
(2009) 05 PAT CK 0052

In the Patna High Court

Umesh Kumar Paswan and etc.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-05-2009

Acts Referred:

Citation : (2009) 4 PLJR 61

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—Petitioners in both these cases are aggrieved by the communications dated 9-3-2009 and 12-3-2009 of the Divisional Rail Manager (Commercial), Samastipur by which the private-respondent, Ram Babu Choudhry has been selected for settlement of Cycle-cum-Scooter stand and Taxi stand respectively at Darbhanga Railway Station, for the purposes of collection of a parking fee for a period of 3 years, which was to commence from 1st April, 2009.

2. The private-respondent, Ram Babu Choudhary has since appeared and filed counter- affidavits in both these cases. Railway have filed their comprehensive-counter affidavit in the first case that is C. W. J. C. No. 3647 of 2009 and agreed that it may also be treated as a counter-affidavit in the second case as well. Pending final disposal of the writ proceedings under orders of this Court Railway itself is doing the work of managing the parking lots.

3. Pleadings being complete, with consent of parties the writ applications have been heard at length for disposal at this stage itself.

4. For the sake of brevity, this Court will discuss the facts in relation to the first case as the material facts in respect of the second case are similar.

5. Umesh Kumar Paswan, the writ petitioner in the first writ petition was allotted a contract for the Cycle-cum-Scooter stand and Taxi-cum-Motor car stand within the premises of Darbhanga Railway Station, pursuant to open bid dated

29-3-2007 and negotiation dated 24-7-2007 for a period of one year, commencing-from 21-8-2007. An agreement was entered into in this regard. The period having expired on 20-8-2008, it was extended from time to time pending finalization of fresh tender for three years and the last extension was for the period 24-12-2008 to 28-2-2009. It would thus be seen that petitioner of the first writ petition Umesh Kumar Paswan was, thus, an existing licensee for collection of parking fee etc. in respect of the motor vehicle stand at Darbhanga Railway Station.

6. In early October of 2008 Railway through the Divisional Rail Manager (Commercial), Samastipur issued notice inviting tender bearing tender No. C/536/Miscellaneous for settlement of, inter alia, Cycle-cum-Scooter stand and Taxi stand at Darbhanga Railway Station. The reserve price fixed so far as Cycle-cum-Scooter stand at Darbhanga Railway Station is concerned, was of Rs. 3,12,075/- for 3 years, which is about Rs. 1,04,025/- for one year and in respect of the Taxi stand (Motor vehicle stand) the reserve price for 3 years was at Rs. 7,80,000/-, which is Rs. 2,60,000/- per year. The last date for sale of tender forms was 22-10-2008. The tender had to be filed separately for each of the places and had to be filed in two separate sealed envelopes marked as envelop-A and envelop-B. Envelop-A was technical bid and the envelop-B was financial bid. The tenders were to be filed between 10.00 a.m. to 12.00 a.m. on 23-10-2008. The tender papers were to be purchased at the cost of Rs. 1,000/- each and tender submitted with earnest money of Rs. 10,000/- each. As per the notice inviting tender itself, once technical bids were opened and scrutinized on 23-10-2008 at 12.30 p.m. then the date was to be fixed for opening the financial bids. In the notice inviting tender, it was stated that the final decision would be taken within 120 days (4 months) from the date of tender opening.

7. Petitioner, Umesh Kumar Paswan being an existing licensee for the Taxi stand, validity of whose licence as to be initially up to 20-8-2008 from 21-8-2007. When the initial period of one year expired, being desirous of taking the settlement again for 3 years, in pursuant to the aforesaid notice inviting tender, the petitioner purchased the tender form on payment of Rs. 1,000/- and thereafter on 15-10-2008 purchased the bank draft from the Central Bank of India, Samastipur Branch drawn in favour of the Railway, as per the notice inviting tender (NIT) towards earnest money. It is alleged by him that on 23-10-2008 when he went to file his tender papers within the prescribed time of 10.00 a.m. to 12.00 a.m. he was cornered by the private-respondent, Ram Babu Choudhary and his associates and restrained from filing the tender papers. Petitioner then on different dates allegedly complained to the authorities, who did not respond. Railway then issued letter on 15-1-2009 fixing 23-1-2009 for opening of financial bids that is marked as envelop-B.

