

(2007) 09 PAT CK 0087
In the Patna High Court
Case No : L.P.A. No. 66 of 2007

The State of Bihar and Others

APPELLANT

Vs

National Project Construction Corporation Ltd. and Others

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Citation : (2007) 09 PAT CK 0087

Final Decision : Dismissed

Judgement

1. Heard counsel for the parties.

2. Both these Letters Patent Appeals have been filed against order dated 21.12.2006 passed by a learned single Judge of this Court in C.W.J.C. No. 12197 of 2006, and, accordingly, these appeals were heard together and are being disposed of by this order.

3. The matter relates to grant of a contract work. The State of Bihar decided to set up an Institute of Technology as premier Institute at Chapra to be named as Lok Nayak Jai Prakash Narayan Institute of Technology. The entire project was divided into thirteen building projects and tenders were floated in the year 2004 for a total estimated construction cost of about rupees thirty crores. However, nothing could materialise. Thereafter notice in tender matter for the same scheme was again issued on 7.5.2005, but before tenders were accepted the State of Bihar was put under President Rule. Under the President Rule the Chief Secretary of the State of Bihar sought for permission from the Governor of Bihar to relax the provisions of P.W.D. Code in order to permit the Government to have the works done from the public sector undertakings or such National reputed contractors. The Governor, accordingly, approved the proposal. The Government thereafter called for tenders only from public sector undertakings and such other contractors.

4. Pursuant to such advertisement the writ petitioners and certain other public sector undertakings applied for the same. Ultimately, the State Government took

a decision to give the contract work to the writ petitioner, namely, National Project Construction Corporation Limited (hereinafter to be referred to as "Corporation") and a letter of intent dated 13.09.2005 was issued in its favour. At the same time, pursuant to the tender notice dated 7.5.2005 a part of the work pertaining to construction works of Lok Nayak Jai Prakash Narayan Institute of Technology was also given to M/s S.R. Construction Private Limited.

5. M/s S.R. Construction Private Limited, however, filed C.W.J.C. No. 12510 of 2005 before this Court challenging communication vide letter No. 4517 dated 13.09.2005 issued by the Building Construction Department, Government of Bihar, Patna to the Corporation. The writ application, however, was dismissed on contest.

6. The appellant State of Bihar in that writ application had supported the claim of the Corporation, but before the matter could be finalised and an agreement was entered into with the Corporation the writ petitioner, the appropriate Government was formed in the State of Bihar.

7. The State of Bihar now reviewed the earlier policy decision taken by the Governor of Bihar during the President Rule and a fresh tender notice dated 7.10.2006 was issued calling for fresh tenders. This time, the tender was finalised in favour of M/s Interlink Coal Private Limited, as it was the lowest tenderer. The tender notice, as such, thereafter was challenged by writ petitioner Corporation giving rise to these appeals.

8. The learned single Judge this Court while allowing these writ applications held that the action of the State authorities was arbitrary, unreasonable and wholly without jurisdiction, inasmuch as its action was barred by promissory estoppel and constructive res judicata. Since earlier tender was finalised in favour of the writ petitioner Corporation, letter of intent was issued.

9. Learned Advocate General appearing on behalf of the appellant State of Bihar and Mr. Anil Kumar Sinha, learned Counsel for the intervenor, M/s Interlink Private Limited, submitted that the State of Bihar was not bound by the earlier decision taken by the Governor of Bihar under the President Rule and it had the authority of law to review the matter, and, therefore, grant of contract work in favour of the intervenor M/s Interlink Coal Private Limited cannot be said to be arbitrary, unreasonable and without jurisdiction. It is further submitted that the writ petitioner had no locus to maintain the writ application, as no agreement was entered into in between the parties. A party would have the constructive right in such matter to challenge the action of the State authorities only when there is a concluded contract. They also submitted that tender was finalised in favour of M/s Interlink Coal Private Limited, as it satisfied all the conditions and was the lowest tenderer.

