

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.434 of 2015

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Jeevan Kumar Son of Sri Ashok Kumar, Resident of Village- Pareo, Police Station- Bihta, District- Patna, Bihar

.... Petitioner/s

Versus

1. The Bihar State Power Holding Company Ltd. through its Chairman cum Managing Director, having office at Bidyut Bhawan, Bailey Road, Patna
2. The Chairman cum Managing Director (Bihar State Power Holding Company Ltd.), having office at Bidyut Bhawan, Bailey Road, Patna
3. The North Bihar Power Distribution Company Ltd. through the Managing Director, having office at Bidyut Bhawan, Bailey Road, Patna
4. The Managing Director, North Bihar Power Distribution Company Ltd., having office at Bidyut Bhawan, Bailey Road, Patna
5. The Chief Engineer, Store AND Purchase, North Bihar Power Distribution Company Ltd., having office at Bidyut Bhawan, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar, Advocate.
Mr. Anand K. Ojha, Advocate.
Mr. Ashok Kr. Karn, Advocate.

For the Respondent/s : Mr. Vinay Kirti Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 22-01-2015 Heard learned counsel for the parties as with regard to

the following relief prayed in this writ application:

"1. That the petitioner in the instant writ application prays for a writ of certiorari for quashing the office order no. 1735/NB/Patna dated 29.12.2014 to the extent it relates to the order of debarment of the Firm of the Petitioner from 29.12.2014 to 28.12.2015 from all the business/commercial activity of the North Bihar Power Distribution Company Ltd. which has been passed ex-parte without any provision of debarment in the NITs and without any sanction of law to exercise the inherent power of debarment in absence of any jurisdiction to debar any bidder and the same is bad also for violation of the decision in the case of M/s Erusian Equipment (AIR 1975 SC 266, Para-15 to 20) relied and held as good law till date."

2. Learned counsel for the petitioner, in support of the
aforementioned prayer, has straightway placed reliance on the

following averments made in paragraph 15 to 18 in the writ application which for the sake of clarity and convenience is quoted hereinbelow:

"15. That it is stated and submitted that the Firm of the Petitioner had not received any specific show cause notice before the debarment and as such the order is ex-parte. There is no provision of the debarment in the three identical NITs. Over and above the same is in violation of the law settled by this Hon'ble Court against same respondents by this Hon'ble Court.

16. That the firm of the petitioner had been seriously damaged as there are pending bidding process which will be adversely affected.

17. That there is no discussion in the order under challenge that the purchase order were issued after so much of delay since the issue of NIT. There is no mention that policy of government towards SSI units had been followed. There is no discussion that any opportunity was given to the firm.

18. That no show cause notice was issued to the firm of the petitioner before debarment. No opportunity of hearing as needed under the law was given. The order of debarment is fit to be set aside on this ground alone."

3. Learned counsel for the petitioner submits since the aforesaid facts have remained uncontroverted in the counter affidavit, which has been filed today by the respondents, the ratio laid down by the Apex Court in the case of ***M/s Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal & Anr.*** reported in ***AIR 1975 SC 266***, shall be squarely applicable.

4. Mr. Anand Kumar Ojha, learned counsel for the respondents, does not dispute any of the aforementioned submission made by the learned counsel for the petitioner, but he seeks to rely on the statement made in paragraph 6 to 9 of the counter affidavit, which again being relevant for the adjudication

of the matter is quoted hereinbelow:

"6. That the Agency was in regular communication with the Power Company when it was being requested to make supply after allowing price preference and thereafter at L1 rate. The firm avoided supply unlawfully and its plea of price hike of Aluminum or Bid validity expiry or price variation are unsustainable. There is no clause of Price variation. In fact the clause of Price Preference was applied but the Petitioner refused to honour the same. All the circumstances were known to the petitioner and nothing had come out of blue and all that the Agency could have said against any notice was very much being conveyed on more than one occasion hence even though no notice was issued to it had not suffered any prejudice hence no notice to the Agency in this case with peculiar facts and circumstances will not vitiate action of the Company. The petitioner had made an unsuccessful attempt to get benefit of a technical omission.

7. That any relief to the petitioner would amount to a premium on the misconduct of the agency on one hand and shall also embolden other misconducting bidders who can think to get away without any punitive consequences against them for the default and damage caused to the public body. In the present case the petitioner has shown a gesture which was akin to taking advantage of circumstances if not an attempt of arm twisting which was bound to be fittingly replied.

8. That the NIT provision at clause 15 is only indicative of the power of the tendering authority against the defaulting bidder. The same may not exclude the inherent power of any Public Bodies like the Power Company to take all measures including debarment to protect itself from the guilty bidder whose misconduct and the damage caused to the company are clear as day light.

9. That even in the absence of specific recital in the NIT the inherent authority of the Power Company as a Public Body may extend to taking all lawful steps to safe guard the commercial interest of the Power Company. The Hon'ble Court may be pleased to appreciate that large number of projects in the company today require open bidding inviting and in fact encouraging participation of committed bidders not only ready and willing to participate but also having a fair conduct with a track record also supporting the same. Such a safeguard is imperative and expedient as for the acts of one defaulting bidder the project suffers serious damage in terms of cost and time line which has a chain effect on all the aspects including the centralized funding lose of opportunity/incentive in loan-grant conversion scheme in appropriate cases. The motto of electricity to all and the flagship projects of rural electrification or urban infrastructure up gradation and host of other key areas get a setback. Looking the action from a broader perspective the same may appear justified."



5. In the considered opinion of this Court, once there is no specific denial to the averment made by the petitioner in paragraph 15 to 18, any plea, being now developed by the respondents in support of the impugned order of blacklisting, has to be only noted for its being rejected. Blacklisting is a severe consequence, as was held in the case of ***Erusian Equipment*** (Supra). For such severe consequence a person has to be given notice and/or afforded opportunity of hearing.

6. The further submission of Mr. Ojha that in this case, the compliance of the principle of natural justice could have been omitted because the defence of the petitioner was already noted by the respondents, has to be again only noted for its being rejected. The compliance of the principle of natural justice cannot be avoided by the respondents by taking a plea that the petitioner's defence was well known.

7. Way back in the case of ***Olga Tellis & Ors. vs. Bombay Municipal Corporation & Ors.*** reported in ***AIR1986 SC 180***, the Apex Court, while examining the similar arguments, had made it clear that adherence to the principle of natural justice is only securing the rule of law and preventing arbitrariness/inaction and thus a strong pillar of reasonableness as ensured under Article 14 of the Constitution of India.

8. In that view of the matter, this Court will have no difficulty in holding that once the impugned order of blacklisting against the petitioner was passed without compliance of the principle of natural justice, such order has to be held to be bad.

9. In the result, this writ application is allowed and the impugned order, contained in Annexure-1 to the extent of blacklisting by way of debarment, is hereby quashed.

10. Before parting with, this Court must make it clear that nothing said in this order, however, will come in the way of the respondents in taking fresh action against the petitioner for blacklisting/debarment in accordance with law.

Sujit/-

(Mihir Kumar Jha, J)

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