
(2005) 02 JH CK 0083
In the Jharkhand High Court
Case No : LPA No. 765 of 2004

Vasant Vihar

APPELLANT

Vs

The Steel Authority of India Ltd. and Others

RESPONDENT

Date of Decision : 07-02-2005

Acts Referred:

Citation : (2005) 2 JCR 238

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.;N.N. Tiwari, J

Bench : Division Bench

Advocate : Delip Jerath, Manoj Tandon and Sujit Narayan Prasad, for the Appellant; P.K. Prasad, Ananda Sen and Pandey Neeraj Rai, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Tiwari, J.—This appeal has been preferred by the writ petitioner of W.P. (C) No. 5942 of 2004, assailing the order of the learned Single Judge dated 11.1.2004, dismissing the writ petition. The prayer of the appellant in the said writ petition was for a direction to the concerned respondents to allot the City Park Restaurant at Bokaro Steel City to the petitioner in terms of Notice Inviting Tender No. TA/TC/4.5/OT-2/27/7/17, dated 28.6.2004 issued by the Assistant General Manager (Tender Cell), SAIL, Bokaro Steel Plant, B.S. City and for quashing the direction, as contained in Reference No. TA/D/ 01/420/3026, dated 22.10.2004 issued by the respondent No. 3 whereby the petitioner had been directed to close the restaurant and hand over the vacant possession. Subsequently, the petitioner also added a prayer for quashing the letter as contained in Reference No. TA/D/01/420/2044, dated 2.11.2004 whereby the writ petitioner was again directed to close the said restaurant and hand over the same to the respondents within a week from the date of the letter mentioning that the respondents have decided to allot the said restaurant to M/s. Daffodils Food, Bokaro Club Ltd., Sector V, B.S. City, Bokaro (respondent No. 5).

2. The case of the appellant is : that he was awarded contract to run the restaurant, name, City Park Lake "Restaurant" situated at City Park, BS. City,

Bokaro, initially, in the year 1988. Since then the appellant has been successfully and efficiently running the said restaurant. There was no complaint against them from any quarter. In view of the above, the competent authorities extended the agreement period from time to time till June, 2004. By Notice Inviting Tender No. TA/TC/04-05/OT-2/27/07/17, dated 28.6.2004, the respondents came out with the notice inviting tenders from the eligible person for running the said City Park Lake "Restaurant." The tender document has been made Annexure-2 to the memorandum of appeal. Responding to the said notice, the appellant submitted his tender. There were altogether three tenderers, namely, (1) Daffodils Caterers; (2) Saket Singh; and (3) Vasant Vihar Restaurant (appellant). As per the time schedule in the document, the technical bid of the tender was opened on 20th July, 2004 in presence of all the three tenderers. Among the three tenderers, the appellant alone fulfilled the eligibility criteria "having experience of running of similar type of restaurant for a period of minimum three years in their own name and style." However, the other tenderers were also allowed to participate in the price bid, though they had no experience of running of similar type of restaurant for a period of three years and the certificate which was enclosed with their tender paper was regarding experience of running the canteen. The appellant, against the said arbitrary action, made a representation before the respondent No. 2 on 29.7.2004. In the meantime, by Reference; No. TA/D/1803, dated 31.7.2004, the respondent No. 4 extended the period of the appellant's earlier contract with a stipulation that the contract may be closed at any time by giving seven days" notice. The appellant, thereafter, was allowed to participate in the price bid. The other contender M/s. Daffodils Food is a sub-contractor of Bokaro Club Ltd., who has no experience of running a restaurant. The said Bokaro Club Ltd. itself does not have any experience of running any restaurant of State Government/Central Government/Public Sector Undertaking. M/s. Daffodils Food, therefore, does not fulfill the criteria, as laid down under the clauses of Notice Inviting Tender. As per the eligibility criteria, the experience should be of running a restaurant and not canteen. "Restaurant" and "Canteen" are two different types of establishments and purposes of both are absolutely different. Experience of running a canteen cannot fulfill the requirement of experience of running a restaurant.

3. The grievance of the appellant is that the learned Single Judge, without appreciating the said fact and settled principle of law and even without directing the respondents to file counter affidavit, erroneously dismissed the appellant's writ petition.

4. In this Court, two sets of counter affidavits have been filed by the respondents, one on behalf of the Steel Authority of India Limited and its officers and another by the respondent No. 5--proprietor of M/s. Daffodils Food.

5. In the counter affidavit of Steel Authority of India Limited and others, it has been contended that the tender is for running the canteen. The said canteen is known a City Park Restaurant. The appellant had himself was having experience

of running a canteen, when he was awarded the job of running the same. The same canteen is sought to be given on contract. For that purpose tender was floated for 2004-05. There were three tenderers, the appellant quoted the lowest rent. The highest tenderer is M/s. Daffodils Food who has quoted rent at the rate of Rs. 26,071/- per month whereas the appellant quoted rent at the rate of Rs. 12,000/- and odd. The highest tenderer M/s. Daffodils Food has also deposited the security money of Rs. 50,000/- and rent for one year to the tune of Rs. 3,12,852/- in advance. The appellant's allegation that M/s. Daffodils Food does not fulfill the eligibility condition has been refuted. Respondents further stated that the work order has already been issued to M/s. Daffodils Food to the knowledge of the appellant, but the same has not been challenged by them and in that view neither the writ petition nor this appeal is maintainable.

