

(2011) 03 JH CK 0024**Jharkhand High Court****Case No:** Writ Petition (C) No. 3887 of 2010

A.K. Construction

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: March 23, 2011**Hon'ble Judges:** R.K. Merathia, J**Bench:** Single Bench**Judgement**

R.K. Merathia, J.

Mr. A.K. Mehta, learned Counsel for the Petitioner, submitted that the work with regard to Tender Notice No. 3/2010-11 was given to Respondent no, 8-M/s Harsh Construction after relaxing condition Nos. 11 and 12 contained in Tender Paper, and had the Petitioner known that such clauses would be relaxed, it could have also taken part in the tender. He further submitted that the Secretary, Rural Development Department, Government of Jharkhand by his letter dated 22.5.2010 addressed to all the Deputy Commissioners of Jharkhand asked them to follow the PWD Code according to which, the tender papers were to be sold from three places i.e. office of the Executive Engineer, Superintending Engineer and Chief Engineer, but in this case the tender papers were sold only from the office of the Executive Engineer.

2. Learned Advocate General, in reply, submitted that the said letter of the Secretary was directory in nature He further submitted that in view of the advancement of the technology, it was not thought necessary to sell the tender papers from all the three offices as it was given on the website and it was advertised in local newspaper. He further submitted that admittedly Petitioner was not eligible as per clauses 11 and 12 of the tender paper, and it is not known whether he was eligible as per Clause 3 thereof. He relied on paragraph 7 of [Air India Ltd. Vs. Cochin Int. Airport Ltd. and Others,](#)

3. Respondent No. 8 in its counter affidavit has inter alia said that as no work was awarded to it there was no question of complying with clauses 11 and 12 by it.

4. It is true that the Respondents should have sold tender papers from the office of Superintending and chief Engineer also, but on that ground, I am not inclined to interfere. Tender was notified in local newspaper and on website. Other parties took part in it.

5. However, it could not be disputed by learned Advocate General, that clauses 11 and 12 were waived/relaxed while awarding work to Respondent No. 8, though he offered some explanation for such decision. According to the Petitioner it did not take part in the tender as he was not eligible in terms of Clause 11 and 12. It is settled position that if any terms is to be waived/relaxed, it should be notified so that the parties who become eligible after such relaxation/waiver, may also take part in the tender.

6. In the circumstances, the work order issued in favour of Respondent No. 8 in relation to Tender No. 3/2010-11 is set aside with liberty to the Respondents to proceed in accordance with law, With these observations and directions, this writ petition is disposed of.