
(1993) 03 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2008 of 1992

Sudhir Prasad Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-03-1993

Acts Referred:

Citation : (1993) 03 PAT CK 0012

Final Decision : Dismissed

Judgement

N. Pandey, J.—The petitioners in this writ application have challenged the mode and manner in which the tender notices were published as also the allotment of work with the private respondents by the Executive Officer, Rosera Municipality.

2. The grievance of the petitioners is that respondents Nos. 5 and 6, without publication of the tender notice, have allotted the work for construction and repairs of roads and drains worth Rs. 25,00,000 (Twenty five lakhs) with the private respondents. According to the petitioners, as notices were not published in the daily newspaper nor they were affixed at conspicuous places in the municipal area, several persons including the petitioners were excluded from filling up tenders and participating in the auction. The allegation of mala fide and favouritism against the official respondents in allotting the works to the private respondents has also been alleged. It has been urged that different Government circulars which are binding over the municipal authorities, have not been followed. It has been further stated that at the time of the alleged publication of notice, there was general strike. Therefore, even assuming that notices were displayed on the notice board of the Municipality, it was not expected for general public to have knowledge with respect to such publication. As per the circular, only those persons who had submitted Sales Tax and Income Tax clearance certificate were entitled to deposit tenders for allotment of work. Admittedly, the private respondents did not deposit such certificate. Therefore, the respondent Nos. 5 and 6 should not have allotted the work to them.

3. The respondents have entered appearance and filed counter affidavits.

According to them, all the prescribed procedures for allotment of work were followed. Written notices were given to the District Magistrate, Samastipur, District Engineer, Samastipur, Executive Officer, Sub-divisional Officer, Rosera, Secretary, Agricultural Produce Market, Block Development Officer and Circle Officer Rosera for publication on their respective notice boards in their offices. Notices were also published on the notice board of the Municipality. It is wrong to say that the construction work was allotted to the private respondents without inviting tenders. It has been stated that as per rule 116 of the Bihar Municipal Accounts Rules, 1928 (hereinafter called "Rules"), the Municipality has two options to publish tender notices, that is, advertisement in the local newspapers or by notices in the vernacular in public places. It is stated that since the work was of urgent nature as also located in the Municipal area, the second mode of publication, that is, pasting of notices at public places was adopted. It has been further stated that most of the work had already been completed for which contractors have also been paid.

4. Learned counsel for the petitioners contended that in view of the admitted position that there was no publication of notices in the daily newspapers as also private respondents did not fulfil the criteria for allotment of work, this is a fit case in which this court should quash the work order and the agreement pursuant thereto executed by respondent Nos. 5 and 6 and a direction be issued for allotment of fresh work order by inviting fresh tender notices. In support of his contention, he has placed reliance over the decisions in the case of *Girja Nandan Singh v. The State of Bihar* 1987 PLJR 95 and *Syed Hasan Rasul Numa and others Vs. Union of India and others*, .

5. Before considering the claim and rival claim of the parties, it would be appropriate to notice the relevant rules for publication of notice and execution of agreement by the Municipal authorities in inviting tenders for allotment of work in the local limit of municipal area. Rule 116 of the Rules is as follows:--

"116. (a) In the case of all works executed by contract, tenders shall ordinarily be invited in the most open and public manner possible whether by advertisement in the local newspapers or by notices in the vernacular in public places."

6. From reading of the aforementioned Rule it is true that the tenders are to be invited in either of the two manners mentioned therein but at the same time there cannot be any doubt that the same has to be done in open and public manner. The object, thus, is quite clear that there should be a wide publicity so that no person can make grievance that he was deprived of an opportunity to offer the tender. In the present case, it is alleged that the tender notices were invited by the respondents by pasting of the notices at public places. Admittedly, the first manner regarding publication of the advertisement in the local newspapers was not followed.

7. In the case of *Ramana Dayaram Shetty Vs. International Airport Authority of*

India and Others, in respect of the duty imposed on a Government while entering into contracts or issuing licences, which is all the more applicable to the public utility service and public service it was observed as follows at page 1637 :--

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences etc. must be confined and structured by rational, relevant and non-discriminatory standard or norms and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

In another case reported in AIR 1980 SC 1992 (Kasturi Lal Lakshmi Reddy v. State of Jammu & Kashmir) the Supreme Court, while emphasising that the Government must act in public interest while giving a contract or sell or lease out the property with the sole object being to raise the highest revenue, held as follows at page 2000 :

"Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot for example give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable in public interest to do so."

The said mandate equally applies while awarding a contract for construction and repairs with private individuals. The object behind it is that the public authority must act fairly and without discrimination and without unfair procedure. In the case of Ram and Shyam Company Vs. State of Haryana and Others, the Supreme Court pointed out as follows:

"The law is now well-settled that the Government need not deal with anyone, but if it does so, it must do so fairly and without discrimination and without unfair procedure -- An unilateral offer, secretly made, not co-related to any reserved price made by the fourth respondent after making false statement in the letter was accepted without giving any opportunity to the appellant either to raise the bid or to point out the falsity of the allegations made by the fourth respondent in

the letter as also the inadequacy of his bid How an uncontrolled exercise of executive power to deal with socialist property in which entire community's interest was sacrificed so as to cause huge loss to the public exchequer would have gone unnoticed but for the vigilance of the appellant..... acceptance of an offer secretly made and sought to be substantiated on the allegations without the verification of their truth, which was not undertaken, would certainly amount to arbitrary action in the matter of distribution of State largesse which by the decisions of this Court is impermissible."

