(2001) 11 JH CK 0021

In the Jharkhand High Court

Case No : CWJC No. 2260 of 2001

Shakti Steel Pipes APPELLANT

Vs

State of Jharkhand and Another RESPONDENT

Date of Decision : 26-11-2001

Acts Referred:

Bihar Finance Act, 1981 — Section 14, 3, 4

Citation : (2001) 11 JH CK 0021

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

Bench : Single Bench

Advocate : S.D. Sanjay and A.K. Mehta, for the Appellant; S.B. Gadodia and B.S. Lal, AAG, for the Respondent

Judgement

The Court

1. The petitioner has preferred this writ petition, praying therein the following reliefs :

(i) For a declaration that the decision of the Purchase Committee dated 12.5.2001 and any subsequent decision of the Purchase Committee on the same line for awarding the supply order is arbitrary, discriminatory, and hence, liable to be quashed;

(ii) For a declaration that the respondent-State Authorities acting through the Purchase Committee while making comparison of costs of any commodities of the same quality has to take into consideration the actual price/landed cost payable by the State Government for purchase of any commodities/for taking supply of any commodities;

(iii) For a declaration that once the Respondent-State Authorities having floated the sealed Tender, and once, the Tenderers having submitted their quotations, the State Authorities can not be allowed to offer for supply of commodities to the Tenderers having quoted higher price subject to the Purchase Price Preference Rules, 1975 fide Resolution No. 19806 dated 22.10.1975;

(iv) For a declaration that the respondent-State of Jharkhand can not act for cancelling the exemption granted by the State of Bihar in view of the specific provision Section 41(2) of the Bihar Reorganisation Act, 2000.

(v) For a declaration that the respondent-State of Jharkhand can not force the Tenderers of the outside the State of Jharkhand to take Registration in the State of Jharkhand under the local Sales-tax Act in absence of any liability under the Local Sales-tax law and

(vi) For restraining the respondent-State from prescribing any condition on the Tenderers to raise the Bill for the supply only from the State of Jharkhand, and for any other relief or reliefs for which the petitioner may be found legally entitled to under the facts and circumstances of the case.

2. The petitioner claims to be a company engaged in manufacturing G.I. Pipes and supplying its products throughout the country its quality and rates being reasonable and competitive in market. It is registered under Central Sales-tax Act. 1956 as also under the Bihar Finance Act, 1981 of the State of Bihar. It claims to be exempted from any tax as per Government of Bihar Incentive Policy which also covers the present territory of the State of Jharkhand. The exemption from payment of Bihar Sales-tax and Central Sales-tax has been granted to the petitioner in terms with the Government''s notification bearing S.O. No. 479 dated 22nd December. 1995 and S.O. No. 481 dated 22nd December, 1995.

3. Further, case of the petitioner is that the State of Jharkhand through its Public Health Engineering Department ''P.H.E.B.'' fcr short-came out with short tender notice tn the newspaper Times of India, Patna dated 14th April, 2001 for supply of six items including G.I. Pipes. 23rd of April. 2001 was fixed as the last date for selling B.O.Q. As per the tender notice, certain requirements and pre-conditions were laid down but no condition was shown for tenderers to be registered under the provisions of the Bihar Finance Act, 1981 in the State of Jharkhand nor any condition was put that the sale is to be taken effect locally and Inter-state trade is not permissible.

4. It appears that the respondents subsequently prescribed a condition to furnish Sales-tax Clearance Certificate of the State of Jharkhand. It was challenged by the petitioner in CWJC No. 1756 of 2001. In the meantime, another similar writ petition, preferred by one M/". Rama Expalnvest Pvt. Ltd. v. State of Bihar, CWJC No. 1800 of 2001. (Reported in 2001 (2) J C R 133 was taken up and decided by this Court vide its Judgment and order dated 8th May. 2001. Clause 16 of the tender notice to the effect that the tenderers should obtain the Sales-tax Clearance from the State of Jharkhand. was held to be unreasonable, irrational, and having no nexus with the object of the tender or supply of goods as per the tender notice and the same was set aside. However, the competent statutory authority of the State of Jharkhand was given liberty to lay down guidelines under the Bihar Finance Act. 1981 or any other law. relating to supply and receipt of articles.

5. According to the petitioner, the authorities of Public Health Engineering Department. Jharkhand. opened the rates/ bid of petitioner and other tenderers. A comparative chart prepared by the petitioner as Annexure-4 has been enclosed, showing the rates/bid made by the petitioner and other tenderers. Petitioner claims to have quoted lowest rate in respect of 32 mm G.I. Pipes and 65 mm G.I. Pipes in comparison of others but alleged to have not yet been provided with the work order because of the impugned decision dated 12th May, 2001. as contained in An-nexure 5.

6. Counsel for the petitioner submitted that the last portion of the decision of the Purchase Committee, as taken in its meeting dated 12th May. 2001, has been taken to circumvent the order of the Hon''ble Court, though the petitioner has quoted the lowest rate in respect to 32 mm G.I. Pipes and 65 mm G.I. Pipes but because of the last part of the decision of the Purchase Committee dated 12th May. 2001. the respondents intend to provide the work order to others who have quoted higher rates and in effect, it will be against the State exchequer for purchase of the said commodities.

