
(2006) 02 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2755 of 2005

Shambhu Nandan Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

Citation : AIR 2006 Jhar 72 : (2006) 2 JLJR 209 : (2006) 2 JCR 205 : (2006) 2 AIRJharR 206

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

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant; Rajeev Sharma and Rita Kumari for Respondent No. 5 and Sheela Prasad, G.P. IV, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Heard the Parties.

2. Petitioner has prayed for quashing order dated 28.4.2005 (Annexure-9) issued by the Commissioner, Santhal Pargana Division, Dumka (Respondent No. 4) and the letter dated 10.5.2005 issued by the Special Officer, Pakur Municipality, Pakur (Respondent No. 3), whereunder and whereby the settlement for collection of truck toll taxes for the year 2005-2006 made in favour of the petitioner was cancelled and it was settled in favour of respondent No. 5.

3. According to the petitioner, for collection of the said toll, Rs. 2,4,60,900.00 was kept as reserve price. Bids were held on 11.3. 2005, 17.3.2005, 23.3.2005 and 28.3.2005, but they were cancelled as no body offered the reserve price. Then again bid was held on 2.4.2005, in which petitioner's highest offer of Rs. 12,11,000.00 was accepted by the respondent Nos. 2 and 3, in view of the aforesaid situation. Petitioner deposited Rs. 6,05,500.00, i.e., 50% of the bid amount as asked. An agreement was entered into on 4.4.2005 and petitioner started collecting the tolls.

On 16.4.2005, a purported complaint was made to the respondent No. 4 by

respondent No. 5 to the effect that the bid had been settled with the petitioner below the reserve price and that the complainants were ready to deposit the reserve price. On 28.4.2005, the Divisional Commissioner (respondent No. 4) ordered for settlement in favour of the persons who deposits the reserve price at one time. Clause 6 of the guidelines (Annexure-B) provides that re-bidding should not be done, if any offer is received after the bid is complete as the bid is closed, after local authorities are satisfied that there is no possibility of getting higher price than the highest bid. However, if an offer, higher by 25% of the highest bid is received, re-bidding can be done after getting 50% of such offer deposited. 25% above the petitioner, bid comes to Rs. 15,13,750.00 (12,11,000/- + 25% -3,02,750/-) and accordingly, respondent No. 5 was directed by respondent No. 3 to deposit it's 50% i.e. Rs. 7,56,350.00. But in a purported bid held on 9.5.2005, it was settled with respondent No. 5 at Rs. 14,70,500.00 and petitioner was directed to return the toll collected by him up to 10.5.2005.

4. Mr. Rajiv Ranjan, learned Counsel appearing for the petitioner further submitted that respondent No. 5 was never a party to any of the bids held on earlier five occasions, but about two weeks after the bid was finally settled in favour of the petitioner, the said purported complaint was made to the Commissioner and petitioners bid was cancelled and it was settled with respondent No. 5 ignoring the said Clause 6. He further submitted that petitioner was not given opportunity of hearing before canceling his bid. In these circumstances, he submitted that petitioner has been made to suffer due to the arbitrary and illegal actions on the part of the concerned respondents. He relied on Chhotanagpur Agro Agencies and Atma Ram Agencies Ltd. Vs. State of Jharkhand and Others, .

5. Mrs. Sheela Prasad, learned Counsel appearing for the State supported the impugned orders and submitted that though the bid can be cancelled without assigning any reason but even then petitioner was given a notice for participating in the bid to be held on 9.5.2005. She further submitted that in view of the said guidelines contained in Clause 6, if higher offer is received, fresh bid can be held. She further submitted that in the interest of revenue, the aforesaid actions were taken.

6. Mr. Rajeev Sharma, learned Counsel appearing for the respondent No. 5 submitted that as the settlement was made in favour of petitioner below reserve price, a complaint was made before the Commissioner and then it was rightly settled with respondent No. 5. He further submitted that if the bid of the petitioner was to be accepted below the reserve price, a fresh bid should have been held. Thus, he submitted that the settlement of the petitioner was bad and it has been rightly cancelled.

7. It is true that the concerned authorities could accept the highest bid of the petitioner even below the reserve price as no body offered such price in the last four bids. However to avoid any possible controversy, they should have notified

the highest bid offered by the petitioner, inviting any further offer, before closing the bid in favour of the petitioner. But in the facts and circumstances noticed above, it did not cause prejudice to any one, specially respondent No. 5, who never participated in any of the five bids held earlier.

8. Even as per the said Clause 6, bid could have been settled in favour of respondent No. 5 only if he offered 25% above the highest bid of the petitioner. The highest bid of the petitioner was 12.11.000/-. Its 25% comes to 3,02,750. Thus, bid could be settled in favour of respondent No. 5 at a price not less than Rs. 15,13.750/-. In fact, he was directed to deposit 50% of this amount i.e. 7,56,850/- but surprisingly the bid was settled in favour of respondent No. 5 at Rs. 14,70,500/-. It is not understood as to how the respondents-State ignored the guidelines contained in Clause 6.

9. I know my limitations under the writ jurisdictions in such matters. But the Court has to examine the decision making process if the same is questioned by a party adversely affected. On examination of the facts and circumstances indicated above. I am satisfied that the impugned decision making process adopted by the State-respondents was arbitrary and illegal.

10. Having held this, the next question is as to how to balance the equities. The petitioner collected toll up to 10.5.2005 and thereafter respondent No. 5 has been collecting it. This Court on 5.7.2005 ordered that the tolls collected by respondent No. 5 shall be kept in proper account.

11. In the circumstances, though the settlement made in favour of respondent No. 5 has been held to be bad by me but I do not want to disturb it till 31st March, 2006, in order to avoid possible complications/Litigations.

12. But the petitioner has to be compensated. Respondent No. 5 who is the beneficiary of the bid settlement will pay a lump sum amount of Rs. 75,000.00 to the petitioner within four weeks from today. The State-respondents shall, after deducting the amount collected by the petitioner from his deposit of Rs. 6,05,500.00 shall return it to him along with interest thereon from the date of deposit, till the date of payment @ 12% per annum, within four weeks from the date of receipt of this order.

13. The Secretary, Urban Development Department, Government of Jharkhand, Ranchi by himself or by any competent officer will enquire into the matter. If it is found that any officer(s) has acted arbitrarily and in illegal manner, the said amount of interest may be recovered from him/them.

14. This order will not prejudice the petitioner or the respondent No. 5 in taking part in the bid for the next financial year.

15. The respondents should act in a transparent manner. The process of settlement for the next financial year should be started well in advance.

16. With these observations and directions, this writ petition is allowed. Let a

copy of this order be handed over to Mrs. Sheela Prasad, State counsel.