

(2008) 09 JH CK 0021
In the Jharkhand High Court

State of Jharkhand

APPELLANT

Vs

Dinesh Sharma and Others

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Citation : AIR 2009 Jhar 89

Hon'ble Judges : Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal has been preferred against the order dated 28-02-2008 passed by the learned single Judge in W. P. (C) No. 72 of 2006 whereby the learned single Judge although disposed of the writ petition by holding that no relief can be granted to the petitioner as the work order had already been executed by respondent Nos. 7 and 8, it was directed that the Chief Secretary, Government of Jharkhand and the Secretary of the Rural Engineering Department should enquire into the matter regarding grant of tender to the respondent Nos. 7 and 8 within four weeks from the date of receipt/production of the order passed by the Court.

2. The State of Jharkhand who was the pro forma respondent before the learned single Judge has filed this appeal assailing the direction to the extent by which the Chief Secretary and the Secretary, Rural Engineering Department had been directed to enquire into the matter and in support of the same it was submitted that there was no prima facie case before the learned single Judge to issue a direction for an enquiry into the matter.

3. Controverting this argument counsel for the respondent has contended that the learned single Judge having recorded in favour of the petitioner/respondent No. 1 herein to the effect that his bank guarantee was wrongly rejected by the concerned authority due to which he could not participate in the tender process, the learned single Judge was not justified in issuing a direction for enquiry into

the matter for fixing the responsibility on the officer who had rejected the bank guarantee furnished by the petitioner/respondent No. 1 herein.

4. Having perused the impugned order passed by the learned single Judge we have noticed that the learned single Judge had refused to allow the writ petition on the ground that the work order had already been executed and thus, refused to quash and set aside the award of tender to respondent Nos. 7 and 8. The respondent No. 1, who was the petitioner before the learned single Judge, has not preferred any appeal against the refusal of the single Judge to quash and set aside the award of tender to the respondent Nos. 7 and 8 who have already executed the work order. He thus acquiesced with the refusal of the grant of tender to him. Under the circumstance, he can be permitted to contend in this appeal only to the extent by which enquiry was ordered by the learned single Judge to be conducted by the Chief Secretary and Secretary, Rural Engineering Department.

5. In the process we have noticed that the learned single Judge had already recorded conclusively that the Bank guarantee furnished by the petitioner/respondent No. 1 herein for securing work order as per tender process was wrongly rejected and when we put a question to the counsel for the respondent No. 1 as to who has rejected his bank guarantee, the counsel replied instantly that it was the Chief Engineer of Rural Engineering Works who had rejected his bank guarantee. In view of this reply we do not find reason for the learned single Bench to direct further enquiry into the matter as it was open for the petitioner/respondent No. 1 herein to prefer an appeal against that part of the order by which he was denied grant of tender although it was held that he had completed all the formalities and the bank guarantee furnished by him was wrongly rejected.

6. In view of this position it is difficult to comprehend what further enquiry possibly can be conducted by the Chief Secretary and the Secretary of the Rural Engineering Department as the learned single Bench having himself concluded that the bank guarantee furnished by the petitioner/respondent No. 1 herein was wrongly rejected, it was open for the learned single Judge to grant relief to the petitioner/respondent No. 1 herein. But, as already stated, the respondent No. 1 herein do not appear to be aggrieved against the denial of tender to him as the work order has already been executed.

7. In the facts and circumstances, the direction issued by the learned single Judge to the Chief Secretary and Secretary of the Rural Engineering Department would be an exercise in futility as the petitioner/respondent No. 1 herein himself has stated that it was the Chief Engineer of the Rural Engineering Department who had wrongly rejected the bank guarantee furnished by him. But as the petitioner/respondent No. 1 herein has failed to seek any relief in spite of this conclusive observation of the learned single Judge, we find no reason for him to oppose the appeal of the State of Jharkhand which had been directed to conduct further enquiry in regard to the grant of tender to the respondent Nos. 7 and 8. Besides this, it is also relevant to point out that if the respondent No. 1 had been

really serious about the denial of the contract to him, he would have made an effort for securing the stay order in his favour and that having not been done and the work order having been already executed, the writ petition practically had been rendered infructuous, and further enquiry in regard to the grant of tender to respondent Nos. 7 and 8 ultimately would not have served any purpose.

8. In view of the aforesaid discussions we quash and set aside the order of the learned single Judge to the extent by which he had directed the Chief Secretary and the Secretary of the Rural Engineering Department to enquire into the matter of grant of tender to respondent Nos. 7 and 8 for we have already noted that the question as to who was responsible to reject the bank guarantee furnished by the petitioner/respondent No. 1 herein required no enquiry since the petitioner/respondent No. 1 herein had already stated that it is the Chief Engineer, Rural Engineering Department who illegally and wrongly refused to accept the bank guarantee furnished by the petitioner/respondent No. 1 herein.

9. Thus, the appeal is allowed to the aforesaid extent but, in the circumstance, without any cost.