means to justify the kind of order of pre decisional hearing which has already been passed against the petitioner in terms to annexure-6.

11. The lack of proper procedure followed in this regard is the only reason why the Court is inclined to allow this writ application and quash the action of blacklisting as well forfeiture of the security amount of the petitioner.

12. This writ application succeeds. The decision contained in annexure-6 in so far as it relates to the present petitioner is quashed. This writ application stands allowed.