

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2402 of 2015

Along with

Interlocutory Application No. 2551 of 2015

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M/s Macro Ranjan Construction Pvt. Ltd. through its Director, Mr. Rajeev Ranjan Singh, Resident of Village Khilwat, P.S. - Bidupur, District - Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Building Construction Department, Govt. of Bihar Cum Chairman of Tender Committee, Bishweshraiya Bhawan, Bailey Road, Patna.
2. The Chief Engineer (South), Building Construction Department, Govt. of Bihar, Patna.
3. The Superintending Engineer, BCD, Building Circle, Gaya.
4. The Executive Engineer, Building Division, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suresh Pd Singh No.1, Advocate.

For the State : Mr. Uma Shankar, GP-4

Mr. Karandeep Kumar, AC to GP-4

For the Intervener : Mr. Shivendra Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 29-03-2016

Re.: Interlocutory Application No. 2551 of 2015

Heard learned counsel for the parties.

The present Interlocutory Application has been filed by one Shailendra Kumar Rai for impleading him as party respondent in opposition to the writ petition.

Learned counsel for the applicant submits that he is the successful bidder in the second tender of the work in question and that a right has accrued to him and thus, he should be allowed to assist the Court.



Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the considered opinion of the Court, the applicant can only have a right once the action of the respondent authority, in declaring the petitioner unfit in the technical bid, is negated. If the first tender is allowed to continue, in which the petitioner had participated, there cannot be any question of validity of the second tender for the same work and the applicant admittedly having participated in the second tender can have a cause of action only when the first tender is held to be bad in law necessitating the second tender.

In that view of the matter, this Court does not find that the applicant has any *locus standi* as he can have a case only if the first tender, which is the subject matter of the present writ petition, goes. Accordingly, the Interlocutory Application No. 2551 of 2015 stands dismissed.

Re.: Civil Writ Jurisdiction Case No. 2402 of 2015

The challenge in the writ petition is to the order dated 21.01.2015 contained in Memo No. 126 issued by the respondent no. 2 by which re-tender has been issued for the work in question.

Learned counsel for the petitioner submits that the tender was issued on 17.10.2014 and within time the petitioner had applied and though he was qualified in all respects, his technical bid



was rejected on the ground that validity period of his bid security, as per Clause 16.2 of the S.B.D., was not in order. It is submitted that it being the sole ground and being contrary to the factual position, the decision of the authorities, both to reject his technical bid as well as to go for fresh tender, is bad in law. It is submitted that admittedly, the petitioner had submitted his bid security which was valid till 04.5.2015 and as per Notice Inviting Tender, the validity should have been till 30th April, 2015. It is submitted that that being the position and even as per Clause 16.2 of the S.B.D., the petitioner was qualified as the validity period of the bid security was within time frame fixed for the said purpose.

Learned counsel for the State submits that there are other issues against the petitioner also inasmuch as he was debarred at the relevant time, which fact was suppressed by him and thus, the decision to disqualify him and go for re-tender is justified.

At this juncture, learned counsel for the petitioner submits that the question of debarment though not germane in the present case as it is not the reason given by the authorities to reject his technical bid, still on merits, the debarment was neither communicated to the petitioner nor was it done on valid ground and the moment he became aware of such debarment, he moved before the Court and the Court had held the debarment to be bad from the date of

initial debarment itself in CWJC No. 3580 of 2015 by order dated 24.09.2015. He submits that this fact is not required to be gone into in the present writ petition as it is not a ground taken by the authorities for disqualifying him.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds substance in the contention of learned counsel for the petitioner. The order of the authorities has to be tested by the reason mentioned in the order and cannot be supplemented by way of an affidavit in a judicial proceeding as is being sought to be done on behalf of the State. The decision of the Tender Committee rejecting the technical bid of the petitioner on the ground that the bid security was not for the period required stands falsified from the facts and circumstances of the case which has also not been controverted by the learned counsel for the State.

Thus, on the said short point, the Court finds the decision of the authority to disqualify the petitioner in the technical bid to be bad in law and accordingly, the same is set aside. The petitioner is held to be qualified in the technical bid and the authorities will take action in the matter treating the technical bid of the petitioner to be valid and proceed with the original tender in accordance with law and take it to its logical conclusion.

As the subsequent re-tender was a consequence of the rejection of the technical bid of the petitioner which has now been set aside and also there being an interim order of the Court dated 09.02.2015 that the respondents may proceed with the process of bid but no final contract should be given to anybody till further order is passed in this case, the impugned notice as contained in Memo No. 126 dated 21.01.2015 issued by the respondent no. 2 also stands set aside.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Sujit/-

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