
(2004) 07 PAT CK 0126
In the Patna High Court
Case No : C.W.J.C. No. 3840 of 2004

Rajendra Prasad Poddar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-07-2004

Acts Referred:

Citation : (2004) 4 PLJR 69

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—Heard learned counsel for the parties. In this writ petition, the petitioner has assailed the validity of the decision of the tender committee dated 16.3.2004, communicated vide letter no. 784 dated 20.3.2004 issued by the Joint Secretary, Water Resources Department, Government of Bihar, Patna, whereby and whereunder the tender committee decided to allot the work of construction on residual pucca road on top of Jhausa Dilli Diwanganj Mahananda left Embankment from Chain 415 to 1018 to respondent no. 7. According to the case of the petitioner, the allotment of work to respondent no. 7 was done in total violation of the Government resolutions/letters as well as the Notice Inviting Tender and the tender of the petitioner was rejected on a non est ground although he was the lowest, valid and genuine bidder as per Government's own circulars/resolution and, thus, has further sought for restraining the respondent-authorities from entering into the agreement with respondent no. 7.

2. In short, the relevant facts are that the Executive Engineer, Flood Control Division, Katihar vide Tender Notice no. 2 year 2003-2004 invited tender for execution of the said work. The said tender notice {Annexure 1} itself mentioned estimated cost amount for the execution of the work. In paragraph 12 of the notice inviting tender {Annexure 1}, however, it is stated that the cost of departmental material, if supplied for execution of works, will be recovered from

contractors bill as per the rates approved by the department.

3. A counter affidavit has been filed on behalf of the respondent-State and its officials (respondents no. 1 to 6). In paragraph 4 of the said counter affidavit, it is stated that in the tender document a formula for stating rates by the tenderer in bill of quantity has been given as per Code, but the lowest permissible limit of rate could not be calculated due to non-receipt of the full quantity of Bitumen from Indian Oil Corporation by the Division. It is further stated that as the lowest rate was not calculated, so this was also explained in pre-bid conference that in the circumstances the rate quoted by tenderer in B.O.Q. will be treated as rate excluding the Government materials and its lowest permissible limit will be 15%. As such, according to the said respondents, the rate quoted by respondent no. 7 was 15% below which was the lowest and the work was allotted to him.

4. In the reply affidavit filed on behalf of the petitioner, it has been contended that when a formula has been given for stating rates by the tenderers, they were bound to observe that and as per the formula for lowest permissible limit deduction of the cost of material supplied by the department is must. It is further stated that in pre-bid conference on 5.2.2004, no question was raised about the quantity and availability of bitumen in the department and that is why on 6.2.2004 under clause 24 of the tender notice, the petitioner made enquiry from the department for the same. However, it is not denied that in the pre-bid conference it was explained that the rate quoted by the tenderer in B.O.Q. will be treated as rate excluding the Government materials and its lowest permissible limit will be 15%. It is not in dispute that the rate quoted by respondent no. 7 excluding the Government materials was within the permissible limit.

5. It is contended by Mr. Singh, learned Senior Counsel appearing for the petitioner that the tender submitted by respondent no. 7 was below 15% of the estimated cost, which, according to the principle laid down by the State Government in sub-clause (Ga) of Clause 6 of the instruction dated 31.12.1983, contained in Annexure 3, was not entertainable and liable to be rejected on that ground alone. According to the learned counsel for the petitioner, the petitioner's tender was the only valid and lowest tender and, as such, he was entitled for allotment of the same for the execution of work.

6. According to the learned counsel for the respondents, the petitioner as well as the respondents and all other tenderers participated in the pre-bid conference and it was explained to them as to how the lowest rate quoted in B.O.Q. will be treated, as referred to in paragraph 4 of the counter affidavit of the respondent-State.

7. Mr. Singh, learned Senior Counsel appearing for the petitioner, in reply, contended that in view of the fact that in the tender document, the petitioner himself mentioned the rate of Bitumen at Rs. 15,932/-, any explanation as claimed by respondent no. 7 with regard to the permissible limit is not at all tenable.

8. I am unable to accept the said submission of the learned counsel for the petitioner. This Court has already noticed above that for the reasons mentioned in paragraph 4 of the counter affidavit, all the tenderers, including the petitioner, were explained regarding the permissible limit in the pre-bid conference and under such circumstances, the tender submitted by respondent no. 7 cannot be held to be not entertainable. This Court, thus, does not find any merit in the writ petition and it is, accordingly, dismissed.