IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10274 of 2015

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Vivekanand Thakur, son of Late Gajendra Prasad Thakur, Resident of Old T.V. Centre Campus, Sahganj Benta, P.S.- Laheriasarai, District- Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Health Department, Government of Bihar, Patna
3. Principal, Darbhanga Medical College, Laherisarai
4. Ram Murat Ram son of not known, Proprietor of Ritu Enterprises, Mufti Mohlla, Lal Bagh, P.S.- L.N.M.U. Campus, District- Darbhanga

.... Respondent/s

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Appearance :
For the Petitioner/s :
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 05-02-2016

Heard learned counsel for the parties.

Pursuant to the order dated 03.02.2016, the original records, relating to the tender in issue, have been produced before the Court. The Principal of Darbhanga Medical College, Laheriasarai, though not directed to be present, is also present.

The challenge in the writ application is to the rejection of the technical bid of the petitioner.

The brief facts of the case are that the petitioner firm had applied for supply of various essential and consumable items in Darbhanga Medical College, Laheriasarai. It appears that in the scrutiny of the technical bid on 2nd July, 2015, the petitioner was found ineligible and, thus, the technical bid having been rejected, the petitioner was ousted from the zone of consideration.

Learned counsel for the petitioner has challenged the said decision, *inter alia*, on the grounds that as per Clause 5 of the tender notice, he or his authorized agent was permitted to be present when the scrutiny of the technical bids were to be done, but despite repeated request, on the date when the scrutiny was being held, neither he nor his agent was allowed to be present at the deliberations. It is further submitted that the grounds taken in the counter affidavit cannot be accepted for the reason that the rejection order is cryptic and as the law is settled that reasons cannot be supplemented by way of counter affidavit, hence, the order of rejection is fit to be set aside. Learned counsel has further submitted that even the grounds, which have been taken in the counter affidavit, are not of a nature which may be classified as the essential eligibility requisites and at best may be collateral and on this score also the technical bid as a whole could not have been rejected. For the said proposition learned counsel has referred to a decision of a co-ordinate Bench of this Court in the case of ***M/s New Ratan Priya vs. State of Bihar*** reported in ***2014(2) PLJR 380***, the relevant being at paragraph-10. Learned counsel has also submitted that one of the reasons that the petitioner was also the proprietor of another firm, namely, M/s Rishi Electronics and its work, during the financial year 2014-15, in the same college, was not satisfactory, cannot be accepted for the reason that in the tender in question, he had applied in the name of a different firm and thus the two firms having separate legal identity, the liability or shortcomings of one firm cannot be fastened upon the other firm.

Learned counsel for the State relies upon the counter affidavit and submits that the contentions raised by the petitioner are erroneous. It is submitted that during the deliberations itself, the matter was noticed by the authorities since the petitioner was the sole proprietor of M/s Rishi Electronics also and had done the work in the aforesaid medical college itself. The authorities were thus well aware of his identity and even personally, he had applied under a sole proprietorship firm though by a different name and thus, the authorities have rightly rejected the technical bid on the ground that his work performance in the financial year 2014-15 was not satisfactory, which cannot be faulted. It is submitted that though the firms may have different nomenclature, but the law cannot be so absurd so as to give advantage to the sole proprietor of a firm to change the name conveniently and take advantage of the situation though having defaulted and not performed satisfactorily in other works undertaken by him. Learned counsel submits that the petitioner has not denied the fact that he is the proprietor of both firms, namely, M/s Rishi Electronics as well as M/s V.S.Enterprises, but the name used by him is different and, in fact, he has two PAN cards issued in slightly different names, but the person is one and the same. It is submitted that this being a fact not denied raises serious question with regard to conduct of the petitioner and amounts to fraud on the system which is also a criminal offence.

Learned counsel further submits that the issue of the petitioner not being granted an opportunity to participate in the deliberations of the technical committee is also false and averment to this effect has been made for the first time in the writ application and for which there has been no communication to any higher authority, the Department or even to the authority concerned immediately after such denial. Learned counsel relies upon the original records, which has been placed before the Court, to substantiate his claim that such matter with regard to the petitioner not having satisfactorily performed the work allotted to him for the previous financial year 2014-15, has been noted in the deliberations of the committee, while rejecting the technical bid of the petitioner.

Having considered the rival contentions, this Court finds that there is ample justification for the respondents to reject the technical bid of the petitioner. The petitioner cannot take the benefit of having two firms when he was the sole proprietor of both the firms. When one firm has defaulted and not performed satisfactorily, under a new identity with a slightly different name, the benefit is sought to be taken, cannot be permitted. This Court is also appalled on the conduct of the petitioner when he has got issued two PAN cards in two different names mentioning different dates of birth from the Income Tax Department (in the name of Viveka Nand Thakur bearing No. ACWPT8867A and Vishvajit Thakur bearing No. ALWPT8726B), which is also a matter of concern as it is clearly a fraud on the system.

For the reasons aforesaid, this Court finds no merit in the writ application and the same stands dismissed.

The matter is also referred to the Income Tax Department to take appropriate action against the petitioner for him having obtained two different PAN cards in slightly different names, though admittedly that person is one and the same.

Registry shall send a copy of this order to the Chief Commissioner of Income Tax, Bihar forthwith, for necessary action.

(Ahsanuddin Amanullah, J)

Sujit/-

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