(2003) 01 JH CK 0116

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6668 of 2002

Shanti Cements Pvt. Ltd. APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 29-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 JCR 71 : (2003) 2 BC 408

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

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant; Jai Prakash, S.C. (Mines) and R.K. Bobby, J.C., for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The writ petition has been preferred by petitioner against the decision dated 18th November, 2002 whereby it was decided to purchase cements for the work in question from respondent No. 5--Larson and Turbo Limited (L & T) and Respondent No. 6. Orissa Cement Limited.

2. According to petitioner. It is a company registered under the Companies Act, having its factory at N.S. 53 VI Phase, Industrial Area, Adityapur, Jamshedpur and Office at 9, Asiana Trade Centre, Adityapur, Jamshedpur. It is a small scale industry which manufactures cement.

In pursuance of tender notice No. 12/Pur-012/2002-04/Ranchi dated 12th September, 2002, petitioner as also respondent Nos. 5, 6 and others submitted tender for supply of cement. The following terms and conditions were mentioned :

(I) Quality must confirm to ISI standard.

(II) Tender for supply of OPC-33 (IS 269 : 1989) OPC-43 (IS 8112 : 1989) and Portland slag cement (IS 455 : 1989).

(III) Income tax and sales tax clearance certificate upto March, 2002 must be attached with the tender paper.

(IV) Only manufacturers of cement are entitled to participate in the tender. (Here no distinction has been made regarding Mini plant or Major plant).

(V) Specific mode of payment has been prescribed saving the interest of the department.

(VI) Procedure of receiving and quality check and in case of poor quality, it has to be replaced and further provision for penalty.

(VII) Preference Clause, giving preference to manufacturers; who pay full JST and TOT and whose past performances were found satisfactory."

3. The grievance of the petitioner is that though in pursuance of tender notice, 11 suppliers participated in the process, purchase records were evaluating and the petitioner-company fulfills all the conditions but for the reasons best known to the respondents, the work order has been issued in favour of respondent Nos. 5 and 6.

So far as Respondent No. 5 is concerned, it was alleged that the income tax clearance certificate was not submitted and the sales tax certificate submitted was not in accordance with requirement. The tender submitted was conditional in regard to payment.

Regarding respondent No. 6, it was alleged that the rate quoted by respondent No. 6 was not lowest from any destination and sales tax clearance was not shown but work order was issued on the basis of condition imposed by Respondent No. 6 that it will receive advance payment.

4. The counsel for the petitioner relied on Rule 130 of Bihar Financial Rules to suggest violation of such rule. One of other decision of the Supreme Court was cited to suggest that the Court can interfere with the matter.

On 17th December, 2002, when the Court issued notice on Respondent Nos. 5 and 6, noticed that they have not deposited the security money, but they have been asked to deposit it. The respondent-State was directed not to release any advance payment in favour of Respondent Nos. 5 and 6.

5. The Respondent No. 6 has appeared but inspite of notice. Respondent No. 5 M/s. L & T did not choose to appear.

Counsel for the State submitted that the respondent M/s. L & T has not agreed to supply without receiving advance money.

The respondent-State has brought to the notice of the Court that the tender notice was invited for supply of 6100 M/T, 4637 M/T and 450 M/T of cement for Chief Engineer, Water Resources Department, Ranchi/Deoghar/Suberna Rekha Multipurpose Project Chandil Complex, Jamshedpur respectively. Tenderers were at liberty to quote rates for any type of cement, such as OPC 33, OPC 43 and PSC. In the last financial year, it came to the notice of the State that the quality of cement supplied by some of the mini plant cement manufacturers was not as per I.S. Specification and the cement was found sub standard. As the cement was to be used in important Hydraulic structures, there was no occasion to compromise with the quality of cement in the interest of work and in the interest of the State. In this background, the Central Purchase Committee in its meeting held on 18th November, 2002 decided to take supply of cement from those manufacturers, who have got ISO 9002 certificate.

It appears that the Respondent Nos. 5 and 6 being only two firms which qualify international specification having ISO 9002 certificate, the respondents decided to purchase the cement from Respondent Nos. 5 and 6 and not from others including petitioner, who has no such certificate.

6. I find no reason to disagree with the ground shown by the respondents to purchase cement from standard Companies, such as M/s. L and T, who have ISO 9002 certificate. Because of their goodwill in the market and as no compromise can be made in cement structure, I am not inclined to give weightage to a manufacturer, who quoted lowest amount.

7. Accordingly, the writ petition is dismissed.