7. As per the petitioner, Bihar Finance Act. 1981 is also applicable in the State of Jharkhand. u/s 3 of the said Act. 1981 provisions have been made to charge tax, sales tax or purchase tax. as the case may be. which every dealer ts to pay. u/s 14 of the Act, 1981 it has been made obligatory that no dealer, who is liable to pay tax under Sections 3 or 4, shall sell or purchase goods unless granted or in possession of valid certificate of registration. The conjugal reading of both the provisions makes it clear that a dealer must incur sales tax liability in Jharkhand before becoming eligible for registration and can not be granted registration in the State of Jharkhand unless incures any liability under Sales-tax within the State of Jharkhand. Further, case of the petitioner is that under the scheme of the Bihar Finance Act. 1981 if a person incurs any sales tax liability then only it is liable for registration in a particular circle of sales tax within whose jurisdiction the" place of business of the dealer is situated. If a person does not incur any liability of sales tax within the State of Jharkhand, as if it does not effect any transaction of sale within the territory of State of Jharkhand. it does not have any place of business in the territory of Jharkhand within the jurisdiction of any Sales-tax circle, it does not require any registration u/s 14 of the Bihar Finance Act. 1981. in such case. no Sales-tax Clearance Certificate is required to be furnished by the dealer or could be granted by any Sales-tax authority in absence of registration.

8. According to the counsel for the petitioner, the last part of the decision of the Purchase Committee, taken in its meeting, will not only violate the provisions of the Sales-tax Act. ultra vires and against the decision of this Court in the case of M/s. Rama Expoinvest Private Ltd., (supra) 2001 (2) J C R 133 , but also affect State as it has to pay more cost for purchase of same commodities as the Tenderers like petitioner quoted lower tender, will be excluded.

9. According to the respondents, for supply of two size G.I. Pipes, namely. 32

mm and 65 mm tenders were invited and Purchase Committee was constituted as is apparent from the Minute books. The Government has not yet finalised the tenders submitted by the tenderers till today. The contract having not been finalised, is not complete. It has also denied any acceptance of offer till date and prayed to dismiss the writ petition, being premature. Further, case of the respondents is that the actual price is to be decided on the basis of the basic rate, quoted by the tenderers and since the Purchase Committee has agreed for raising bill within the State of Jharkhand hence the taxes from all manufacturers will be the same. It is accepted that the exemption granted to the petitioner under the Bihar Sales-tax Act has not been cancelled and they have relied on Section 41(2) of the Bihar Re-organisation Act. 2000. relating to transfer of assets and liabilities to the successor State.

10. So far as liability of tax on sales is concerned, it is stated that a reasonable restriction can be imposed upon the tenderers for the purpose of obtaining revenue of the State and at least 16 firms have got themselves registered as dealers under the Bihar Finance Act after invitation of tender notice and even after the order, passed by the Court in M/s. Rama Expoinvest Private Ltd.. (supra).

11. The present case relates to contract in pursuance of tender notice and as such, it is not necessary to discuss the tax liability under any one or other Act. The respondents having accepted that the contract has not yet been finalised and having taken plea that there is no cause of action for the present, the writ petition being pre-mature. it is not necessary to give any finding in respect to the question raised by the petitioner. However, the decision of the Purchase Committee, as taken in its meeting dated I2th May. 2001. being on record, it is necessary to make certain observations so that before finalisation of the contract, the respondents may take into consideration the relevant fact and law.

12. In the last part of the decision of the Purchase Committee dated !2th May. 2001, the Purchase Committee decided that Jharkhand Sales Tax be charged from the tenderers in the light of the Bihar Finance Act. 1981/Central Sales-tax Act. 1956 and those tenderers, not registered in the State of Jharkhand, be asked to submit billing in the State of Jharkhand and on this term the work order be issued.

13. The petitioner has raised objection relating to the billing in the State of Jharkhand as according to it, it is open to any tenderer to do billing at any place from which it may supply the goods. In respect to this clause it is alleged that the Purchase Committee''s decision for billing in the State of Jharkhand is against the ratio laid down by this Court in M/s. Rama Expoinvest Private Ltd.. (supra).

14. So far as the aforesaid issue is concerned, it may only be mentioned that the Purchase Committee can not lay down any additional condition or condition contrary to the conditions, as laid down in the tender notice and B.O.Q, Further, this Court having set aside Clause 16 of the tender notice, in absence of any

subsequent decision of the competent statutory authority, no similar clause/ stipulation can be laid down by the Purchase Committee. The Purchase Committee and competent authority both are required not only to look into the supply of standard materials but also the competitive rates. Without any valid ground, the tenderers, who quoted minimum rate, can not be excluded. There may be variation of rate of sales tax if the material is supplied from one or other place. For such variation if the total cost/rate quoted by one or other supplier varies, the competent authority and Purchase Committee both are required to take into consideration such factor before issuance of supply order in favour of one or other. Thus, without giving any specific finding in respect to sales-tax, payment of tax and the case being pre-mature. the respondents are given liberty to provide the work order and finalise the matter, keeping in mind the relevant rules, tender notice. B.O.Q. and observations. made above.

15. The Court has also gone through the original records, submitted by the counsel for the State. But as no specific finding is given except certain observations, as made above, it is not necessary to discuss any detail facts, as available on the record. The writ petition stands disposed of accordingly.

16. Writ petition accordingly disposed.

