

Pramod Narayan Sinha Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Aug-08-2001

Judge : Radha Mohan Prasad, J.

Appeal No. : C.W.J.C. No. 9823 of 2001

Appellant : Pramod Narayan Sinha

Respondent : The State of Bihar and ors.

Disposition : Petition Dismissed

Judgement :

Radha Mohan Prasad, J.

1. In this writ petition, the petitioner has sought for quashing of Sub-clauses (Gha) and (Cha) of Special Condition No. 1 of the notice inviting tender dated 20th July, 2001, issued by the Executive Engineer, N.H. Works Division, Bihar Sharif, contained in Annexure 1, and has further sought for amendment/ modification in the said condition in the line of the notice inviting tender dated 5th June, 2001, issued by the same Executive Engineer for similar nature of contract work, contained in Annexure 3, and to allow him to participate in response to the impugned tender. Under Sub-clause (Gha) of the impugned tender, the tenderers are required to file certificate that in the last annual turnover of three years, the turnover for one year is of over three and half crores, certified by the Chartered

Accountant and under Sub-clause (Cha), the tenderers are required to furnish the certificate from the rank of at least Executive Engineer that in the last three years he had the work experience of B.M. and S.D.C. by Paiver Finisher on National Highway Sub-Division/ Road Construction Department.

2. In short, the relevant facts are that the petitioner claims to be a registered Class I-A Contractor carrying on its contract business in the respondent Department. The petitioner claims to possess sufficient equipment, plant and technical expert staff for properly running of its contract business and has been executing the road construction work in Bihar. According to the petitioner, Class I-A Contractor is eligible to take up works up to any amount as per the registration rules and regulations. The petitioner, being eligible for participation in response to the earlier tender notice dated 5-6-2001 (Annexure-3) which related to 'Widening and Improvement of N.H. 82 in K.M. 4 to 13' for an estimated cost of Rs. 1,49,45,636/-, participated in the tender purchased bill of quantity and submitted his tender as there was no condition as inserted in Clauses (Gha) and (Cha) of the impugned tender notice.

3. The impugned notice inviting tender relates to periodical repair work under National Highway Division, Bihar Sharif for the year 2001-2002, the estimated cost of which is Rs. 1,72,00,000/-. According to the petitioner, insertions of the impugned condition have no nexus at all for executing the work in question and the petitioner who has recently acquired a new plant and technology, has been mala fide deprived of the work in question as it does not fulfil the said condition resulting in that only two and three Contractors will be eligible to get the work creating monopoly and denying healthy competition.

4. Mr Prasad, learned Senior Counsel appearing for the petitioner has submitted that the respondents have put some unreasonable, mala fide and irrational condition for eligibility of contract work with a view to prevent other Contractors like the petitioner from participating in the said tender and facilitate only favourable Contractors. According to the learned Counsel, sub-classification within Class I Contractor is not permissible and is violative of Article 14 of the Constitution besides contrary to the prescribed standard, as contained in Annexure 4 to the

supplementary affidavit filed on behalf of the petitioner. It is submitted that under revised Bihar Enlistment of Contractors Rules, 1992, the Contractors for execution of works are registered in different classes and Class I-S and I-A, both, which are at the top of the list of Contractors for registration, contained in Rule 2 of the said Rules, are qualified to tender for works up to Rs. 200.00 lakhs and, thus, the respondent authorities have clearly acted arbitrarily in treating the petitioner differently. Moreover, according to him, the Executive Engineer is not competent to insert the impugned conditions and as per Schedule of Delegation of Financial Powers to the Officers of Irrigation and Electricity Department, contained in Annexure A of P.W.D. Code, the State Government is the only competent authority to accord approval of any change.

5. this Court fails to appreciate as to how the provisions referred to by the petitioner has any relevance to the present case. Revised Bihar Enlistment of Contractors Rules, 1992, contained in Annexure-B to the Bihar P.W.D. Code, on which reliance has been placed relates to registration of the Contractors for execution of works in the Department of Water Resources and not in relation to National Highway Road Division. Annexure-A to the P.W.D. Code referred to by the learned Counsel for the petitioner also relates to Schedule of Delegation of Financial Powers to the Officers of Irrigation and Electricity Department and not to the officers of the Road Department or National Highway Road Division. this Court also fails to appreciate as to how Annexure-4 is also of any help to the petitioner. It is not a standard form as contended by the learned Counsel for the petitioner. Learned Counsel for the petitioner has failed to show from any rule or even governmental instruction prescribing the standard conditions for notice inviting tender. Annexure-4 appears to be bill of quantity issued to the petitioner on his depositing Rs. 10,000/- eventually to be drawn in P.W.D. Form 2 and indicating the date and time of receipt of sealed tender on approved bill of quantity, but it does not provide that even such tenders which do not fulfil the impugned conditions shall be entertained.

6. The submission of the learned Counsel for the petitioner that it amounts to creating sub-classification is wholly misconceived and unfounded. In the absence of any specified requirement either under the rules or any policy decision of the

State Government, in the facts and circumstances of the present case, this Court is unable to accept that the impugned action of the respondents amounts to creating sub-classification and violates Article 14 of the Constitution of India.

7. In my opinion, earlier tender notice dated 5-6-2000 (Annexure 3) relating to different works does not also have any relevance in the present case. The Government in a welfare State has the wide powers in regulating and dispensing of special services like leases, licences and contracts etc. and the magnitude and range of such Government function is great. There cannot be any doubt that the Government while entering into the contracts or issuing quotas is expected not to act like a private individual but should act in conformity with certain healthy standards and norms and such actions should not be arbitrary, irrational or irrelevant. In the matter of awarding contracts inviting tenders is considered to be one of the fair ways. It is true that if there are any reservations or restrictions, then they should not be arbitrary and must be justifiable on the basis of some policy or valid principles which by themselves are reasonable and not discriminatory. But, in the present case, this Court does not find any arbitrariness and unreasonableness in the imposition of the impugned conditions.

8. It is true that in the notice inviting tender for the works of the estimated cost of Rs. 1,49,45,636.00, contained in Annexure 3, the impugned conditions were not there but at the same time, it is difficult to accept that the authority will not be competent to impose such conditions in any subsequent notice inviting tenders. It depends on the nature of past experience as well as the volume of work for which N.I.T. is issued. Many Contractors leave work half-way and incomplete which affects public at large and the consequence of it is against the public interest. As such, if the respondents by the impugned conditions have considered to entertain only those tenderers who are financially sound and have past experience of work C.B.M. and C.D.S. with Paiver Finisher on National Highway, this Court does not find any unreasonableness or arbitrariness in it. All those Contractors, who are financially sound and have experience to take up the work in question, are equally entitled to participate in the tender and thus impugned connotation cannot be held to be violative of Article 14 of the Constitution.

9. In my opinion, there is no question of creating monopoly by imposing such conditions. The determination whether such contract unreasonably restrains others right to trade depends on the nature of agreement and upon the surrounding circumstances which can give rise to an inference that it is intended to restrain others from entering into trade only to monopolise the same. The Supreme Court in the case of Union of India v. Hindustan Development Corporation : AIR 1994 SC988 , has held that mere offering of a lower price by itself, though appears to be predatory, cannot be a factor for inferring formation of a cartel unless an agreement amounting to conspiracy is also proved.

10. In the present case, it is only vaguely alleged that two or three Contractors will be eligible to get the work, but there is no material much less enough material brought on record to conclude that there is intention much less mala fide intention to create monopoly which too actuated by any extraneous consideration.

11. Accordingly, this Court does not find any merit in the writ petition and the same is thus summarily dismissed.

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