(2011) 02 JH CK 0070

In the Jharkhand High Court

Case No : Writ Petition (C) No. 46 of 2010

Setu Printers APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 70

Citation : (2011) 2 JCR 38

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Petitioner has challenged the order dated 18.12.2009 passed by Respondent No. 2-rejecting the claim of the Petitioner for payment of bills of Rs. 64,74,761/- against the work down by the Petitioner.

2. Mr. P.K. Prasad learned senior counsel appearing for the Petitioner submitted as follows.

Pursuant to the rate fixed by Respondent No. 3-Public Relation Department, of the State Government, work order was issued to the Petitioner by Respondent No. 2-the Food Supply Department. The Petitioner completed the work and submitted the bills on the basis of the said rates approved for similar work. Food Supply Department utilized the printed materials, but the Petitioner''s bills are not being paid. The Petitioner has been given work by other department also on the said rates and is getting the payment of the bills against the worked done. The Deputy Secretary of the Finance Department was also one of the member in the purchase committee by which the rates of printing were fixed by the Public Relation Department, but now the bills are not being paid on the ground that the work order was issued by the Food Supply Department without following the rules/instructions contained in resolution No. 5703 dated 1.10.2002 of the Finance Department where under for any item above Rs. 50,000/-, tender should be issued in the newspaper. There is no dispute with regard to the amount of the bills. In view of Section 70 of the Contract Act, 1872, as the Petitioner has lawfully done the work on the basis of the work order and the Food Supply Department having utilised the printed materials supplied by the Petitioner, it is bound to pay the bills. He lastly submitted that the supply was made by the Petitioner In the year 2010 at the rate fixed two year ago in the year 2008.

3. On the other hand, Mr. Anil Kumar Sinha, learned Advocate General submitted as follows:

Section 70 of the Contract Act, 1872 is of no help to the Petitioner as according to the Respondents, Petitioner was not given the work lawfully. Petitioner took part in the tender issued by the Public Relation Department, and was issued work order. Then, on Petitioner''s approach, work was given by the Food Supply Department on the rates on which Petitioner was given work in the tender Issued by the Public Relation Department. He referred to the letter dated 29.8.2008 sent by the Petitioner to the Food Supply Department (Annexure-2). Petitioner has been approaching and getting work from other departments also on the said rates fixed in the tender of Public Relation Department. In view of the said circular of the Finance Department, the Food Supply Department was required to issue tender as the work was for more than Rs. 50,000/-. Action ahs been taken against the concerned officers of the Food Supply Department for not following the said circulars of the Finance Department. The State Government, in any event is not bound by the acts done by its officers/employees. There is nothing to show that Public Relation Department, floated the tenders for fixing rates for all the departments. The requirements of different departments may be different from the requirement of the Public Relation Department. Therefore, it cannot be said that the work order was given lawfully and consequently the work done by the Petitioner is also unlawful. The Petitioner was a party to the violation of the government rules/instructions for his unjust enrichment. The remedy of the Petitioner is to file a civil suit for a decision whether it is entitled to the amount of bills/compensation in terms of Section 70 of the Contract Act.

4. Thus, there appears to be serious disputes between the parties whether the work order issued to the Petitioner by the Food Supply Department, without inviting tender, was lawful or not. On the ground that the Deputy Secretary of the Finance Department was one of the member in the tender committee of Public Relation Department at the time of taking decision to give work to the Petitioner, it cannot claim that the rules/instructions of the Finance Department contained in resolution No. 5703 dated 1.10.2002 should be ignored. It further appears that action has been taken against the concerned officers/employees of the Food Supply Department regarding such violation in giving work to the Petitioner. Further it is not understood how the Petitioner is getting work from other departments also in violation of the said resolution. However, this again cannot be a ground for the Petitioner for payment of bills. Further, the disputes in this case arises out of non-statutory contract. The scope of judicial review in

such matters is limited. It prima facie appears that the process of giving work to the Petitioner by the Food Supply Department was against the said resolution. Therefore, there appears to be no arbitrariness or mala fide in refusing the payment to the Petitioner on the ground of violation of the said resolution. Whether such refusal is reasonable or not also cannot be within the scope of inquiry in this writ petition. The judgment relied on by the Petitioner are of no help to it. In the case of Sanjeev Kumar Dwivedi v. State of Bihar and Ors. reported in 2006 (4) PJJR 622, learned single Judge of Patna High Court on facts of that case, held that the grounds for nonpayment did not relate to any action of which the Petitioner of that case should be said to be responsible and that such denial was arbitrary. Here in this case according to the Respondents, Petitioner is party to the illegality committed by the Food Supply Department. In the case of Bishwanath Prasad v. State of Bihar and Ors. reported in 2007 (1) PLJR 258, learned single Judge of Patna High Court inter alia, held that if the faults were found by the officers of the department in not scrupulously following department circulars and if the payment of the contractor is withheld on that ground, the action should be taken against both- the contractor as well as the officer. Here, in this case according to the Respondents action has been taken against the concerned officers of the Food Supply Department. In the judgment reported in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, it was inter alia held in paragraph 27 that in an appropriate case, writ petition arising out of contractual obligation, is maintainable and merely because some disputed question of facts arises, the same cannot be the ground to refuse to entertain a writ petition in all cases as a matter of rule, and that; a writ petition involving a consequential relief of monetary claim is also maintainable. The said principles are indisputable. In that case, a dispute arose only with regard to meaning of a clause of the insurance clause, and therefore it was said that it does not become a disputed fact. It was further observed that in the facts of that case, it was permissible for the Court to go into and decide the objection with regard to interpretation and meaning of the insurance clause. But, here in this case, the dispute is whether the work was awarded to the Petitioner lawfully or not. In a subsequent judgment reported in (2007) 14 SCC 514 of Jagdish Mandal v. State of Orissa and Ors. it was observed as follows:

22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to chick whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest. Courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or

prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil Court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade Courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a Court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the Court can say:

the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached

(ii) Whether public interest is affected. If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stands on a different footing as they may require a higher degree of fairness in action.

5. After hearing the parties at length and careful considering the materials on record, I do not find any reason to interfere with the impugned order which has been passed on the ground of violation of the said resolution of the Finance Department and on taking into account the relevant matters.

However, if Petitioner flies a suit, this order pronounced under writ jurisdiction will not prejudice the respective cases of the parties.

With these observations, this writ petition is dismissed. However, no costs.

