IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.360 of 2015
With
I.A. No.144 of 2015

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Md. Masiha, son of Md. Abdul Haque, resident of Mohalla - Laukaha, P.S-Laukaha, District – Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Mines and Minerals Department, Government of Bihar , Patna.
2. The Principal Secretary, Department of Mines and Minerals Government of Bihar , Patna.
3. The Joint Secretary Department of Mines and Minerals, Government of Bihar Patna.
4. The Collector Madhubani.
5. A.S.P. Madhubani.
6. Senior Additional Collector, Revenue Department, Madhubani.
7. Sale Tax Officer, Madhubani.
8. Mining Inspector, Madhubani.
9. Authorized Tender Officer Cum Mining Officer, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Farooq Ahmad Khan
For the Respondent-State	:	Mr. Devendra Kumar Sinha, AAG-2 Mr. Alok Kr. Rahi, AC to AAG-2
For the Mines Department	:	Mr. Rajendra Prasad, SPl. P.P. (Mines)

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 13-02-2015

Heard Mr. Farooq Ahmad Khan, learned counsel appearing on behalf of the petitioner, Mr. Devendra Kumar Sinha, learned Additional Advocate General No.2 representing the Mining Department.

The petitioner is aggrieved by the order dated 30.12.2014 issued under the signature of Joint Secretary –cum-Director, Mines and Geology Department, Government of Bihar, a copy of which is placed at Annexure-1 to the writ petition whereby while responding to the recommendation dated 26.11.2014 of the District Magistrate –cum- Collector, Madhubani for settlement of Balughat at Madhubani with the petitioner, a direction has been issued to hold a fresh auction in the interest of Government revenue.

It is the argument of Mr. Khan, learned counsel appearing for the petitioner that it is after three round of exercise undertaken by the respondent-Department that finally the technical bid of the petitioner was found to be the most appropriate and since it was above the reserve *Jama* hence the Collector, Madhubani while discussing the matter in detail, has recommended for settlement in his favour vide letter dated 26.11.2014 (Annexure-10) and with a reminder on 27.12.2014 placed at Annexure-11 but it has been responded to by the impugned order.

He submits that in the first round there was no tenderer responding to the notice which resulted in second round tender in which it was the petitioner alone who applied and thus while maintaining the offer made by petitioner that the department went for a third tender in which one more person, namely, Tej Narain Yadav only applied, however since the technical bid of said Tej Narain Yadav was rejected, it left the petitioner alone in the contest.

It is submitted that since there remained only one contestant in the contest that the District Magistrate, Madhubani sought instruction from the headquarter and vide letter dated 17.11.2014 of the Headquarters, the District Magistrate was required to complete the formalities following which the Tender Committee held its meeting on 26.11.2014 when the financial bid of the petitioner was opened and was found at Rs.78,70,000/- i.e. above the reserve *Jama* which was fixed at Rs.78,67,200/-. The Tender Committee consisting of the Mining Officer, Madhubani, Commercial Tax Officer, Madhubani, Senior Deputy Collector (Revenue), Madhubani, the Additional Superintendent of Police, Madhubani and the Collector, Madhubani recommended for settlement of Balughat in favour of the petitioner, a copy of which is placed at Annexure-9 and it is following such recommendation that the Collector after discussing the entire matter has given his recommendation in favour of the petitioner on 26.11.2014 placed at Annexure-10 which recommendation was reiterated in his letter dated 27.12.2014 placed at Annexure-11. He submits that although such exercise was undertaken after approval by the headquarters, yet when the recommendation of the Collector reached the Joint Secretary –cum- Director for his approval that he has chosen to reject the same and directed for fresh order.

Mr. Khan learned counsel appearing for the petitioner has submitted that the exercise having been completed it is no more open for the respondents to set at naught the exercise and the decision of the Tender Committee and the recommendation of the District Magistrate would be conclusive and binding. Learned counsel has relied upon a decision of this Court reported in **2004 (3) PLJR 741 (The State of Bihar Vs. P.E.C. Ltd) paragraph 10** to submit that once the technical bid of the petitioner was opened and was found above the reserve *Jama* there was no turning around for the respondents.

Mr. Khan has also referred to a Bench decision of this Court reported in **2006 (3) PLJR 503 (M/s Vijay Raj Mewar Construction Co. Pvt. Ltd. vs. State of Bihar), paragraph 6** and **2007(2) PLJR 27 (Mandar Madhusudan Bahudhandhi Swablambi Sahkari Samitee Ltd. vs. The State of Bihar), paragraph-10** to submit that once the exercise stands completed and the petitioner has been found eligible for grant of settlement, it did not vest in the respondents to go for fresh auction in absence of any extraordinary circumstances which is completely missing in the present case.

The argument of Mr. Khan is responded to by Mr.

Sinha, learned Additional Advocate General No.2 and who with reference to the tender notice placed at Annexure-2 more particularly paragraph 7 (v) thereof submits that even if the Tender Committee has proceeded to hold the technical bid it would not vest any right in the petitioner until approval is granted by the department which in the present case is wanting inasmuch as the department taking note of the circumstances and in the interest of Government revenue, has decided to go for fresh tender. The sum and substance of argument of Mr. Sinha is that the decision impugned at Annexure-1 is in sole interest of Government revenue.

I have heard learned counsel for the parties and I have perused the materials on records.

The facts stands discussed and the issue is very limited. Three rounds of exercise have taken place for finding a suitable person for settlement of the *Balughat* and whereas in the first round none turned up, in the second round only the petitioner turned up whose candidature was maintained even while going for third round and even in the third round only one person responded and whose offer also did not go beyond the technical bid. The facts speak for themselves and there were hardly any response to the tender notice except the petitioner and one other who stood disqualified. It is taking note of these circumstances that instructions/guidelines were sought by the Collector and who was given a green signal by the department to go ahead with the technical bid. The offer of the petitioner was above the Reserve Jama and it is looking into such circumstances that the Tender Committee approved his offer and following which the recommendations were made by the Collector, Madhubani placed and Annexures 10 and 11. The exercise having been completed there existing no other adversity against the petitioner, the excuse of protecting the Government revenue in the peculiar circumstances discussed hereinabove, is as vague as it can be. Even when there remained only one contestant in the bid there was every right in the department to order for fresh exercise but they did not choose to do so rather directed the Collector to complete the formalities vide letter dated 17.11.2014 as is discussed in the recommendation of the Collector dated 26.11.2014 and it is only thereafter that the Tender Committee sat to consider the offer of the petitioner and found him suitable.

Apart from the fact that the reason is vague and non-descriptive, even on the principles of promissory estoppel and legitimate expectation, the exercise having been completed by the department there cannot be any turning around. Such is the whimsical action of the department that even when they take refuge to protection of revenue, it is apparent that had the settlement been made timely, it would have fetched revenue for the Government since 1.1.2015 and which precious time has been lost in unwarranted litigation. It is the action of the department which has led to loss of revenue to the State and without any accountability.

For the reasons aforementioned the order of the department communicated by the Joint Secretary –cum- Director vide letter dated 30.12.2014 cannot be upheld and is accordingly set aside. The department is directed to proceed in the matter in the light of the decision of the Tender Committee placed at Annexure-9 and the recommendations of the Collector placed at Annexures-10 and 11 for completion of the formalities.

This writ petition is allowed. The interlocutory application stands disposed of.

(Jyoti Saran, J)

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