

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.25 of 2015

IN

Civil Writ Jurisdiction Case No. 9376 of 2010

Bindeshwar Yadav, Son of Late Jugeshwar Yadav, Managing Director, Bindeshwar Yadav Construction, R/o Village - Hariraha, P.S. - Laukaha, District - Madhubani.

.... Appellant

Versus

1. Nava Nirman Bihar Construction Pvt. Ltd. through its Managing Director, Navkant Yadav, Son of Sri Sahadeo Bhindwar, Resident of Village -Ekamma, P.O.- Basauniya, P.S. - Laukaha, District - Madhubani.

2. The State of Bihar through its Chief Secretary, Old Secretariat Building, Patna.

3. The Principal Secretary, Water Resource (Irrigation) Department, Government of Bihar, Patna.

4. The Engineer-in-Chief, Water Resource (Irrigation) Department, Government of Bihar, Patna.

5. The Deputy Secretary, Water Resource Department, Government of Bihar, Patna.

6. The Chief Engineer, Western Koshi Circle, Water Resources Department, Darbhanga.

7. The Superintending Engineer, Western Koshi Circle, Water Resource Department, Jhanjharpur.

8. The Executive Engineer, West Koshi Canal Division, Khutauna.

.... Respondents

Appearance :

For the Appellant : Mr. Lakshmindra Kumar Yadav, Advocate

For the Respondents : Mr. Prasoon Sinha, GA 2

For Private Respondent : Mr. S. Alamdar Hussain,

Mr. L.B. Singh, Advocates

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 09-02-2015

I.A. No.58 of 2015

This application is filed with a prayer to condone the delay of 45 days. In view of the reasons mentioned in the interlocutory application and those stated by the learned counsel for the appellant, we are convinced that the delay deserves to be condoned. Accordingly, the application is allowed.

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2. In relation to the certain works of Western Koshi Canal, tenders were invited in the year 2009. The appellant and the first respondent herein participated in the bid. After they were cleared in the technical bid, financial bids were opened and the first respondent was declared as the highest bidder. Accordingly, it was awarded the work and the work is said to have been executed.

3. The petitioner filed CWJC No. 9376 of 2010 alleging that the first respondent herein tampered with the financial bid after submission of tenders and that resulted in the award of contract to the respondent. The writ petition was disposed of at the stage of admission itself through order dated 27.08.2010 directing that the Principal Secretary, Vigilance Department, Government of Bihar shall cause the enquiry into the allegations made against the first respondent herein, who figured as respondent no.7 in that writ petition.

4. The Vigilance Department is said to have submitted its report on 03.03.2010 expressing the view that there was tampering of financial bid by the first respondent and that the senior officials of the Irrigation Department colluded with the first respondent.

5. The Deputy Secretary, Water Resources



Department, 4th respondent herein, issued notice to the first respondent on 19.04.2010 stating that on the basis of the vigilance report, it has been decided to blacklist the first respondent. The first respondent was required to submit explanation, as to why proper action be not taken.

6. Challenging the said notice, the first respondent filed CWJC 9376 of 2010. Apart from raising other grounds, the first respondent pleaded that the proceedings dated 19.04.2010 cannot be treated as show cause notice in view of the fact that the first respondent herein has already taken to blacklist them. The writ petition was opposed by the appellant and other respondents in the writ petition. The learned Single Judge allowed the writ petition, through the judgment dated 27.08.2014. After setting aside the notice, the learned Single Judge observed that in case the Government intends to proceed to blacklist the first respondent, it shall be only after the departmental proceedings are initiated and the criminal cases are instituted against the Engineer-in-Chief, Chief Engineer, Superintending Engineer, two Executive Engineers, Accountant and Clear who were posted at the relevant time. That order is challenged in this appeal.

7. Heard Mr. Lakshmindra Kumar Yadav, learned counsel for the appellant and Mr. Prasoon Sinha, learned Government

Advocate for the respondents.

8. As observed earlier, the contract was awarded to the first respondent way back in 2009. Though the appellant made an effort to challenge the award of contract to the first respondent, by filing writ petition it ended with a direction that a vigilance enquiry be conducted in the matter. We find it difficult to sustain the direction issued in CWJC No.906 of 2010. The reason is that by the time the writ petition was disposed of, the Principal Secretary, Vigilance Department was not made a party to it, nor was the first respondent herein heard before ordering the vigilance enquiry against it, a reputed construction company.

9. Be that as it may, in case the vigilance report has indicted the senior officials of the Irrigation Department, the first step ought to have been taken at the departmental level. It is only when a definite finding is recorded against the first respondent after hearing it, that any finding with regard to its involvement in the alleged tampering of the figures in the financial bids could have been recorded. Not a single word was stated about the involvement of the officers. Further the contract awarded to the first respondent stood executed. Still the notice dated 19.04.2010 was issued to the first respondent.

10. Though letter dated 19.04.2010 is sought to be

treated as a show cause notice. The learned Single Judge has analyzed the contents thereof and demonstrated that it can not be treated as show cause simplicitor. We are in agreement with the reasons furnished by the learned Single Judge. In the said letter it is clearly mentioned that the Government has already decided to blacklist the first respondent. It is just understandable as to what explanation can the first respondent submit, once the Government has decided to blacklist it. The learned Single Judge was also correct in directing the respondents that before proceedings to blacklist the first respondent are initiated, steps must be taken against officials also. However, it is not for this Court, to indicate the nature of proceedings, to be initiated in this regard.

11. We, therefore, dismiss this Letters Patent Appeal, however with an observation that the nature of the steps to be taken by the Government is left open to its discretion; but the action to be taken, if any, against the first respondent cannot be in isolation. There shall be no order as to costs.

12. The interlocutory application, if any, shall stand disposed of.

(L. Narasimha Reddy, CJ)

B.T/Ibrarul.

(Vikash Jain, J)

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