IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22861 of 2013

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1. Elmech Engineers , a partnership firm established under the provisions of Indian Partnership Act through its Partner, Ashutosh Mohan having its Registered Office located at 4, Tarpan Ghat Road, Kolkata – 700053.

2. Shri Ashutosh Mohan Son of Late Om Prakash Singhal of Plot No. 6, Jayashree Complex, Alampur, P.O. - New Kalorah, N.H. 6, District - Howrah, Howrah - 711302, West Bengal.

.... Petitioners

Versus

1. The State of Bihar, through the Principal Secretary, Department of Health, Old Secretariat, Patna.
2. The Secretary, Department of Health, Government of Bihar, Patna-cum-Executive Director, State Health Society, Bihar Parivar Kalyan Bhawan, Sheikhpura, Patna – 800014.
3. State Programme Officer, State Health Society, Bihar, Parivar Kalyan Bhawan, Sheikhpura, Patna – 800014.

.... Respondents

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Appearance:

For the Petitioners	:	Mr. S.D.Sanjay, Sr. Advocate
		Mr. Abhijeet Kumar Lal, Advocate
For the State	:	Mr. Manoj Kumar Jha, AC to GP 26
For the Health Society	:	Mr. K.K.Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-09-2015

Heard Mr. S.D. Sanjay, learned Senior Counsel for the petitioners and Mr. K.K. Sinha, learned counsel for the State Health Society.

2. The present writ petition has been filed for quashing of the order dated 29.08.2013 as contained in Memo No. 7179 issued under the signature of Respondent No. 2 by which the petitioner No. 1 has been restrained from supplying any material to the Health Department, Government of Bihar, Bihar Health

Society including various District Health Societies and Medical Colleges by blacklisting the said petitioner no. 1 for a period of five years after cancelling the work order of Respondent No. 3 dated 31.01.2013 issued to the petitioner no. 1 for supply of 34 10 KVA Genertor sets meant for blood banks in Bihar.

3. That the petitioner no. 1 is a partnership firm with its registered office at Kolkata and in the ordinary course of its business the firm sent its quotation dated 04.12.2012 in connection with specific requirement of 10 KVA Generator sets in the State of Bihar by the State Health Society, Bihar. The quotation clearly specified that entry tax and other statutory charges would be payable by the buyer and so also the way bill was to be provided by the importer. The matter culminated in the work order dated 31.01.2013 awarded in favour of the petitioner on the various terms and conditions mentioned therein, inter alia, requiring supply of the DG sets to be made within one month thereof. The time for supply was however later extended to 31.03.2013.

4. According to the respondents since the petitioners did not make the supply within the stipulated extended time and in view of the difficulties faced at the blood blanks due to such delay on the part of the petitioners, the impugned order dated 29.08.2013 came to be passed blacklisting the petitioners, after grant of opportunity and hearing the petitioners. The main

reason for blacklisting the petitioners was that road permits were never demanded by the petitioners even after expiry of the extended time for delivery of the DG sets which demonstrated that the petitioners had no intention of fulfilling their part of the contract. It was further observed that since the supply was agreed to be made at DGS&D rates by the petitioners, the petitioners ought to have paid the advance tax and procured the road permits themselves rather than demand the same from the respondents for which there was no provision in the DGS&D rates.

5. Mr. S.D. Sanjay, learned Senior Counsel appearing on behalf of the petitioners submits that the order of blacklisting against the petitioners is wholly arbitrary, illegal and unsustainable, being not only perverse but also suffers from manifest errors of record. Contrary to the finding therein that the petitioners did not ask for road permits prior to the expiry of time for supply of the DG sets, the petitioner had duly requested for road permits in its letter dated 20.03.2013 (Annexure-8), receipt of which was duly acknowledged on the letter itself. Inasmuch as the requisite road permits were not supplied, a reminder was then sent on 09.04.2013 informing that the DG Sets were lying at the petitioners' factory ready to be despatched. Yet again another reminder dated 08.07.2013 was also sent with a request for issuance of the road permits.

It is, therefore, incorrect on the part of the respondents to say that the petitioners did not make any request for the road permits until the expiry of the time for delivery and further that they had no intention in fulfilling their part of the contract.

6. It is further submitted that as regards the issue of entry tax, it was the case of the petitioner right from the stage of submitting its quotation that entry tax was to be borne by the purchaser and this aspect of the matter was never denied by the respondents until for the first time while passing the impugned order of blacklisting. It is therefore submitted that to this extent, the impugned order is bad in law also for the reason that it travels beyond the show cause notice in which the issue of entry tax was never raised.

7. Learned counsel for the respondents on the other hand, opposes the writ petition on the ground that the blacklisting order had to be passed in view of the conduct of the petitioners creating unnecessary delay leading to considerable difficulties faced by the blood banks in the various districts of the State. It is pointed out that the claim for entry tax and furnishing of way bill may have been stated in the quotation of the petitioners, however, the same was not specifically accepted and the respondents can be held bound only with regard to the terms and conditions enumerated in the work order dated 31.01.2013. The claim of the petitioners with regard to entry tax

and road permits must therefore be deemed not to have been accepted by the respondents.

8. Having heard learned counsel for the parties and on consideration of the materials on the record, this Court is of the view that the writ petition must succeed. It is borne out from the records that the petitioner did request for issuance of road permits/entry forms in its letter dated 20.03.2013 stating that the DG sets were ready for despatch at their workshop, well before expiry of the time for supply i.e. 31.03.2013. The observations to the contrary in the impugned order of blacklisting to the effect that the petitioners requested for road permits only as late as on 09.04.2013 after expiry of the time for supply is, therefore, clearly an error of record and the inference on this score that the supply has been delayed creating disruption in Government work thus stands vitiated.

9. As regards the issue of entry tax, the same has been made part of the reason of blacklisting the petitioner in the impugned order without however the same having been made the part of the show cause notice which thus renders the same not in accordance with law. Even otherwise, it would prima facie appear that whether or not there is a stipulation in the work order with regard to entry tax, the same in the ordinary course would fall to be borne by the importer in terms of Section 3 of the Bihar Tax on Entry of Goods into Local Areas for

Consumption, Use or Sale therein Act, 1993. In the present case, the respondents have not shown that such liability for entry tax was to be borne by the petitioner. That apart, it would appear that despite the blacklisting order the petitioner has subsequently again been awarded work orders by the respondents in terms of letter No. 2340 dated 26.03.2014, letter No. 5001 dated 31.05.2014 as well as letter No. 5002 dated 31.05.2014 and in respect of all of which the contracts have been concluded after payment of entry tax by the respondents who also made available the road permits to the petitioners.

10. In the above circumstances, the impugned order of blacklisting dated 29.08.2013 is hereby set aside and the writ petition stands allowed.

(Vikash Jain, J)

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