
(2007) 09 PAT CK 0144

Patna High Court

Case No: CWJC No. 11040 of 2007

Shri Krishna Fevicons (Pvt.) Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Sept. 17, 2007

Citation: (2008) 1 PLJR 691

Hon'ble Judges: Mridula Mishra, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mridula Mishra, J.

Heard the counsel appearing for the petitioner, for Bihar State Construction Corporation Ltd. (hereinafter to be referred to as "BSCC") and the Advocate General appearing on behalf of the State. An intervention application being I.A. No. 5262 of 2007 has been filed on behalf of Nagarjuna Construction Company Ltd. for its impleadment as a party respondent and allow him to participate in the adjudication of principal issues involved in this writ application, as in the technical bid round of the notice inviting tender for restoration of Eastern Gandak Canal System Barrage and its appurtenants, Intervenor was the any Company which was left in the contest, and subsequently his bid was rejected.

2. Considering the fact that the intervenor has its own case against rejection of its claim and also that intervenor is supporting the case of the petitioner, it should file separate writ application for redressal of its grievance.

3. I.A. No. 5262 of 2007 is rejected.

4. Petitioner has also filed another interlocutory application vide I.A. No. 4843 of 2007 for stay of the order of allotment and further re-delegation of work lease by BSCC to any other agency.

5. Petitioner is a Class-IA Registered Company with Road Construction Department having vast work experience in the field of construction of big projects. This application has been filed for quashing tender notice No. 2GC-2006-07 and work order allotted pursuant thereto in favour of BSCC stating that it is against the terms of NIT. On 28.3.2007 a notice was published by the Water Resources Department inviting tenders for execution of restoration of Eastern Gandak System including Barrage and its appurtenants.

6. The Notice inviting tender provided for certain criteria for qualification which included:

(i) Furnishing information that the bidder had access to or availability of credit facilities (minimum 10% of estimated cost).

(ii) Proof of ability to invest minimum of cost upto 25% of the contract value.

(iii) Proof of construction work performed for each of the last five years.

(iv) Proof of experience in work of a similar nature and size for each of the last five years and the details of works underway.

Clause 4.5 of the NIT required that in the last five years the bidder have achieved in any one year, a minimum annual financial turnover (in all classes of civil engineering construction works only), volume of construction work of at least the amount Rs. 155.055 crores. He should have completed work of value not less than 31.0111 crores. He should have executed in any one year quantities (i) brick work amounting to Rs. 0.45 lac (54,000 cubic meter), (ii) cement concrete including R.C.C. and P.C.C. work of 0.20 lac (20,000 cubic meter), and (iii) earth work in both excavation and embankment (combined quantities) of 69 lacs cubic meter. Pursuant to the issuance of the NIT the BSCC and the Intervenor Nagarjuna Construction Company Limited submitted its tenders. The technical bid was to be opened on 8.5.2007 in presence of Evaluation Committee. Financial Bid was to be opened with the approval of the Evaluation Committee.

7. The contention of the petitioner's counsel is that the respondent BSCC did not meet even the qualifying criteria, as such it ought to have been disqualified at the stage of technical bid itself by the Evaluation Committee. Only the technical bid of Nagarjuna Construction Company Ltd., Hyderabad, was qualified on its merit but on the basis of extraneous consideration the technical bid of BSCC was approved. The contract was also awarded to BSCC by the work order dated 2.7.2007 in spite of the fact that it did not fulfill the qualifying requirements as provided in Clause 4.3 and Clause 4.5.

8. It has been submitted that the respondent by incorporating stringent condition in NIT have eliminated a large number of agencies who could have suitably executed the work. It has also been stated that the allotment of work in favour of BSCC is in the teeth of the decision of the Counsel of Minister to wind up the Bihar State

Construction Corporation.

