
(2000) 01 PAT CK 0119
In the Patna High Court
Case No : C.W.J.C. No. 3622 of 1998

Sri Krishna Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 PLJR 744

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : N.K. Agrawal, K.C.K. Sinha, B.K. Sinha and D.N. Tiwari, for the Appellant; Suresh Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This writ petition under Article 226 of the Constitution of India is directed against the order contained in memo No. 1008 dt. 11.12.95 (Annexure 7), whereby the Respondent authorities have prohibited the Petitioner from lifting the materials which were subject matter of the tender and he was allowed to lift on the terms and conditions agreed upon. This writ petition is further directed against the order dated 1.6.96 (Annexure 8), issued by the Respondent authorities seemingly in partial modification of the aforesaid order dt. 11.12.95 (Annexure 7), whereby the Respondent authorities lifted the ban with respect to all the centers in the State of Bihar excepting that of Patna. The Petitioner makes a further grievance that inspite of the said order dt. 1.6.98 (Annexure 8), the same has not been allowed to be implemented.

2. The Respondent authorities had issued a notice inviting tenders which had appeared in the local newspapers on 6.2.94 (Annexure 1), for purchase of Rejected and scrap steels from various centers of the State of Bihar. The Petitioner, along with others, had submitted their tenders which were opened on 18.3.94, and that of the Petitioner was found to be the highest, was accepted and was communicated to him by letter contained in memo No. 149 dt. 21.8.95

(Annexure 3). In pursuance of this communication dt. 21.8.95, the Petitioner started lifting the materials on deposit of requisite amount as per the rates quoted by him. While the Petitioner was forging ahead with the lifting of materials, the Respondent authorities passed the impugned order contained in memo No. 1008, dt. 11.12.95 (Annexure 7), prohibiting the Petitioner from lifting the materials in question until further orders. This order was modified by order dt. 1.6.96 (Annexure 8), whereby in partial modification of the said order dt. 11.12.95 (Annexure 7), the Petitioner was allowed to lift the materials from all the centers in question all over the State excepting that of Patna. Thereafter the Petitioner submitted various representations to allow him to lift the materials from Patna as well. He had also submitted that inspite of the order dated 1.6.96 (Annexure 8), the Respondent authorities were not allowing him to lift the materials from centers other than Patna. Copies of such representations are on record.

3. While assailing the validity of the impugned action of the Respondent authorities, learned Counsel for the Petitioner submits that the impugned orders are acts of arbitrariness on the part of the Respondent authorities. He further submits that the aforesaid order dated 1.6.96 (Annexure 8) has also not been allowed to be carried out to the extent it has allowed him to lift the materials, and further criticizes the same on the ground of equality clause of the Constitution. Why has the Patna Centre been omitted from Annexure 8.

4. Mr. Suresh Kumar, learned JC to Mr. K.P. Yadav, SC V, who has made a feeble attempt to defend the impugned action, and has taken me through the counter affidavit. The counter affidavit states four reasons in support of the impugned action. Firstly, the Minister, Secretary and other functionaries of Public Health Engineering Deptt., Govt, of Bihar, had decided to stop further lifting of the materials. The counter affidavit secondly states that "...the tender will remain valid for acceptance and placing of order upto 30.12.94 from the date of receipt of tender." Thirdly, it further states that "... if any dispute or difference arises in the interpretation of the specification, bill of quantity, Schedule of Prices or any other matter in connection with the contract, the decision of the Engineer-in-Chief-cum-Special Secretary, PHED, Bihar, Patna, shall be final and binding upon the parties concerned." The last reason stated in the counter affidavit is to the effect that the Cabinet Vigilance (Technical Investigation Cell) has also enquired in this matter. The matter is still under investigation by Cabinet Vigilance Department (Investigation Bureau).

5. Having considered the rival submissions, I am of the view that this writ petition is fit to be allowed. The circumstances and the materials placed before me discloses arbitrariness on the part of the Respondent authorities. There is no denial of the fact that the Petitioner had made the highest bid and was therefore, rightly entitled to the tender. Since it was disposal of rejected materials, there was no question of quality control and, therefore, there could not have been the question of accepting tender of a bid of the liking of the authorities to ensure

quality. The first ground stated in the counter affidavit is, in view of this Court, extremely arbitrary which militates against the rule of law and seems to suggest a state of affairs where there is rule of men. There is not the slightest indication as to what had inspired the authorities to pass the impugned order. Secondly, the time-limit indicated in the counter affidavit with respect to the second ground is unintelligible to this Court. In view of the nature of the contract, time was surely not the essence of the contract. As stated above, it relates to disposal of rejected steel scraps. The third reason given in the counter affidavit speaks of some kind of arbitration clause. There is no indication that this clause has been invoked and, in any case, there has to be a bonafide dispute to go to arbitration. No such case has been made out in the counter affidavit, let alone during course of oral arguments, to satisfy this Court that there was a bonafide dispute to be referred to arbitration. The last ground given in the counter affidavit is equally untenable for two reasons. There is not the slightest indication as to what complaint had been received and, secondly, what progress has been made by the Cabinet Vigilance (Technical Investigation Cell), ever since the impugned orders were passed. A period of four years has lapsed since then.

6. In the result, this writ petition is allowed. The impugned orders dated 11.12.95 (Annexure 7), and dated 1.6.96 (Annexure 8), are hereby quashed. The Respondent authorities are directed to permit the Petitioner to lift the materials from all the centers including Patna as expeditiously as the Petitioner can. This writ petition is allowed with costs quantified at Rs. 10,000/- (ten thousand) for the arbitrariness attributable to the Respondent authorities and the delay caused in the meanwhile, which shall be adjusted against the amount payable by the Petitioner.