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(2010) 05 PAT CK 0066

In the Patna High Court

Case No : CWJC No. 8023 of 2010

Ran Kaushal Pratap Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Citation : (2011) 1 PLJR 400

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties.

2. Annexure-2 is the notice inviting tender issued by the Building Construction Department, Nalanda Division, Biharsharif. The work in question was for construction of 12 bedded hospital. Petitioner was one of the tenderers alongwith some other contractors.

3. Despite opening of the technical and financial bid of the Petitioner no final decision was taken. But a communication dated 27.4.2010 made by the Chief Engineer South to the Executive Engineer, Nalanda Building Division has brought the Petitioner before the High Court. The communication indicates that the earlier notice inviting tender for construction of hospital in question stood cancelled and a fresh tender will have to be invited by following what is known as E-tender mechanism.

4. Learned Senior Counsel representing the Petitioner submits that the decision to re-tender, after the tender process was gone through, on the ground that the procedure of E-tender system was not followed is too belated and too late in the day since certain right had accrued in favour of Petitioner. He also submits that once the technical bid and financial bid were opened then it becomes public knowledge as to what was the price quoted by the Petitioner for the said construction.

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5. Additional submission is made that though there are certain communications to indicate that from April 1st, 2010 all contracts above Rs. 25 lakhs will be through E-tender process, but this tender in question was invited before 1st April, 2010. This tender should have been allowed to run through and did not require re-advertisement.

6. learned Counsel for the State in the counter affidavit has stated that all authorities including ones in the field were well aware that the process of tender has undergone change. That was the policy taken by the State Government and the communication of the kind had been made at the level of the Principal Secretary which is not only evident from the letter dated 18.3.2010 Annexed with the supplementary affidavit filed on behalf of the Petitioner but also Annexure-A which is dated 5.3.2010. This letter is annexure-A to the counter affidavit filed on behalf of the State.

7. It is/was also urged that when the changed tender process was notified and communicated to all the authorities then merely because somebody in the field chose to ignore the State directive and issued a notice inviting tender which was not finalized before 1st April it would be allowing a premium to a breach or directive of the State to an individual.

8. It is evident from the pleading that though the tender in question was published prior to 1st April, 2010 it was not finalized. If despite the said fact if the authority is allowed to push through the tender in the field then the decision taken at the headquarters for annulling the same, directing re-advertisement by following E-tender process, cannot be said to be unreasonable.

9. The policy of the State is meant to be followed in letter and spirit rather than in breach. Re-tender. advertised or the reasons furnished by the State are cogent. Since no right had accrued in favour of the Petitioner due to consideration of technical bid or the financial bid, therefore no direction can be given to the Respondents to finalize the tender on the basis of the action taken earlier in this regard.

10. Petitioner has not succeeded in making out a case for interference with the decision.

11. This writ application has no merit and it is dismissed.

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