
(1995) 05 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2745 of 1995

Rama Kant Singh

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 25-05-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 05 PAT CK 0010

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Chandra Shekhar, for the Appellant; K.P. Yadav for State and Mr. Tarakant Jha, for the Respondent

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—This writ petition has been filed challenging, inter-alia, the order passed by respondent No. 2, the Project Director dated-21st April, 1995, whereby the bid of respondent No. 5 M/s Arpana Housing and Construction Pvt. Ltd. has been accepted. The said letter of acceptance has been annexed to this writ petition as Annexure-8. The brief facts of the case are that for construction of the Administrative Block and Hostel for Regional Training Centre for Males, Patna tenders were invited by respondent No. 2. The said project was constructed with the aid of World Bank.

2. The grievance of the writ petitioner is that in pursuance of the notice inviting tender the petitioner, after obtaining the bid documents, submitted its tender for the said project on 31st December, 1994. The further case of the petitioner is that evaluation was made of the bid paper submitted by him" and in doing so the Executive Engineer, Engineering Works Division-2 sought for clarification from the petitioner against the item noted in his letter No. 15 dated 12th January, 1995 and to that the petitioner submitted clarification. Thereafter, the Chief Engineer, Building Construction and Housing Department (South Bihar) vide letter No. 33 dated-30th January, 1995 invited the petitioner to meet him in the

chamber on 10.2.1995 in the forenoon for negotiation. Pursuant thereto the petitioner presented himself for negotiation as invited. Thereafter, the petitioner came to learn that his was the lowest tender at Rs. 1 Crore 35 lakhs (approximately).

3. On the basis of his being lowest bid the Chief Engineer recommended the award of the work in his favour on certain conditions. Thereafter, the petitioner states, as no action was taken by the respondent No. 2 despite the fact that recommendation in his favour was made by the Chief Engineer some time in the month of February, 1995, the petitioner sent a Fax message to the Incharge, Project Construction Division dated-14th March, 1995 in order to make enquiry in the matter. Ultimately, the petitioner came to know that by letter dated-21st April, 1995 the Project Director accepted the bid for a higher amount of Rs. 1,38,97,000.16 paise in favour of respondent No. 5 and wanted the said respondent No. 5 to furnish security in the prescribed form for an amount equivalent to Rs. 6,94,86,000/-.

4. The case sought to be made out by the petitioner is that such action of respondent No. 2 is wholly arbitrary, unreasonable inasmuch as, he has not stated in writing anything indicating the reason for his disagreement with the recommendation of the Chief Engineer. At this stage this writ petition was filed before this Hon'ble High Court on 26th April, 1995. This Court on 1st May, 1995 was pleased to intervene in the matter and granted order of stay restraining the respondents from taking any steps pursuant to the letter of acceptance dated-21st April, 1995. Thereafter, on affidavits being exchanged between the parties the matter was heard at length and finally on 18th May, 1995 and also on 22nd May, 1995, certain records were also produced. Learned counsel for the petitioner reiterates the case as made out in the writ petition, namely, that he is the lowest tenderer and for no reason the Project Director has made his offer as second lowest on the basis that the rates quoted by him have been interpolated in the tender document. The said action of respondent-Project Director has been challenged by the petitioner as unreasonable and unfair. The petitioner further stated that there has been no interpolation in the tender documents submitted by him and in accordance with the case of the respondent the lowest tenderer should be accepted inasmuch as, he is admittedly the lowest tenderer who has given his bid for the said tender at Rs. 1,35,00,000/- approximately. The case of the State respondents as also the case of respondent No. 5 is that there has been manipulations in the tender document of the petitioner and it is only by way of manipulation that his tender has been shown as lowest. Both respondent No. 5 and the State respondents have stated that the action of the Executive Engineer and the Chief Engineer is improper and irregular in sending the quarry to the petitioner by the letter of the Executive Engineer dated 12th January, 1995 and also by the letter of the Chief Engineer dated 30th January, 1995. Their case is that the only person who can enter into any negotiation is the employer and nobody else. It is also the common case of respondent No. 5 and the State-respondents that the matter relating to the award of the contract is governed by

the clauses of tender document and the acceptance or otherwise of the tender in question will be decided only on the basis of the clauses contained in the said tender document. Pursuant to the direction of the Court dated-18th May, 1995 both the Chief Engineer and the Executive Engineer submitted affidavits.

