
(2003) 08 JH CK 0084
In the Jharkhand High Court
Case No : WPC No. 2899 of 2003

Shivam Planners and Construction Pvt. Ltd.	APPELLANT
Vs	
State of Jharkhand and Others	RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 BC 144 : (2003) 4 JCR 50

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Rajiv Sinha and Bhupal Krishna Pd, for the Appellant; A.K. Sinha Sumir Pd. and Saurav Arun, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—The petitioner seeks a declaration that the action of respondent No. 3, Engineer-in-chief-cum-Additional Secretary, Rural Development Department, Government of Jharkhand in cancelling the tender on the ground contained in the letter dated 12.6.2003 and, thereafter, floating a fresh tender for the same work is illegal and mala fide.

2. Petitioner's case is that pursuant to the tender notice dated 25.2.2003 issued under the signature of the Executive Engineer for execution of five items of work, the petitioner submitted his tender papers being technical bid document and financial bid documents, On 13.3.2003 the technical bid was opened in presence of the bidders and the authorities. Respondent No. 4 then communicated to the petitioner that he has qualified in the technical bid and the financial bid will be opened in presence of the petitioner and other authorities. It is contended that the petitioner was the sole bidder in respect of the work and, therefore, after opening of financial bid only a formality for approval was to be done. But surprisingly respondent No. 2 cancelled the tender on the ground that the petitioner was the sole bidder and the site of the work is terrorist affected.

3. Learned counsel appearing on behalf of the petitioner assailed the cancellation of tender notice and issuance of fresh tender in respect of the same work as being wholly illegal and mala fide. The petitioner, after being qualified in technical bid and after having quoted the rate below the scheduled rate, was entitled to allotment of work under the terms and conditions.

4. Mr. A.K. Sinha, learned Advocate General, on the other hand has drawn my attention to paragraphs 6 and 7 of the counter- affidavit and submitted that the petitioner was the single tenderer and, as such, the same was not accepted in view of the circular dated 18.11.1998 and also the amendment made in Bihar Finance Rules dated 5.3.2003 according to which, in case of single tenderer the same has to be cancelled and fresh tender has to be called.

5. Admittedly pursuant to the tender notice the petitioner submitted his tender for the technical bid and financial bid. The submission of tender by the petitioner was an offer in the eye of law. It is the admitted case of the parties that only the technical bid was opened and the financial bid was not opened and in the meantime the tender notice was cancelled on the ground that the petitioner was the sole bidder. It is, therefore, clear that contract had not come into existence inasmuch as the work order or the letter of intent or the letter of acceptance was not issued to the petitioner. On the contrary, in view of the circular of the Government and the Bihar Finance Rules, in case of one tender, a fresh tender notice has to be issued after cancelling the tender notice. In my opinion, therefore, no legal right has accrued to the petitioner to compel the respondents to allot work order in terms of the earlier tender. The action of the respondents in cancelling the tender cannot be held to be illegal and mala fide. Moreover, this Court exercising power under Article 226 of the Constitution cannot enforce the contractual obligation, if any, between the parties.

6. For the aforesaid reasons I find no merit in this writ application which is, accordingly, dismissed. Petition dismissed.