8. Seeing no way, petitioner on advice filed C. W. J. C. No. 2104 of 2009 before this Court seeking annulment of the tender, as by then he had come to know that only one tender had been filed and that too by the private-respondent, Ram

Babu Choudhry for the two stands. The said writ petition was disposed of by order dated 13-2-2009 by this Court. This Court held that it was difficult to go into disputed question, but however noticing that as allegedly there was only one tender of Ram Babu Choudhry, healthy competition was ignored, which was a material to be considered by the Railways Authorities, who may if they think it necessary, direct for retender. Petitioner was asked to represent to the Railway Authorities in this regards, who were to consider all aspect and ensure that the best suited person paying highest revenue is selected in an open and fair manner, as per the rules and guidelines of the Railways and Central Vigilance Commission.

9. Petitioner, Umesh Kumar Paswan again represented, but instead of a favourable response he was informed by letter dated 30-3-2009 that as there was allegedly adequate arrangement of security and Railway administration was in no way responsible for ensuring individual security of each tenderer and the Railway administration had followed the tender process fair and transparent manner and without prejudice to any person, there was no question of giving it a second thought. In the said communication, the Railway administration did appreciate the apprehension of the petitioner of possibly not getting the best price, but, in view of the above noted facts, it deem it unnecessary to revise the matter and issue a retender. This was communicated to the petitioner by the respondent-Divisional Rail Manager (Commercial), Samastipur by his letter dated 30-3-2009, by when the private-respondent had already been communicated by the two impugned acceptance letters dated 9th and 12th of March, 2009 of his tenders.

10. So far as the writ petitioner of the second writ petition is concerned, there was no earlier settlement with him. He was a fresh tenderer, who had also purchased the tender forms on payment of Rs. 1,000/- and had also got a bank draft dated 15-10-2008 drawn in favour of the Railway for submitting along with his tender papers in respect of Cycle-cum-Scooter stand at Darbhanga Railway Station and was similarly prevented by the private-respondent from filing his tender on 23-10-2008.

11. From the counter-affidavits of the private-respondent, Ram Babu Choudhry and the Railway the stand of the respondents is clear. Their stand is that the protests by the petitioners were after thoughts. In spite of the adequate security arrangement, petitioners did not protest immediately or take legal recourse immediately. Accordingly, on basis of tender filed by the private-respondent, Ram Babu Choudhry, the sole tenderer was validly selected for both the Cycle-cum-Scooter stand and Taxi (Motor Vehicle) stand at Darbhanga Railway Station.

12. From the two counter-affidavits four noticeable facts also appear. Firstly, from the counter-affidavit of Railway, it is clear that five tender forms were sold in relation to the Taxi (motor vehicle) stand at Darbhanga Railway Station but only one form was dropped in respect, thereof. For the Cycle-cum-Scooter stand for Darbhanga Railway Station seven tender forms were sold but only one tender

form was dropped. The two tender forms that were dropped were of the private-respondent, Ram Babu Choudhry alone, one for the Cycle-cum-Scooter stand and other for the Taxi stand at Darbhanga Railway Station. None else filed/dropped their tenders. Thus, as against the 12 tender forms for the two settlements only two were responded and both by the private-respondent alone. The second fact that is apparent is, even though, just two tender forms were filed, one each for the Cycle and Scooter stand and Taxi stand by private-respondent, Ram Babu Choudhry and the technical bid of envelop-A was opened on 23-10-2008, it took almost two months for the Railway to come to a decision to open the financial bid. Envelop-B was opened on 23-1-2009, which was an empty formality because there was single bidder for the two settlements. Third, in spite of the financial bid having been opened on 23-1-2009, the final settlement orders were issued on 9th and 12th March, 2009 in favour of the private-respondent, Ram Babu Choudhry for the value as tendered by him. The fourth fact is noticeable from the table shown hereunder:

-----			Three years Bid by		
private-	reserve	price	respondent		
-----			Cycle-cum-Scooter		
Rs. 3,12,075/-	Rs. 3,25,209/-	stand at Darbhanga	Railway Station		
-----			Taxi stand at		
Dharbhanga	Rs. 7,80,000/-	Rs. 8,11,009/-	Railway Station		

13. From the table it would be noticed that the offer of private-respondent, as accepted by the Railway without any negotiation was only marginally above the minimum reserve price fixed by the Railway.

14. Having considered the matter and the four aforesaid facts taken together, it clearly shows that it was indeed a matter of concern for the Railway and an appropriate case when they should have resorted to retender. Firstly, in spite of number of tender papers were sold only the single tenderer filed his tenders. Secondly, the tenders being invited are for the purposes of seeking the highest competitive price, which competitiveness admittedly was totally absent. The price that the Railway was receiving was marginally above the reserve price without competition. Railway has failed to explain why there was only one tenderer whose financial bid was opened on 23-10-2008, what took Railway two months to decide about opening the financial bid, which was opened on 23rd January, 2009 and then having opened the financial bid on 23-1-2009 what took them over two months to finally accept that. The other fact may also be noted here. When petitioner of the first writ petition made a representation, pursuant to orders of this Court in the earlier writ petition (C.W.J.C. No. 2104 of 2009), instead of considering first that objection and first disposing of that objection, Railway first took the decision to accept the tenders of the private-respondent and communicated it to him on 9th and 12th of March, 2009 and then on 30th March, 2009 communicated the rejection of petitioner's representation. In my

view, these facts clearly establish that the actions of the Railway in this tender was lacking in bona fide. The whole purpose of issuing tenders and having open bid is for the sole purpose of getting the best competitive price. The very object of open tender stood fully and effectively frustrated in the present case. Railway themselves realise the situation when they admitted in their communication to the petitioner that the apprehension of the petitioner of possibly not getting the best price may be right, but beyond that apprehension there was no commensurate, action. In this connection, this Court can only refer to certain common irregularities and lapses, as observed by the Central Vigilance Commission, and the guidelines issued by it, though, in relation to purchase of stores. There the Central Vigilance Commission in Clause 6.3 has referred, which is quoted hereunder:

In case of proprietary purchases, the detailed justification for purchase from a single vendor is not being placed on record. As by issuing single tender, the competition is totally eliminated and the possibility of paying higher prices cannot be ruled out.

15. As stated above, this was with regard to purchase, but the logic equally applies to settlements. Such settlement with single person tenders is not approved by the Central Vigilance Commission unless it is for some very justifiable reasons. This is exactly what this Court is of the opinion. No justifiable reason for accepting single tender is given except that no one else filed. Why no retender was issued calling for competitive bids is not explained.

16. Thus, taking note of the aforesaid facts this Court is of the opinion that Railway ought to have immediately cancelled the tender on finding that only one person had responded, which was not usual and in its own interest should have taken a decision of retender immediately in October, 2008 itself. But, for some undisclosed reasons, it took them almost five months to take a decision in the matter and ultimately they accepted the sole tenders of the private-respondent. In such a situation, this Court is left with no option but to cancel the settlement, as made with the private-respondent, Ram Babu Choudhary, and direct the Railway to retender the matter and ensure healthy competition for getting the best price. That would only help people having confidence in the operating system of the Railway. The private-respondent would be competent to compete once again and by virtue of interim order passed by this Court having not worked the settlement at all would be entitled to full refund of all money deposited by him, which were deposited only recently in the month of March 2009.

17. With these observations and directions, both the writ petitions are allowed.