5. The Court sitting under Article 226 of the Constitution of India cannot enter into any adjudication in the middle of facts on the issues namely (i) whether the tender submitted by the petitioner is manipulated and (ii) whether the rates quoted by the petitioner and the respondent No. 5 item-wise, if added will make his tender lower than that of respondent No. 5. But from this medley of facts one thing is clear. The petitioner at page 2-3 of the tender document which is titled as "Contractor's Bid", has, offered his rate at 1 Crore and 35 lakhs (approximately). Now if the respondent No. 2 finds that item wise rates quoted by the petitioner have been manipulated subsequently to arrive at the figure and without manipulations that figure quoted would have been higher then the inherent principle of fair play in action of the governmental authorities would demand that the petitioner must be heard before such a prejudicial factual assumption is arrived at in respect of his tender. This has not been admittedly done in this case, even though there is provision for the same under clauses 25 and 27 of the "Instructions to Bidders" in the tender document.

6. The admitted factual position is that the petitioner in the tender document at page 2-3 under "Contractor's Bid" has quoted the rate at Rs. 1,35,00,000/- (approximately), whereas, the respondent no.5 in page 2-3 of his tender document in respect of "Contractor's Bid" has left the portion blank and has not quoted any price. The entry which has been left blank by the respondent No. 6 is set out below : -

Contractor's Bid Description of the Works: RTCM (Patna) Package I Slice I BID

To

Project Director, IPP-7 Bihar Address : Sone Bhawan, 3rd Floor, Birchand Patel Path, Patna-800001.

Gentlemen,

We offer to construct and complete the works described in accordance with the conditions of Contract and other particulars identified in the Contract Date accompanying this bid for the Contract price of Rs: (Rupees.)

7. It is, thus, clear that the relevant page of the tender document at page 2-3 itself, titled as contractor's bid, the respondent No. 5 has not quoted any price. Therefore, in the eye of law respondent no.5 cannot be stated to have made any bid at all. Learned counsel for the respondent no.5 stated that his client has quoted item-wise rates and on adding them his bid has been found to be the lowest. But that cannot be his "Bid" which is separately mentioned in Section 2 of the Tender Document. That cannot be equated with his item-wise quotation of rates in Section 7 of the Tender Document which is titled as "Bill of Quantities".

8. In clause-18 of the "Instructions to Bidders" of the said Tender Document the following instructions have been given : -

18. Format and Signing of Bid....

18.1 The bidder shall prepare one original and one copy of the documents comprising the bid as described in Clause-12 of these "Instructions to Bidders", bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL" and "COPY" as appropriate. In the event of discrepancy between them, the original shall prevail.

18.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to sign on behalf of the bidder, pursuant to sub-Clause 4.1 (a) or 4.2 (b), as the case may be. All pages of the bid where entries or amendments have been made shall be initialed by the person or persons signing the bid.

18.3 The bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.

(emphasis supplied).

9. In the instant case it is not disputed that the pages of the tender document where entries have been made by respondent No. 5 were signed only on 29.5.1995 which is much after 21st April, 1995, the date of acceptance. Therefore, on the date of alleged acceptance of the bid entries in the tender document were not signed by respondent No. 5. This is a very serious and glaring departure from the procedure mentioned in the Tender Document.

10. Therefore, the principle which have been canvassed by the counsel for respondent No. 5 and the State-respondent that the acceptance of the tender in question depends upon strict compliance with the conditions mentioned in the Tender Document has not been followed in the acceptance of tender of respondent No. 5 at all namely, (1) no Bid has been quoted by him in page 2-3 of the tender document and (ii) not a single entry of rate/rates in the tender document made by respondent No. 5 has been signed by him on the date of acceptance of the tender. It is surprising how despite such glaring departure the tender of respondent No. 5 was accepted by the respondent No. 2. This Court holds that the so called exercise of discretion by the respondent No. 2 in accepting the tender of the respondent No. 5 is wholly capricious and whimsical. The decision making process of the respondent No. 2 in allegedly accepting the tender of respondent No. 5 is vitiated by clear errors of jurisdiction. The respondent No. 2 is set up and conferred all powers under the Tender Documents. Therefore, in the exercise of his jurisdiction if he acts contrary to the stipulations in the Tender Documents, he acts without jurisdiction. This Court, therefore, has no hesitation to hold, without entering into the factual

controversies, that the acceptance of the bid of respondent No. 5 has been wholly improper, illegal and unauthorised on the part of respondent No. 2. In that view of the matter, this writ petition is finally decided at the stage of admission by setting aside the decision impugned at Annexure-8 of the writ petition. The respondent No. 2 is directed to take expeditious steps to finalise the tender by acting in strict compliance with the conditions, contained in Tender Document. All steps taken by the respondents pursuant to the said order dated 21st April, 1995 are hereby set aside and quashed.

This writ petition is thus allowed to the extent indicated above. There will be no order as to cost.