

Khursheed Alam Vs. State of Bihar and ors.

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Court : Patna

Decided On : Dec-23-1992

Judge : Bisheshwar Prasad Singh, J.

Acts : [Constitution of India](#) - Articles 14, 99 and 226

Appeal No. : Civil Writ Jurisdiction Case No. 6378 of 1991

Appellant : Khursheed Alam

Respondent : State of Bihar and ors.

Advocate for Def. : K.N. Jain, Shyam Narayan Sinha, Shakeel Ahmad Khan and Abdul Kalam, Advs.

Advocate for Pet/Ap. : Nasrul Hoda Khan, Adv.

Judgement :

Bisheshwar Prasad Singh, J.

1. The petitioner herein is aggrieved by the order dated 16-5-1991 (An-nexure 1) whereby the Chief Engineer. Rural Engineering Organisation (R.E.O. for short), respondent No. 5 herein, has directed the Superintending Engineer, R.E.O. (respondent No. 6) to divide the work between the petitioner and Quasim Raza (respondent No. 8 herein). According to the petitioner, the aforesaid order is illegal, since he was allotted the work after inviting tenders and the order

(Annexure 1) has been passed under political influence. He has, therefore, prayed that Annexure 1 be quashed and respondent No. 7 be restrained from acting in accordance therewith.

2. The facts of this case will disclose the manner in which the governmental work of a routine nature is interfered with by politicians who bring all sorts of pressure on the officers of the government to act in a particular manner so as to confer favour on the person/persons in whom they are interested. The practice has attained notoriety and must be stopped at any cost. When the political personalities get involved in such routine work of the Government, the concerned Minister is also pressurised into passing orders favouring one or the other person. This has resulted in complete demoralisation of the officers concerned and the continuance of such state of affairs is bound to adversely effect the functioning of the Government. While it is true that representatives of the public are bound to bring to the notice of the Government any deficiency or maladministration that may come to their notice, it is certainly not their function to interfere with the day to day working of the Government.

3. There is hardly any dispute about the facts of the case. They are as follows: An advertisement was issued inviting tenders for construction of a road from village Madarpur to village Jurari in the district of Munger. Several persons filed their tenders in response to the aforesaid advertisement published on 5-3-1991. The petitioner as well as respondent No. 8 were found to be the lowest tenderers, but since the petitioner was found to be senior to respondent No. 8 as a contractor, having regard to his date of registration, the Superintending Engineer (respondent No. 6) advised the Executive Engineer (respondent No. 7) to issue work order in favour of the petitioner, and to get the necessary agreement executed by him. Consequently, the Executive Engineer called the petitioner to his office to sign the agreement. The petitioner claims that he signed the agreement on 14-4-1991, and that the same was countersigned by the concerned authorities. His case is that respondent No. 8, Quasim Raza, persuaded one Mr. Ram Nath, M.L.A. to write a letter to the Chief Engineer requesting him to call for the file from the office of the Superintending Engineer. Accordingly, the Chief Engineer called for the file, but after a going through the same he directed the Superintending Engineer by

Annexure 2 A dated 27-4-1991 to get the work done through the petitioner in accordance with the terms of the agreement. The same communication discloses that he called for a report on the letters of Sri Ram Nath Yadav, M.L.A. and Sri Sakuni Choudhary, M.L.A.

4. The case of the petitioner is that the Minister of State, Sri Jai Prakash Yadav, was again approached by political persons, and by order dated 24-8-1991 he directed that the work be distributed equally between the petitioner and respondent No. 8. The note sheet of the department, which has been annexed as Annexure 6 makes an interesting reading. It appears that on 6-7-1991 the Engineer in Chief had objected saying that the claim of the members of the legislative assembly that work should be allotted only on the recommendation of the local M.L.A. was not justified in view of the Department's Memo No. 790 dated 29-1-1991. Cabinet (Vigilance) Department's Memo No. 2347 dated 3-12-1983