9. Counter affidavits have been filed on behalf of the respondents No. 5 and 6 who are Chief Engineers, Water Resources Department, Valmiki Nagar and Muzaffarpur and also respondents No. 9 and 10 who are the Chairman of BSCC and its Managing Director.

10. The respondents No. 2 to 5 in their counter affidavit have stated that the project for execution of restoration of Eastern Gandak Canal System including Gandak Barrage and its appurtenants is a scheme known as Rastriya Sam Vikas Yojana which is sponsored by Government of India. The scheme consists of about 6000 Kms. of length. On completion of this project it is going to restore the irrigation potential of 3.50 lacs hectares situated in the district of West Champaran, East Champaran; Muzaffarpur and Vaishali etc. The Project is to be completed by March, 2010 within three financial years and the fund released for it amounts to Rs. 50/- crores. Earlier also NIT were issued for this project but it could not succeed. This was for the 4th time that in May, 2005 tender notice was published. Nine agencies purchased tender documents. Petitioner did not purchase any tender documents. He also did not participate in pre-bid meeting, where he could have put his quarries. Only two bids were submitted one by NCCL, Hyderabad and another by BSCC. Technical bid of BSCC and NCCL, Hyderabad were accepted. But the financial bid of NCCL, Hyderabad was rejected since she quoted unreasonable higher rate. Public Undertaking like BSCC had quoted proper and reasonable rate which was going to reduce financial burden on the State Government. As such State Empowered Committee headed by the Development Commissioner declared highest successful bidder, i.e. BSCC Limited.

11. In reply to other submissions of the petitioner it has been stated that on the recommendation of the Administrative Reforms Committee the Council of Minister took a decision in March, 2007 to wind up the BSCC, Patna but this decision was not implemented in view of Company Appeal No. 5 of 2007 pending in Hon"ble High Court. Subsequently it was decided at the level of the Department to revive BSCC Ltd. in order to check the monopoly of contractors quoting exorbitant higher rate and for utilising the infrastructure of BSCC in timely completion of Irrigation projects with ensured specification and quality. A proposal for revival of BSCC Ltd. was sent to the Finance Department for its concurrence and to get approval of Council of Ministers. The proposal for withdrawal of decision to wind up BSCC and for its revival is under active consideration of the State Government. It has also been stated that subsequently in view of the order passed in C.W.J.C. No. 1359 of 2007 dated 2.8.2007 green signal has been given to the BSCC for execution of the work. It has also been stated that agreement has already been executed in favour of BSCC. BSCC has also invited tender for subletting the work.

12. In the counter affidavit filed on behalf of respondent Nos. 9 and 10 similar statements have been made. It has been stated that preference has been given to

the Government Undertaking in order to strengthen the BSCC in all respect. The relaxation has been given in terms of the Notice inviting tender but it is not applicable for private agencies. In the said counter affidavit it has also been stated that the writ application is not maintainable as the petitioner has no locus standi to file the instant petition because it neither purchased the tender documents nor participated in tender process. He is not entitled to challenge the validity of the decision taken by the Tender Committee and approved by the State Empowered Committee headed by the Development Commissioner.

13. Considering the submissions and pleadings of the parties I find that the petitioner has filed this writ application challenging the award of contract by a public authority. The final decision taken in the allocation of contract can be interfered with only when the Court is satisfied that there is some elements of Public Interest involved for entertaining such a petition. In fact, petitioner is not even a tenderer. He is a outsider. Petitioner is asking for interference in the matter on account which does not need any interference. The delay in execution of such project which relates the interest of large number of farmers, without any rhyme or reason is not justifiable. Further I find that Clause 29 of technical bid reads as follows:

"Notwithstanding Clause 28, the Employer reserves the right to accept or reject any bid, and to cancel the Bidding process and reject all Bids, at any time prior to the award of contract, without thereby in incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the ground for the Employer"s action."

14. The petitioner has no right to maintain the instant writ petition because neither he purchased the tender documents nor he participated in the tender process. Accordingly, this application is dismissed.