8. This Court in the case of Ganesh Bhandar and Another Vs. The State and Others, while considering the action of the Sugar Mills of the Sugar Corporation in disposing of the sugar manufactured by them by public auction, held as follows :--

"3....The act of Government instrumentality must not only be fair but it also must appear to be fair. The publication of advertisement in Amrit Barsa which appear to have some local circulation is only a formal compliance of publication of the auction and cannot be held to be a proper publication of the advertisement in order to attract buyers from the different regions of the country. The publication of advertisement therefore, must be in the papers of All India circulation both in Hindi and English and there must be a margin of at least one week between the date of advertisement and the date of auction...."

9. However, in the instant case there is a rule prescribing the modes for inviting tenders as aforementioned. But it cannot be disputed that the act of the municipal authorities, in inviting tenders for allotment of works must not only be fair but it also must appear to be fair. Therefore, I am of the view that though alternative modes are prescribed, still the authorities should have acted in a more fair manner instead of going in for mere compliance of the rule. By issuing notices and getting it pasted on Rosera Municipal Board as claimed by them in paragraph 11 of the counter affidavit filed on behalf of Municipality was not sufficient and cannot be held to be proper publication of the advertisement in order to attract the tenders in a most open and public manner. In my opinion, it was proper for the municipal authorities to have followed necessarily the first manner and/or both specially taking into consideration the cost of construction and repair work of huge amount, namely, Rs. 25,00,000/- (twenty five lacs).

10. However, in the present case there is no statement even to the effect that the notices in the vernacular were made in open and public manner by pasting it in public places. The only statement in this regard has been made in paragraph 11 of the counter affidavit filed on behalf of Rosera Municipality that the tenders were invited by written notice under Memo No. 620 dated 10-12-1991 to the various authorities mentioned therein for getting it published on their respective notice boards in their offices and that it was also pasted for publication of Rosera Municipal Board for the said purpose. On this basis a presumption is sought to be drawn that there was (sic) a wide publication of notice. Later, in paragraph 12, however, it has been stated that tender notices were displayed to the knowledge

of the people in the office of the District Magistrate, District Engineer and other offices from the block to the district level and it was widely circulated and known to the local people. The said affidavit has been sworn by the Executive Officer of the Municipality, who is claimed to have made this statement on the basis of his personal knowledge.

11. It is difficult to accept the aforesaid statement in view of the earlier statement in paragraph 11 of the counter-affidavit wherein it has been stated that by sending the aforementioned memo dated 18-12-1991 to various authorities there is presumption that there was wide publication of the notices. Moreover, the fact of this case also is such that the aforesaid statement of the Executive Officer cannot be accepted inasmuch as had there been wide publication, as claimed by the Executive Officer, three persons who were allotted contract would not have been the only tenderers. It is not in dispute that only three tenders were submitted in response to the alleged notice and none else. Not only that even in absence of Income Tax certificates and contract labour certificates, the work has been allotted to all the contractors. It may be mentioned here that in the counter affidavit filed on behalf of the respondents Nos. 8 to 11 an attempt has been made to show that notices were published at various other offices also by annexing the letters issued by different authorities to the Executive Officer of the Municipality. Its difficult to place reliance on all these letters as all of them have been issued much after filing of the writ application.

12. I am, therefore, of the view that from the facts and circumstance of the present case the action of the authorities in making allotment cannot be held to be fair. But in any view of the matter, in this writ application the petitioners cannot get any relief at this stage as I have already noticed above that there has been a huge investment and construction work has already progressed so much so that respondents have also received advance of a good amount from the Municipality. Thus, in my view, this writ application, so far as it relates to the prayer for quashing of the work order given to the private respondents, now at this stage, cannot be allowed as it would be against the public interest inasmuch as by inviting fresh tender for the same work the Municipality will have to spend much more as there has been steep rise in the prices of I materials as well as the cost of labour.

13. It is well settled that the writ Court which is the discretionary remedy available to a party should refrain from quashing an order which would not be in public interest. The court may decline to grant relief to a party or mould the relief which it considers just and equitable depending on the exigency of each case. Thus, in my opinion, in the peculiar facts and circumstances of this case, it is in the public interest to allow the private respondents to carry out the contracted job pursuant to the work order issued to them.

14. In the facts and circumstances of the case, while parting with the judgment, I would like to observe that in future while making allotment of such work,

sufficient care should be taken in publication of tender notices so that nobody can raise any grievance that action of the authorities was not fair. In that view of the matter, in my opinion, the municipality should adopt both the procedures in the matter of inviting tenders, namely, issuing advertisement in the local newspapers as well as by issuing notices in the vernacular in public places.

15. In the result, the application is dismissed but in the facts and circumstances of the case, there shall however, be no order as to costs.

Radha Mohan Prasad, J.

16. I agree.