

(2011) 01 JH CK 0108
Jharkhand High Court
Case No: I.P.A. No's. 284 and 295 of 2010

Simran Enterprise

APPELLANT

Vs

The State of
Jharkhand and Others

 Jharkhand State
Forest Development
Corporation Ltd. and
Another Vs Simrar
Enterprises and
Others

RESPONDENT

Date of Decision: Jan. 10, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2011) 2 JCR 221 : (2011) 6 RCR(Civil) 2126 (2011) 1 LJLR 569

Hon'ble Judges: Bhagwati Prasad, C.J; Dhirubhai Naranbhai Patel, J

Bench: Division Bench

Judgement

1. Both the appeals having been preferred against a common order dated 5.7.2010, passed by the learned Singh Judge In W.P.(C) No. 202 of 2010, they are being disposed of together by a common order.

2. In I.P.A. No. 284 of 2010, the Petitioner/Appellant is a firm, which has filed tender. The argument before us is that the tender filed by it was defective and, therefore, it deserved to be rejected. The further argument of the Petitioner/Appellant is that in any case when the Petitioner's tender was required to be rejected, it could not have been awarded a contract for a place for which he did not bid. On these counts, the writ petition was filed by the Petitioner before the learned Single Judge. The learned Single Judge of this Court has not countenanced the argument of the learned Counsel for the petitioner/appellant and has rejected the writ petition. Same arguments have been repeated before us.

3. We find that in Column No. 5, the petitioner/appellant has sought allotment of R.R. Simdega West (E). There is a specific mention of this particular region. The Petitioner's tender was the highest amount for this region, therefore, the Petitioner/Appellant was awarded the contract. In that view of the matter, it does not lie in the mouth of the Petitioner/Appellant that since there were certain wrong entries in the tender form, therefore, tender could not have been awarded to it. The premises on which the argument is based is misleading and misconceived. If the tender form has been wrongly filled up by the Petitioner and it has left scope for arguing after filing of the tender, then such a scope have much to be desired on behalf of the Petitioner. Clause 15 of the departmental regulation reads as under:

Unit number is not entered in the tender form according to provincial range/part provincial range, then submission in that regard will be considered in favour of provincial range/part provincial range.

From the aforesaid, it is clear that it permits the department to make allotment for the mentioned territory.

4. According to this clause, if a territory or part of territory has been filled up, then the department is to understand it in relation to the territory even if the unit numbers are not filled up. In the instant case, as territory has been defined in Column No. 5 as R.R. Simdega West (E), which has been awarded, it cannot be said that the award of the contract was not in terms of the departmental regulations.

5. For such an award, no contract was entered into. The department, thus, suffered the loss of revenue. In any case, the Petitioner having committed a mistake, if wants to take advantage of its own mistake, then conduct of the Petitioner is writ large, where he considers himself to be smart enough to mislead the department in every direction by having filled up the form with wrong details. Such wrong details entail the Petitioner with an stigma that his conduct was not bona fide and in a writ jurisdiction under Article 226 of the Constitution of India, if the Petitioner does not come up with a bona fide conduct, it deserves to be non-suited.

6. The same order is under challenge by way of an appeal, filed by the State Government being L.P.A. No. 295 of 2010. The mistake in the tenderer form was obvious and this mistake appears to be not clerical. It appears to be designed to put the authorities in a kind of suspicion. Out of nine columns, four were just incidental and five columns, if read in each others context, are wrong. If wrong columns are filled in deliberately then any correction. In the tender cannot be said to be permissible. Such gross mistakes were not required to be corrected and any such correction was uncalled for, as has been ordered by the learned Single Judge. Observations of the learned Single Judge regarding correction are not approved.

7. In that view of the matter, the argument of the learned Counsel for the tenderer has not been accepted by this Court, holding that its conduct was not such that it deserved any sympathy from this Court. Thus, the finding of the learned Single

Judge are not correct.

8. As regards the security money deposited by the tenderer, the law is very clear that if the agreement is not signed, as offered, then the security is required to be forfeited. In view of the fact that tender of the Petitioner/Appellant was approved and no follow up action was taken, this resulted into loss to the Government. In that view of the matter, the findings of the learned Single Judge that the security amount's to be returned is not approved. The security is required to be forfeited. To the above extent, the order of the learned Single Judge stands modified.

9. Both the appeals stand disposed of accordingly.