
(2004) 08 PAT CK 0045
In the Patna High Court
Case No : LPA No. 727 of 2004

Rajendra Prasad Poddar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Citation : (2006) 2 CTLJ 510 : (2005) 4 PLJR 157

Hon'ble Judges : Nagendra Rai, Acting C.J.; S.N. Hussain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is directed against the order dated 16.07.2004 passed by the learned Single Judge dismissing the writ application being CWJC No. 3840 of 2004 filed by the appellant challenging the decision of the tender committee dated 16.03.2004, communicated through letter dated 20.03.2004 issued by the Joint Secretary, Water Resources Department, Government of Bihar, Patna by which the tender committee decided to allot the work of construction on residual pucca road on top of Jhaua Dilli Diwanganj Mahananda Left Embankment from Chain No. 415 to 1018 to respondent no. 7-M/s. Narayan Das Construction Private Limited, Binodpur, Town and District Katihar.

2. Admitted facts are that tender was invited by the Executive Engineer, Flood Control Division, Salmari for the work mentioned above being Tender Notice No. 2/2003-2004. A copy of which has been annexed as Annexure 1 to the writ application. It is also admitted position that the State Government has issued a circular which is contained in Bihar Lok Nirman Lekha Sanhita. Paragraph 6(Ga) thereof provided that the contract less than 15% of the estimated cost shall be invalid and 15% should be counted after deducting the material which will be supplied by the department (Annexure 3 to the writ application). This provision was incorporated in Clause 12 of the Notice Inviting Tender (for short "NIT") and in terms thereof it was provided therein that the cost of departmental material, if supplied for execution of works, will be recovered from contractor's bill as per

the rates approved by the department. In the tender document (bill of quantity) the cost of bitumen was given in terms of the aforesaid provision but the quantity of material to be supplied was not given. At the time of pre-bid conference the same was also not explained as a result of which there was confusion as to whether the rate quoted by the tenderer will include the price of the materials to be supplied by the department or not and what criteria should be followed for deciding whether the rate quoted is below 15% or not.

3. The petitioner sought information from the Executive Engineer of the area which informed that 122 M.T. bitumen is likely to be supplied by the department and taking into consideration the said aspect of the matter, the appellant submitted his tender excluding the cost of materials supplied by the department. Respondent no. 7 however submitted tender including the cost of material to be supplied by the department.

4. Six tenders were found to be valid and thereafter as the amount involved was more than Rupees one crore, it was sent to the State Government for accepting the tender for which tender committee has been constituted at the state level where the decision was taken on 16.03.2004. The tender committee found that six tenders were in order and the rates supplied by respondent no. 7 was 15% less than the estimated cost. However, the committee also found that as the bitumen which was to be supplied by the department was not mentioned in the NIT, the confusion has been created. It also found that the rate given by the appellant was 14.20% less than the estimated cost whereas the rate given by respondent no. 7 was 15% less than the estimated cost which also include the cost of the materials to be supplied by the State Government. The committee found that if the cost of material to be supplied by the department is excluded, in that case rate given by respondent no. 7 will be less than 15% of the estimated cost.

5. In spite of all these deficiencies having been noticed by the tender committee, the tender committee accepted the tender of respondent no. 7 and ordered for allocation of the work.

6. The matter was challenged before Court and stay was granted by the learned Single Judge. It is also admitted position that due to flood and other circumstances, very negligible work has been done by the contractor. The Executive Engineer in his counter affidavit has stated that 0.6% work has only been completed.

7. Learned Counsel appearing for the appellant submitted that the tender itself was issued in breach of the statutory provision as contained in Annexure 3 to the writ application. Highlighting his submission he submitted that respondent no. 7 quoted 15% below the estimated cost including the cost of the materials supplied by the department which, according to the provision as contained in Annexure 3 to the writ application, has to be excluded and if that is excluded, his rate would be less than 15% of the estimated cost which is also prohibited and the said

tender will not be valid in terms of the aforesaid provision.

8. Counsel appearing for respondent no. 7 as well as counsel for the State did not dispute the fact that there was mistake at the time of issuance of advertisement but submitted that it was specifically mentioned in the NIT that the cost of departmental material, if supplied for execution of works, will be recovered from contractor's bill as per the rates approved by the department. The tender committee accepted the tender of respondent no. 7 which was 15% less of the estimated cost.

9. No doubt, no person has fundamental right to get contract from the Government and it is open for the Government to choose a person for allotment of contract. But while doing so, the State Government cannot act arbitrarily, capriciously and in violation of the statutory provisions governing the allotment of contract. The State Government has to act fairly and not in unauthorised manner. It has laid down a procedure and conditions for acceptance of tender. It cannot violate the same. From the minutes of the tender committee accepting the tender of respondent no. 7 it is clear that it has accepted the tender of respondent no. 7 in breach of provisions contained in Annexure 3 to the writ application.

10. Accordingly, we are of the view that the decision taken by the tender committee which is in violation of relevant provisions of Annexure 3 to the writ application, is fit to be quashed and accordingly, the same is quashed. Now the steps should be taken for fresh tender in terms of the provisions as mentioned above.

11. If respondent no. 7 would have done work to considerable extent in that case we would not have disturbed the work but the fact is that the whole area is affected by flood and the work done is negligible one, in that situation the things should be set right and the authorities should be reminded their duties to act in a fair manner and not to act arbitrarily.

12. With the aforesaid observation/direction, the impugned order of the learned Single Judge is set aside and the appeal is allowed.