6. M/s. Daffodils Food (respondent No. 5) in its counter affidavit stated that in the open tender it participated and quoted highest rent and on that basis the Restaurant has been allotted. Security money of Rs. 50,000/- and rent for one year to the tune of Rs. 3,12,852/- have also been deposited. The contract is now concluded and respondent No. 5 has acquired a valuable right. It has been asserted that the respondent No. 5 is competent, eligible and qualified in all respects according to the terms of the tender notice and the competent authorities have found it fit and allotted the restaurant on their full satisfaction. It has been stated that the respondent No. 5 has got experience of running a canteen of Bokaro Steel Plant, situated in Bokaro General Hospital, since 1995, in which it serves vegetarian and non-vegetarian foods with home delivery facility etc. and caters to the other required needs to the satisfaction of all concerned. The appellant, who is the third and the last bidder is not in any way competent to claim settlement in its favour and it has got no locus standi to assail the concluded contract in favour of the respondent No. 5.

7. By the impugned order dated 11.11.2004, the learned Single Judge while dismissing the appellants' writ application came to the finding that the nature of the work and services in the canteen and restaurant are the same and that the respondent No. 5 is eligible having experience of running the canteen, learned Single Judge observed that the authority inviting tender is not bound to give effect to every terms of the notice meticulously and the authority is entitled to waive the technical irregularity which is not of much significance. The learned Single Judge relied on a decision of the Supreme Court in M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others, and held that the allottee-respondent No. 5 has got all experience of running a canteen and it can run a restaurant which is similar in nature and the said contract does not warrant any judicial review.

8. Mr. Delip Jerath, learned counsel appearing on behalf of the appellant argued almost the same grounds which were taken in the writ application. Learned counsel submitted that the "canteen" and "restaurant" are two different terms and they have got different meanings and the respondents No. 5 having

experience of running the canteen, he does not fulfill the eligibility criteria of running a restaurant. Learned counsel urged that the learned Single Judge has wrongly relied upon the decision of the Supreme Court in "Poddar Steel Corporation's case" (supra). The judgment cannot be read as a statute and that the same is to be weighed in its totality. According to the learned counsel, there are several persons who had experience of running canteen, but they could not submit their tender only because they had no experience of running a restaurant and in that way peoples' participation in the said tender is lacking. The settlement of the restaurant in favour of the respondent No. 5 is improper and arbitrary as it has no required experience of running a restaurant and it lacked eligibility even to participate in the bid. The allotment in favour of M/s. Daffodils Food is, thus, wholly illegal and impermissible.

9. Mr. P.K. Prasad, learned counsel appearing on behalf of the Steel Authority of India Limited and Mr. Pandey Neeraj Rai, appearing on behalf of the respondent No. 5 M/s. Daffodils Food, emphatically supported the allotment in favour of M/s. Daffodils Food and submitted that the order of the learned Single Judge is wholly legal and sound. According to them. The decision of the learned Single Judge is based on the proposition of law as well as the decision of the Apex Court and the same does not warrant any intervention by this Court. Learned counsel further submitted that the appellant is not even a second contender as he was the last tenderer and he has absolutely got no locus standi to challenge the allotment. It was submitted that the appellant, itself, had experience of running canteen when his bid was first accepted. Having availed the settlement on the basis of said experience, it cannot challenge the eligibility of the respondent No. 5 on that ground, learned counsel further submitted that in fact the City Park Lake Restaurant is a canteen which is evident from the term of the agreement as thus, "the licensor desires to grant a licence to run and maintain a canteen at City Park Lake Area, Bokaro Steel City." The nature of job and services of restaurant and canteen are almost the same, i.e, to serve the edibles/foods/refreshments. The authorities scrutinized the bids and documents of all the tenderers and found the rate of rent quoted by respondent No. 5 as the highest, with all other eligibility and concluded the agreement in its favour. The respondent No. 5, thereafter, deposited the security money of Rs. 50,000/- and rent for one year in advance to the tune of Rs. 3,12,852/-. Work order has also been issued in favour of the respondent No. 5. The appellant has, thus, no locus standi to assail the same.

10. Testing the rival contentions of the parties in view of the provisions and principles of law as well as materials on record, we find no substance in the appellant's objections. We do not find any material deviation from the eligibility requirements in making the said settlement in favour of the respondent No. 5 who has got experience of running a canteen. From perusal of the agreement, it is evident that the licensor is desirous to grant a licence to run and maintain a canteen at City Park Lake Area. According to the respondents, "City Park Lake Restaurant" is the name of the said canteen. In "Poddar Steel Corporation" (supra), referred to by the learned Single Judge, it has been held

that an authority inviting tender is not bound to give effect to every term mentioned in the notice inviting tender in meticulous detail and is entitled to waive even a technical irregularity of little or no significance. The learned Single Judge held that "canteen"/ "restaurant" cater to the need and service of the like nature. We are in agreement with the said finding of the learned Single Judge. The allotment in question is commercial in nature. The competent authorities have examined and found all eligibilities in the respondent No. 5. They have found the tender of the respondent No. 5 with highest rate of rent, accepted the same, and issued work order after getting deposits of security amount and advance rent for one year. The authorities cannot be said to have acted arbitrarily and unreasonably in their decision making process on any of the grounds which have been raised by the appellant. In *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, the Apex Court held that in such commercial transaction, the Court cannot substitute its decision for the decision of the authorities awarding the contract on the basis of material placed before them. The learned Single Judge has, thus, rightly held that the Writ Court cannot review the decision of awarding contract in favour of the respondent No. 5, particularly, on the nature of complaint made by the appellant.

We find no illegality or infirmity in the order of the learned Single Judge. There is no merit in this appeal. It is, accordingly, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

S.J. Mukhopadhyaya, ACJ.

11. I agree.