

(2008) 06 JH CK 0014

Jharkhand High Court

Case No: None

V.I.P. Industries Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: June 30, 2008

Citation: (2008) 4 JCR 158

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.K. Merathia, J.

Heard the parties finally.

2. Petitioner has challenged the Tender Notice No. 23154 (Shiksha) 8-9, dated 4,6.2008.

3. Mr. Singh, learned senior counsel appearing for the petitioner, submitted that once a decision was taken to award the work to the petitioner and it was asked to deposit the additional security money and the draft agreement, the respondents could not advertise fresh tender for the same work, to the detriment of the petitioner.

4. Mr. Gadodia, appearing for the State supported the action.

5. The relevant facts in short are as follows. The tender in question was floated for supply, transportation and installation of polypropylene chairs for Stadium. Three tenderers, including the petitioner were required to provide samples as per the tender notice, but the petitioner furnished the sample, at last on 17.4.2008. However, it was sent for test. It was found that the sample chair was made of polypropylene. As petitioner's offer for normal chair was lowest it was selected and was asked to deposit the balance EMD and enter into the agreement, by letter dated

30.4.2008. But then a letter dated 17.5.2008 was issued to the petitioner, asking it, to supply sample, conforming to the specifications so far as "ribs" are concerned, within 10 days, failing which ex parte decision could be taken. Petitioner replied to this letter by its letter dated 21.5.2008 inter alia saying as follows:

Further the size of the ribs viz 14 mm x 5 mm as mentioned by you is a specific in nature and you would appreciate that each mould is different from the other. The moulds of such specifications as prescribed by you are of proprietary design and are not the standard moulds that are used in normal circumstances. However, we are able to and willing to deliver the chairs with such special requirements of the specific moulds. You may appreciate that designing and manufacturing the chairs with requirements of such special nature would require extra time and resources from our side. Accordingly, while we confirm that we convey our ability to supply such size of ribs, it will take additional time of 3 to 4 weeks for delivery of the chairs in this process. We request you to consider the same and grant us the additional time of approximately 4 weeks for completion of the order. In case you require us to provide you the sample for the same please convey your final approval at the earliest on the same considering the time element taken for making available the said specification.

We assure you that we will supply the Chairs strictly as per the said sample and other standards specified in the said Tender offer and the sample approved by you.

Then by letter dated 29.5.2008, petitioner asked for seven days time to supply sample, but it was not supplied. In these circumstances, a decision was taken to cancel the tender and then fresh tender was advertised.

6. Petitioner took part in the tender in question with eyes open, about the specifications. If the petitioner wanted to say anything about the specifications, it should have done so at the earliest opportunity.

7. It is true that there is lack of due diligence and care on the part of the respondents also. For example, admittedly the thickness of "20 mm" was wrongly mentioned in the tender notice, and then again in the said letter dated 17.5.2008. It could be seen from the naked eyes whether the sample had "ribs" or not. Without being fully satisfied, the respondents should not have issued the letter dated 30.4.2008 informing the petitioner that it was selected and it should deposit the balance of EMD and execute agreement. It is also to be noted that the respondents have been changing the specifications in the tenders. In the fresh tender floated on 4.6.2008, so far as "ribs" are concerned it is stipulated that "Ribs numbers may vary according to technical requirements." This appears to be a vague specification which again may give rise to complications.

8. In these circumstances, I was inclined to give opportunity to the petitioner to submit its tender but Mr. Singh declined.

9. In my opinion, it is not possible to grant the reliefs sought for in this writ petition as there was lack of due care and diligence on the part of petitioner also, and it will not be proper to interfere with the tender in question. Accordingly this writ petition is dismissed.

10. Let a copy of this order be given to Mr. S. Gadodia, as prayed.