IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1084 of 2015
In
Civil Writ Jurisdiction Case No. 3774 of 2015

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M/s Starnet Marketing Pvt. Ltd. 110 Urmila Tower, Bank More, Dhanbad, 82601, branch office – behind B.S.N.L. exchange office Nizammuddin, Kako Road, Jehanabad, through its Director Sada Shiv Prasad Singh, son of Sri Mauleshwar Singh, resident of 301B, SB residency, Raja Bazar, near Mangal Market, P.S. – Shastrinagar, town and district – Patna.

.... Appellant

Versus

1. The State of Bihar, through the Principal Secretary Department of Mines and Geology, Government of Bihar, New Secretariat, Patna.
2. The Joint Secretary, Department of Mines and Geology, Government of Bihar, New Secretariat, Patna.
3. The District Magistrate, Jehanabad.
4. M/S Westlink Trading Pvt. Ltd. having its corporate office at D-504, building authority 27, Sunshine Cooperative Housing Society Ltd. Mahadev Colony, Chandivali, Mumbai – 400 072 through its authorized representative Anand Dwivedi, son of Sri R.S. Dwivedi, R.O. – Mohalla – Kailashpuri, P.S. – Banda, District – Banda (U.P.).

.... Respondents

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Appearance :

For the Appellant	:	Mr. S.A. Narayan, Sr. Advocate
		Mr. Shivendra Kishore, Sr. Advocate
		Mr. Jai Kishor Poddar, Advocate
For the Respondent no. 4	:	Mr. Y.V. Giri, Sr. Advocate
		Mr. Amit Shrivastava, Advocate
		Mr. Girish Pandey, Advocate
Special P.P. Mines	:	Mr. Rajendra Prasad, Advocate
For the State	:	Mr. Alok Kumar Rahi, AC to AAG-2

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL ORDER

2. 26-05-2015 A tender was issued for settlement of sand lease. Two conditions were relevant. First, that the tenderers must submit a no dues certificate and second,

the tenderers must submit a good character certificate issued by competent authority within six months of the tender. Four tenders were filed. The tender of this appellant namely M/s Starnet Marketing Private Limited was the highest. But, the Collector, Jehanabad, was of the opinion that this tenderer along with three others i.e. all the four had formed the cartel. Notwithstanding the highest bid of this appellant and being above reserve jama, he proceeded to phase - II of the tender meaning thereby he called for fresh tender while keeping the first tender in abeyance. This tenderer (appellant) did not contest there. Ultimately, respondent no. 4 appears and in this phase, he was the highest tenderer though he was marginally lower than the appellant. The Collector, Jehanabad, then asked respondent no. 4 to raise his bid. Respondent no. 4 raised his bid. No such offer was given to the appellant. At this stage, respondent no. 4 filed the writ petition for a direction to accept his bid which was now highest bid and which was the recommendation of Tender Committee headed by Collector, Jehanabad. On coming to know this, the appellant filed this second writ petition contending that in the first phase itself, he was the highest bidder, and as such, the settlement should be made to him. Alternatively, he submitted that as an offer had been made to respondent no. 4 to enhance his bid to out-bid him, similar offer ought to have been made to him. Both the writ petitions were heard together and by impugned judgment, effectively they were dismissed giving right to the Government to re-auction.

In my view, so far as right to re-auction is concerned, it cannot be questioned unless it is shown and court is satisfied that cancellation of earlier auction/tender was mala fide. It is the inherent right of the State to cancel auction to secure its revenue or other reason. But the problem, as pointed out by Sri S.A. Narayan, learned Senior Counsel appearing for appellant is that by doing so, learned Single Judge gave an observation though a no dues certificate had been submitted by the appellant at the time of filing of the tender papers in court's proceedings before this Court, the Collector raised further demand of over Rs. Two Crores and that was taken to be a certificate showing pendency of uncleared dues which makes the appellant ineligible. Similarly, with regard to respondent no. 4, the learned Single Judge observed that the character certificate produced had been issued more than one year from the date of tender. The requirement being that it should be issued by competent authority within six months. This made respondent no.4 ineligible also.

It appears, on behalf of the respondent no. 4, it was argued that the certificate had been issued by authorities in State of Uttar Pradesh where such certificates are valid for a period of two years and the Collector, Jehanabad, also enquired from the authorities in the State of Uttar Pradesh about it which was confirmed that it was valid for a period of two years. The learned Single Judge held that this was not a compliance of provisions of the tender notice as issued by this State and thus respondent no. 4 also was virtually declared ineligible.

These two ineligibilities are now the problem because re-tender notice has been issued, but effectively the appellant and respondent no. 4 both stand disqualified.

In my considered view, as the time is short, it would be appropriate that State extends the period for filing of tender appropriately. The appellant and respondent no. 4 would then be required to get a fresh no dues certificate/certificate of character, as the case may be, from the appropriate authority and then file their tender. This does not mean that final date of tender would await the tenders which are to be filed by the said two persons. It is only a reasonable time by which the date would be extended not later than three weeks. It goes without saying that if the appellant contests the matter of no dues certificate or demand made therein, the Collector would take an immediate decision in the matter giving reasons in support thereof within the period aforesaid so as not to deny an opportunity to the appellant to participate, if, there are no dues.

Mr. Y.V. Giri and Mr. S.A. Narayan who appears on behalf of respondent no. 4 and appellant respectively submits that they have just received an endorsement of their application dated 25.05.2015 stating that the security which they had deposited in the earlier tender process of about Rs. 99,00,000/- which they intended to use for fresh tender would not be refunded to them till litigation is pending. This is totally unacceptable. No sooner a decision is taken to cancel the tender by the government, it is incumbent upon government to refund the money immediately and any holding over of the money beyond that would be wholly inappropriate, if not illegal. If for any reason, if the State is unable to refund then if the parties so require, it would be treated as valid offer of the security in the next tender, but, under the same authority.

With these observations and with consent of the appellant, respondent no. 4 and State, this appeal stands disposed of.

(Navaniti Prasad Singh, J.)

Rajeev/-

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