

(2004) 10 JH CK 0005
Jharkhand High Court
Case No: Writ Petition (C) No. 6208 of 2003

Shailesh Kumar
Ganesh

APPELLANT

Vs

State of Jharkhand
and Others

RESPONDENT

Date of Decision: Oct. 7, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2005) 4 BC 252 : (2004) 3 BLJR 1905 : (2004) 4 JCR 546

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: Ajit Kumar, M.K. Sinha, D.K. Pathak and V.K. Gupta, for the Appellant; J.C. to A.G., Rajesh Kumar and Navin Kumar, for the Respondent

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

Petitioner has prayed for quashing the decision dated 1.12.2003 of the departmental committee recommending for allotment of tender in favour of respondent No. 5 and also for quashing the order dated 4.12.2003 issued by the Chief Engineer. Rural Development Special Range, Jharkhand. Ranchi whereby the tender allotted to the petitioner has been cancelled.

2. Petitioner's case is that the respondents issued notice inviting tender for awarding as many as 46 different construction work within the District of Deoghar. Pursuant to that notice the petitioner submitted tender for the work contained in Item No. 41 and submitted relevant papers. Since the petitioner was found lowest tenderer, the work order was allotted to him vide order 2.5.2003. When the allotment order in favour of the petitioner was annulled at the instance of respondent No. 5, the petitioner knocked this Court In WPC No. 2710/2003.

Consequently, work was allotted to the petitioner vide letter dated 25.8.2003 and an agreement was executed by the respondents on 22.9.2003. It is contended by the petitioner that about two months after the execution of the agreement, respondent No. 5 moved this Court-in WPC No. 5313/2003 which was disposed of on 11.11.2003 with a direction to the respondents to hear the parties and decide the allotment. In compliance of the aforesaid direction, respondent No. 2 on the basis of the recommendation of the committee against cancelled the agreement of the petitioner.

3. Respondent Nos. 1 to 4 and 6 have filed their counter" affidavit stating, inter alia that the committee was constituted in view of the order passed in WPC No. 5313/2003 and the committee after hearing the parties decided to issue the work order in favour of respondent No. 5, a copy of the order has been annexed as Annexure-B to the counter-affidavit. It is stated that the committee considered respondent No. 5 to be the only competent person for allotment of the work.

4. Respondents No. 5 has also filed a counter-affidavit stating that the committee constituted by the respondents evaluated all the necessary documents and found the claim of this respondent on a better footing and as such recommended for allotment of work in his favour. It is stated that on the one hand the petitioner failed to produce the residential certificate and on the other hand this respondent is a resident of Jamtara Block about 10 Kms. away from the place of work and, therefore, he is competent to execute the work.

5. I have heard Mr. Ajit Kumar, learned counsel appearing for the petitioner, Mr. Rajesh Kumar, learned counsel appearing for respondent No. 5 and learned J.C, to A.G.

6. The NIT No. 01/2002-03 and its corrigendum have been annexed as Annexure-1 and 1/1 to the writ petition. As per clause 12 of the said NIT. the tenderers were required to submit the Labour Licence, Character Certificate, up-to-date Income Tax and Sales Tax Clearance Certificate. The tenders submitted by the tenderers including the petitioner and respondent No, 5 for the works were opened and processed and finally the works order was issued on 2.5.2003 in favour of the petitioner. Petitioner thereafter approached the respondents for the execution of the agreement but he was Informed that the Chief Engineer cancelled the allotment order of the petitioner and allotted the same in favour of respondent No, 5. A copy of the letter has been annexed as Annexure-4 to the writ petition. From perusal of Annexure-4, it appears that the Chief Engineer after cancelling the allotment work to the petitioner allotted It to respondent No. 5 at the behest of Minister, namely. Mr. Sibu Soren. M.P. The letter reads as under :

"Ish karya ki niuida ke bare mein kai avedan aye hain. Sabhi ko dekha.

