

Kumar and Kumar Vs. State of Jharkhand and ors.

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SooperKanoon Citation : sooperkanoon.com/515524

Court : Jharkhand

Decided On : Feb-27-2008

Reported in : [2008(2)JCR23(Jhr)]

Judge : Amareshwar Sahay, J.

Appellant : Kumar and Kumar

Respondent : State of Jharkhand and ors.

Disposition : Application dismissed

Judgement :

ORDER

Amareshwar Sahay, J.

1. Heard the parties.

2. The petitioner had moved this Court earlier in WPC No. 224/2004 making a grievance that he being the lowest bidder was issue work order for supplying two lifts of OTIS make by the Director, State Institute of Rural Development but subsequently by letter dated 29.12.2006, the Deputy Director of the said Institute cancelled the work order without any notice or opportunity to explain the allegations made against the petitioner and. therefore, it was against the principle of natural justice.

3. The said writ petition was allowed by order dated 26.2.2007 only on the ground that the work order was cancelled in violation of principle of natural justice and it was observed that if the respondents intend to proceed against the petitioner they may do so in accordance with the procedure established by law after giving proper opportunity of hearing to the petitioner.

4. Thereafter, it appears that a notice was issued to the petitioner by the respondents State Institute of Rural Development to show cause as to why the work order given to him be not cancelled and, thereafter, on compliance of the principle of natural justice as directed by this Court in the earlier writ petition, the impugned order dated 19.3.2007 as contained in Annexure-11 to the writ petition has been passed cancelling the work order issued to the petitioner earlier for supply of two lifts of OTIS make and the petitioner has been asked to return the Bank Draft amounting to Rs. 9,51,000/- given to him as advance. This order as contained in Annexure 11 is under challenge in this writ petition.

5. Some relevant facts are necessary to be stated. The respondent No. 2 State Institute of Rural Development invited tender for supply and installation of two elevators/lifts of either OTIS or of Schindler or Kone make, with automatic doors having capacity of 6-8 persons to be installed in the training building of G+2 floors. The petitioner submitted his tender and, thereafter, he was issued with the work order being found the lowest bidder. There is no dispute of the fact that the petitioner quoted the price of two lifts of OTIS make Rs 15,85,000/- each inclusive of all costs, such as, supply, installation, tax etc. The petitioner was also given Rs. 9,51,000/- by way of Bank Draft towards advance by the respondent No. 2.

6. Subsequently, the Deputy Director State Institute of Rural Development issued a letter to the petitioner on 29.12.2006 stating therein that when the quotation was called for from OTIS Company, Calcutta, making enquiry regarding the price of the elevator/lift, then the OTIS Company informed that the price of two lifts would come to Rs. 15.90 lacs only and, then considering the price quoted by the petitioner to be exorbitant, the work order issued to the petitioner was cancelled and he was directed to return the Bank Draft of Rs. 9.51 lacs handed over to him by the Institute as advance.

7. When this writ application was taken up on earlier occasion, this Court, by an order dated 12.2.2008 directed to implead the OTIS Elevator Company (India) Limited, Kolkata as a party respondent in this writ petition and the said company was directed to file affidavit stating as to on which price it was supplying six passengers OTIS make elevator/lift to the petitioner inclusive of all taxes, installation charge etc.

8. Pursuant to the said order the OTIS Company appeared and filed affidavit Paragraph-6 of the affidavit, filed by OTIS Company, is very relevant, which is quoted herein below:

6. That consequently it was proposed by the answering respondent to supply, Install and commission two numbers six passenger elevators at 6,25,000/- per elevator, which was inclusive of all taxes viz. sales tax, excise duty etc. The aforesaid proposal was accepted by the petitioner on 16.11.2006. The acceptance of the petitioner was countersigned on 6.12,2006 by the authorised official of the answering respondent and thus the contract stood concluded between the parties.

9. Mr. Anil Kumar Sinha learned senior counsel appearing for the petitioner submitted that this is a case of concluded contract and when the work order was issued in favour of the petitioner after accepting his offer then in that event, the concerned respondent had no authority to cancel the said work order subsequently.

10. From the facts noted above and from the submission made on behalf of the petitioner, it is apparent that though the work order was issued in favour of the petitioner for supply and installation of the aforesaid two lifts /elevators at Rs. 31,70,000/- but the fact remains that this price, quoted by the petitioner, is more than the double of the actual price quoted by the OTIS Company for the two lifts/elevators.

11. It is necessary to state here that the OTIS Company in its counter-affidavit has quoted the price of one elevator/lift of the capacity of six passengers @ Rs. 6,25,000/-inclusive of all the taxes and excise duty etc and Mr. Indirajeet Sinha, learned Counsel appearing for the respondents OTIS Company submitted that the

Company is ready to supply and install the two elevators/lifts of the capacity of six passengers in the building of respondent No. 2 at Rs. 12,50,000/- inclusive of all taxes. However, he submitted that the cost of civil work to be made for construction of well for installing the lifts is not included in the said price, quoted by the Company.

12. If, in the facts and circumstances of the case; the prayer of the petitioner is accepted then it would amount to allow the petitioner to have unfair and unjust gain and advantage and it would amount to swindling of the public money.

13. The Supreme Court in the case of 'M.P Mittal v. State of Haryana and Ors. reported in : [1985]1SCR940 ' has held that the Court may refuse to give any remedy to the writ petitioner if he seeks to invoke its writ jurisdiction in order to secure dishonest advantage or perpetuate an unjust gain. In other words the discretionary remedies under Article 226 are for doing justice and correcting injustice and not otherwise. The Supreme Court in the case of 'National Highways Authority of India v. Ganga Enterprises and Anr. reported in : AIR 2003 SC3823 ' has also held that in contractual matters it is settled law that the dispute relating to contracts cannot be agitated under Article 226 of the Constitution of India.

14. Following the aforesaid two decisions of the Supreme Court, I am not inclined to exercise my discretion under Article 226 of the Constitution of India, since I am of the view that the work order, which has earlier issued in favour of the petitioner, has rightly been cancelled by issue of the impugned order as contained in Annexure-11 to the writ petition because the exorbitant price quoted by the petitioner for supply of the two elevators is apparently unfair, unjust and unreasonable. Accordingly, this writ application is dismissed.