10. Mr. Ram Balak Mahto, learned Counsel appearing on behalf of the writ petitioner respondent (National Project Construction Corporation Limited), on the other hand, submitted that the learned single Judge of this Court was fully

justified in allowing the writ application, as the action of the State Government was found to be arbitrary, unreasonable, capricious and wholly without jurisdiction. Learned Counsel further contended that finalisation of the tender earlier in favour of the writ petitioner was challenged before this Court in C.W.J.C. No. 12510 of 2005 at the behest of M/s S.R. Construction Private Limited, where the action of the State authorities was supported by the State of Bihar by filing a counter affidavit. The writ application was dismissed upholding the finalisation of tender in favour of the writ petitioner. The State authorities in view of the earlier stand cannot resile from the same and, thus, its action would be barred by the principles of res judicata and promissory estoppel. Learned Counsel further contended that in the matter of grant of tender the writ Court should be loath in interfering with the same unless the action of the State authorities is shown to be arbitrary, irrational, discriminatory or violative of Constitutional or Statutory provisions. Learned Counsel also submitted that the tender was initially finalised in favour of the writ petitioner Corporation in larger public interest to complete the construction work and since the writ petitioner Corporation was fully qualified and eligible for the tender work no element of arbitrariness or discrimination can be demonstrated in the present matter. It is further submitted that the action of the State authorities was tested by this Court in writ jurisdiction in C.W.J.C. No. 12510 of 2005 and the same was found to be wholly within jurisdiction, therefore, it would not be open now for the State to question the grant of tender nor it would be open to the appellants to question the locus of the writ petitioner.

11. We have heard counsel for the parties at length and perused the order impugned.

12. It is not in dispute that the finalisation of the tender in favour of the writ petitioner Corporation pertaining to the same contract work was challenged before this Court, where the State Government supported the finalisation of the tender.

13. In that writ application the action of the State authorities was not found to be arbitrary, irrational, discriminatory or violative of the Constitutional provisions. A complete departure, thus, would not be permissible for the State Government in finalising the tender in favour of a third tenderer M/s Interlink Coal Private Limited.

14. We have examined the facts of the case and appreciated the submissions of the parties.

15. Distribution of Government work or largesse should not be arbitrary and all persons must be considered. While doing so it should be kept in mind that individual interest can be sacrificed for larger public interest and public good.

16. In the instant case, all eligible tenderers were considered and, ultimately, National Project Construction Corporation Limited being a public sector undertakings of the Central Government was selected for the contract work. The

selection of the aforesaid public sector undertaking was finally approved by this Court, as referred to above. The learned single Judge of this Court while approving such grant in C.W.J.C. No. 12510 of 2005 observed:

In view of the past experience and the difficulty, it was facing in allotting work to private contractors, the State Government had a policy decision to select a Public Sector Undertaking. Therefore, general notice dated 16.05.2005 was issued, which related to a large number of other works of the Project of the Bihar Government. There is obviously no case of discrimination or favouritism.

17. The matter of grant of contract works was under challenge before the Apex Court many a time and constantly, it was held by the Apex Court that in matter of grant of contract the writ Court should not interfere unless the action of the State Government is shown to be arbitrary, capricious, irrational, discriminatory or violative of the Constitutional or Statutory mandates. The Apex Court in case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, held:

Whether 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 largess, the Government cannot act arbitrarily at its sweet will and, 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 largess must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norms 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

18. The scope of judicial inquiry is confined to the question whether the decision taken by the Government is against any statutory provision or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere.

19. In this connection, reference may be made to the case of *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, . It is settled that the decision of the State Government or its choice may be disputed or condemned, but error, if any, committed by the Government is not subject to judicial review.

20. In case of *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, , it was held that the Government policy is not subject to judicial review unless it is demonstrably arbitrary, capricious, irrational, discriminatory or violative of Constitutional mandates.

21. In *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, , it was held that

the award of a contract, whether by a private party or by a State, is essentially a commercial transaction and even if when some defect is found in the decision making process, the Court must exercise its discretion under Article 226 with great caution, particularly in furtherance of public interest and not merely on the making out a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not.

22. For the reasons aforementioned and the legal propositions, as noticed above, we are of the view that the impugned action of the State Government was not arbitrary in the background of the difficulty being faced in allotment of the work to a private sector. The policy decision, thus, taken by the Government to grant the contract work to a public sector undertaking cannot be said to be arbitrary, unreasonable, discriminatory or violative of the principles of the Constitution coupled with the fact that the policy decision of the State Government in awarding contract work to the present writ petitioner-Corporation was affirmed by this Court its writ jurisdiction earlier.

23. To sum up, we hold that the action of the State Government in awarding contract work to the public sector the writ petitioner, in no way, on the facts of the case appears to be arbitrary, irrational, discriminatory or violative of the mandates of law.

24. In these backgrounds, we find no reason to interfere with the order impugned.

25. In the result, both these appeals are dismissed. No order as to costs.