Manniya Shri SibuSoren M.P. ne bhi ish karya ke nivida ke sambandh metn uistrit charcha auamjankari dee. Shri Doman Mandal ish put karya sthal ke sabse nazdeek

ke sanwedak hain. Anya log rajya ke baahar ke ya site se door ke hain. Kripaya punah vichar karte huye ish niuida ko Shri Doman Mandal ke paksh mein sivikrit karein.

Purua ki dee gai swikriti raddh karein. Kripaya sabhi sanuedako ka der saman hain aur B.O.Q. der per hain. Kripaya tadanusar agretar karuai karein."

7. The petitioner immediately moved this Court by filing writ petition being WPC No. 2710 of 2003. In the said writ petition the Engineer-in-Chief, R.E.O., Jharkhand appeared in person and stated that he will withdraw the said cancellation and accordingly it was withdrawn. The writ petition was disposed of on 20.6.2003 by passing the following order :

"In pursuance of Court's order. Dr. C.K. Singh, Engineer-in-Chief, R.E.O., Jharkhand is present.

He states that no formal order of cancellation of contract of petitioner has been issued. He accepts that "note given" by him dated 11th June, 2003, as contained In Annexure-3 is not In accordance with law and states that the said note will be withdrawn and will not be acted upon.

In view of the stand taken by Dr. C.K. Singh, Engineer- in-Chief, no further direction is given at this stage.

It is made clear that if the competent authority intends to pass any appropriate order, they may do so. in accordance with law, for good valid ground after notice and hearing the petitioner,

The appearance of Dr. C.K. Singh is dispensed with.

The writ petition stands disposed of."

8. The Chief Engineer thereafter considered all the documents of the tenderers and finally allotted the works order in favour of the petitioner on 25.8.2003 and thereafter agreement was executed between the petitioner and the respondent-authority on 22.9.2003.

9. Curiously enough, when the petitioner after the said agreement completed substantial part of work, respondent No, 5 approached this Court in WPC No. 5313 of 2003 and the writ petition was disposed of on 11.11.2003. The order reads as under :

"Heard learned counsel for the petitioner and learned counsel for the State.

In view of the order, which I intend to pass, it is not necessary to issue notice to the respondents.

The learned counsel for the petitioner has made a short submission that neither while passing order on 25th June, 2003 in WP (C) No. 2710 of 2003 (Annexure-3) the

petitioner was before this Court nor he was heard before passing the impugned order by Chief Engineer as contained in Memo No. 1302 dated 25.8.2003 (Annexure-4). It is further submitted that while passing the order by this Court (Annexure), the competent authority were given liberty to pass an appropriate order in accordance with law to good valid ground after notice and hearing the petitioner of that case, namely, Shri Shailesh Kumar Ganesh. who Is the respondent No. 5 in this case. But, while issuing the impugned order (Annexure-4). no reasons have been given.

In that view of the matter, the petitioner is granted liberty to move the Chief Engineer concerned within 10 days from today raising his grievances, who will hear the petitioner and other L-I Contractors including Sri Shailesh Kumar Ganesh, who is respondent No. 5 in this case within a period of three weeks from the date of receipt of representation of the petitioner and pass an appropriate order regarding the allotment of the work in question, in accordance with law, giving good and valid grounds.

With these observation and direction this writ petition is disposed of."

10. From the aforesaid order, it is evident that respondent No. 5 did not bring to the notice of this Court about the execution of the agreement with the petitioner and the fact that petitioner has already executed part of the work. The aforesaid order was passed without issuing notice to the petitioner and only a direction was issued to consider the grievance of the petitioner and to pass appropriate order in accordance with law after hearing to the petitioner and respondent No. 5. It is only on the basis of this order the Chief Engineer constituted a committee who took a decision recommending cancellation of petitioner"s tender merely on the ground that he is not a local resident and place where the work is to be executed. On the face of the decision of the committee, it transpires that the cancellation of the contract of the petitioner is wholly arbitrary, illegal and on extraneous consideration.

11. Taking into consideration the entire facts of the case I am, therefore, of the opinion that the committee has failed to consider that after execution of agreement the same cannot be cancelled in such a manner.

12. This writ application is therefore allowed and the impugned order passed by the respondents is quashed. Consequently the petitioner shall complete the execution of the work.