
(2002) 09 JH CK 0014

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 3234 of 2002

Satyendra Kumar and Co.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-09-2002

Acts Referred:

Citation : (2003) 3 BC 249

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : R. Krishna, for the Appellant; A.K. Mehta, SC I and C. Prabha, JC to SC I and Dhananjay Kr. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The petitioner has challenged the notice dated 20th May, 2002 published in newspaper, whereby the respondents intimated the works allotted in favour of one or other contractor in pursuance of Tender Notice published in the newspaper on 8th March, 2002.

2. The case relates to Package No, JH-0502 for construction of road under "PRADHAN MANTRI GRAMIN SARAK PARTYOJNA".

3. According to the petitioner in pursuance of Tender Notice dated 8th March, 2002 published in the newspaper "HINDUSTAN", it submitted tender papers for Package No. JH-0502, as mentioned at Sl. No. 52" of the Tender Notice. The tender was opened on 27th March, 2002 and the petitioner was found the lowest tenderer (L-1 for short). The 6th respondent, M/s. B.N. Engineering Works, Deoghar was the second lowest tenderer (L-2 for short).

Subsequently, notice was published by the Engineer-in-Chief, by which the petitioner was directed to appear for negotiation on 6th May, 2002. All on a sudden, after some negotiation, the respondents published the impugned Press Notice dated 20th May, 2002. whereby the Package No. JH-0502 has been bifurcated and distributed amongst two tenderers i.e. petitioner and the 6th

respondent.

4. The counsel for the petitioner submitted that the aforesaid action is violative of Clause 12 of the notice inviting tender, as also the guidelines framed by the State.

According to him, there is no provision to bifurcate a package in two parts and to allot the work order in favour of two tenderers.

It was also submitted that the 6th respondent being the second lowest tenderer, there is no occasion to allot approximately 2/3rd work to him and 1/3 work to petitioner, who is the lowest tenderer.

5. In pursuance of Court's order, the Secretary, Rural Development Department, Jharkhand and the Ex. Engineer-in-Chief, R.E.O. who allotted the work, now posted as Engineer-in-chief (Vigilance), Jharkhand were present on 12th September, 2002 to assist the Court.

6. The petitioner and others filed Tender documents/Bill of Quantity (B.O.Q.) and signed in each and every page. At para 1.11 of B.O.Q., it was specifically mentioned that the authority reserves its right to reject any or all the tenders received to allot the work to one or more Contractors. At para 2.8 of B.O.Q., it was also mentioned that the tenderers shall be presumed to have carefully examined the conditions of the contract and specification of the work. They will also be deemed to have inspected the work site, including its climate and other geological characteristics, availability of skilled, semi-skilled and non skilled labourers, the consequence of the lack of necessary knowledge will be at the risk and cost of the tenderer.

7. The stand of the respondent is that the Tender Committee headed by the Secretary, Rural Development Department of Jharkhand, as Chairman, the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary; Chief Engineer, R.E.O., and Deputy Secretary (Finance), as members after scrutiny and examination of B.O.Q. submitted by tenderers, prepared a comparative chart of successful tenderers i.e. L-1 and L-2, who were invited for negotiations.

In its meeting held on 17th May, 2002, after due deliberations and discussions with regard to :

- (a) quality of the work to be done in PMGSY packages;
- (b) capacity of the tenderer with respect to tools and plants;
- (c) time frame of completion of the work within nine months; and
- (d) performance of the previous work undertaken in the Rural Development Schemes particularly Phase-I, PMGSY schemes.

The Tender Committee decided to distribute such packages which have value or more than Rs. 450.00 lacks to one or more Contractors depending on the need, location of the road and also the working capacity of the contractor.

It is stated that the Ministry of Rural Development, Government of India has given time frame of nine months from the date of approval and 12 months in exceptional cases for completion of work. Delayed execution of project could also hold up further sanction.

8. In respect to the present case, the following statements made at paragraph 8 to the Supplementary/Additional Counter Affidavit :

".....In the instant case M/s. Satyendra Kumar & Co. and B.N. Engineering Agency were also provisionally selected in Package No. JH-0502 in view of the decision of the Tender Committee. All the DCs/DDCs of Jharkhand State have been instructed to verify the tools and plants physically available in different location of the State on a single day i.e. ,on 5.6.2002 to avoid manipulation/ duplication through out the State.

In the instant case the Deputy Commissioner, Deoghar vide letter No. 699 dated 6.6.2002 had submitted the physical verification report. As per this report. M/s. Satyendra Kumar & Co., Patna has the following tools and plants located at Mavurnath dande road-

Road Roller- 1 Sip foot roller- 1

Road Roller- 1 (National School) Dumka. Vibrator Compactor- 1

Mini HMP-1 Paver- 1

Water Tanker- 1 Tar boiler- 1

Prokclen-1 (Mathurapur Joria Bridge) Mixer Machine-2

Dumper -1 Vibrator-3

Dozer- 1 Generator- 1

Diesel pump-2

Whereas the second lowest bidder L-2, B.N. Engineering Agency has the following tools and plants located at Hararia village-

HMP (with Computerised) Spot Mix Plant-2

paver finisher- 1 Own Crusher Plant for Metal- 1

JCB Loader- 1 Water Tanker-5

JCB-1 Mixer Machine-4

Road Roller-5 (Two hired). Vibrator-5.

On analysing the capacity on the availability of tools and plants, it is apparent that out of these tools and plants Road roller and Hot Mix Plant, for mixing, bitumen/tar and metal, crusher for metal are highly essential for road construction. The petitioner has only two road roller, one mini hot mix plant,

which is capable of mixing the bitumen and metal manually for one km. length which is far inferior compared to the other tenderer M/s. B.N. Engineering Agency. This Agency has 5 Road Rollers (2 hired), one Computerised Hot Mix Plant capable of mixing bitumen/tar and metal for 45-50 km. length of road at one go by electronically. This is for superior compare to manually operated Mini Hot Mix Plant. The other party also owns a crush plant for metal, which is an additional capacity major input for road construction."

9. In view of the aforesaid stand taken by the respondent, I find no reason to interfere with the matter on the ground of violation of clause 12 of the advertisement dated 8th March, 2002, the tenderers, including the petitioner having signed B.O.Q. with conditions at para 1.11 that the authority can allot the work to one or more contractor.

10. There being no merit, the writ petition is dismissed.