provided for allotment of work to the senior-most tender and there was no provision for distribution of work. In any event, there was no justification for distribution of work involving Rs. 1.60 lakhs. He was of the views that the work should be allotted to the seniormost tender subject to the conditions mentioned in the memo. He sought directions from the Department. The noting of the Commissioner-cum-Secretary dated 8-7-1991 discloses that he took the view that the Engineer-in-Chief could himself take a decision. Below the noting it is mentioned that one Sri Prayag Choudhuri, M.L.A. had made an application to the Minister of State and, accordingly, the file had been called for from the concerned Department. The Commissioner-cum-Secretary on 25-7-1991 directed that the matter be placed before the Minister of State. On 24-8-1991 the Minister of State directed that the work be distributed equally between the petitioner and respondent No. 8. The Engineer-in-chief again wrote to the Commissioner-cum-Secretary that there is neither any rule nor was there any justification for distribution of work, and that it was necessary to reconsider the matter. The Commissioner-cum-Secretary entirely agreed with the noting of the Engineer-in-Chief and put up the matter before the Minister of State so that he may reconsider the matter if so advised. The Minister, however, directed that his earlier order be obeyed.

5. There is also a letter dated 1st June, 1991 written by the Superintending Engineer to the Engineer-in-chief, which is annexed as Annexure 5. This was in response to the letter of Engineer-in-chief dated 27-5-1991. From this it appears that three letters were written by Md. Wali Rahmani dated 25-3-1991, 3-4-1991 and 9-4-1991. Similarly, Sri Dhanraj Singh and Sri Sakuni Choudhary, both members of the legislative assembly had recommended allotment of work to the petitioner.

6. It is, therefore, apparent from the facts stated above that the petitioner as well made political approaches to secure the work. Similarly, respondent No. 8 also approached members of the legislative assembly to espouse

his cause. In my view, both are guilty to the same extent and no sympathy can be shown to either of them. This has become the common practice which is wholly unwarranted in law. I fail to understand why the State of Bihar has not so far made it a condition that if any contractor brings pressure on the Government through politicians to secure a particular work, he should be disqualified from consideration. The State will be well advised to incorporate such a condition in the advertisement itself.

7. Coming to the merit of the case, respondent No. 8 claims a preferential treatment because he is one of the beneficiaries under the scheme. The petitioner makes a similar claim while denying the claim of respondent No. 8. It is not possible for me to go into this question of fact. Unfortunately, the order of the Minister of State is a one line order which does not disclose any reason as to why he was persuaded to take a view different from the one taken by the officers of the Department. Prima facie, it appears to me that there was nothing illegal in the allotment of work to the petitioner. If there be any other consideration permissible in law which justified the division of work between two contractors, certainly that could be done. The nothing of the Engineer-in-Chief with which the Commissioner-cum-Secretary has agreed, would show that there is no provision for/ distribution of work in such cases, and yet the Minister of State has passed an order for distribution of the work between two tenderers without recording any reason and without referring to any rule, circular or order which justifies such distribution of

work. It is no doubt true that it is open to the Minister to take a view different from the view taken by the officers of the Department. However, justice demands that when he takes such a view, he must record his reasons as briefly as it may be so that if challenged one can examine the reasons disclosed in the order. Unfortunately, in the instant case no reasons whatsoever have been recorded and, therefore, it is not possible to say whether the order is sustainable in law or not. Under these circumstances, only fair order which I can pass is to quash the order of the Minister of State

dated 24-8-1991 and the consequent order issued by the Chief Engineer (Annexure 1) distributing the work between the petitioner and respondent No. 8, and to direct that a fresh decision be taken after considering the relevant rules etc. and after recording reasons for the order that may be passed. It will be open to the Minister of a State (respondent No. 2) to pass any order in accordance with law. He will apply his mind to the facts as well as the law and pass a reasoned order. Nothing said in this order shall be construed as an expression of opinion in favour of any of the parties.

8. This writ petition is allowed to the extent indicated above.

9. Before parting with this case I may only observe that the petitioner is also guilty of making political approaches to secure his private ends, and this by itself would have furnished a good reason for this court to refuse to interfere with the impugned order. However, since the impugned order has also been passed on similar consideration it would be unjust not to quash the same. I may again observe at the cost of repetition that the Government will be well advised to evolve ways and means by which such political interference in the day to day working of the Government is not only discouraged, but prevented.

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