

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1509 of 2015

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M/s Mrinal Construction & Supplier Pvt. Ltd. Through its Director Rakesh Kumar Singh, S/O Late Shaligram Singh, resident of Mohalla- South Lakhibag, P.S.- Mofassil, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Government of Bihar, Department of Minor Water Resources, Old Secretariat, Patna.
2. The Chief Engineer, Department of Minor Water Resource, (Minor irrigation), Old Secretariat, Patna.
3. The Superintending Engineer, Department of Minor Water Resource, (Minor irrigation), Circle Gaya, District- Gaya.
4. The Executive Engineer, Department of Minor Water Resource (Minor irrigation), Division Gaya, District- Gaya.
5. Chhotiya Construction Pvt. Ltd., East Gandhi Maidan, Jehanabad, District- Jehanabad, through its Managing Director, Ashok Kumar.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Ravindra Kumar Sinha, Advocate

For the Respondent State : Mr. Raju Giri, G.P. 30

For the Respondent No. 5 : Mr. Dinu Kumar,
Mr. Ritu Raj and
Mr. Santosh Kumar Singh, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 24-02-2016

Heard learned counsel for the parties.

Pursuant to order dated 09.02.2016, supplementary counter affidavit on behalf of respondents no. 1 to 4 as well as reply to the Interlocutory Application No. 3079 of 2015 has been filed.

The challenge in the writ petition is to the order by which the technical bid of the petitioner has been rejected. The petitioner along with others had taken part in e-tender in NIT No. 15/2013-2014 dated 29.01.2014 for extensive renovation of Reula Ahar Pyne Scheme, Block Mohra, Gaya. Pursuant to scrutiny, the technical bid of the petitioner was rejected which was uploaded on the Internet by the authorities.

Learned counsel for the petitioner submits that the disqualification was due to the error found in the affidavit submitted by the petitioner. It is submitted that though the requirement was an affidavit before the Executive Magistrate, which was complied with, but erroneously in the main body of the affidavit it was typed "Before, Notary Public, Gaya". It is submitted that it was only a typographical error as the essential requirement of the affidavit being before the Executive Magistrate had been fulfilled. It is thus submitted that the respondents without giving him any opportunity either to explain or clarify the matter proceeded to disqualify him and award the work to

the respondent no. 5.

Learned counsel for the State as well as respondent no. 5 submit that though the petitioner knew fully well that an error had occurred in the affidavit submitted by him which was clearly mentioned in the reason for disallowing his bid, but still he has not furnished any explanation in the main writ application and only when the State has filed counter affidavit highlighting such error in the affidavit which was mentioned in the reason for disqualification, an explanation has come which clearly indicates that the conduct of the petitioner has not been fair and on this ground alone, the Court may not interfere in the matter. It is further submitted that the work has already been allotted to the respondent no. 5 on 23.01.2015 and approximately 75% of the same has already been completed.

At this juncture, learned counsel for the respondent no. 5 submits that he undertakes to complete the work latest by 31st March, 2016. Learned counsel has also relied upon a decision of a Division Bench of this Court in the case of **M/s Indian Oil Corporation Limited vs. Raj Kumar Jha** reported in **2012 (2) PLJR 783** where it has been held that even in a case of typographical error, the best way to avoid discrimination is strict adherence to the standards mentioned in the advertisement and the application not being in conformity, the authority is justified in rejecting the application.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, without advertng to the merits or plea of the petitioner that an opportunity could have been given to him, since the action of the respondent authorities cannot be strictly faulted with, as admittedly there was an error in the affidavit which was an essential document which raised *bona fide* doubt with regard to its veracity. The Court thus, cannot hold the action of the respondent authorities to be bad in law. Moreover, having larger public interest in mind and the respondent no. 5 having executed about 75% of the work and also undertaking before the Court to complete the remaining work latest by 31st March, 2016, the Court is not inclined to interfere in the matter.

Accordingly, the writ petition stands disposed off.

The Court would like to clarify that the earlier order restraining further payment to the respondent no. 5 stands vacated and the authorities shall ensure that the payment is made to the respondent no. 5 in terms of the work done by him without undue delay.

(Ahsanuddin Amanullah, J)

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