

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17080 of 2016

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Satyendra Kumar Construction Pvt. Ltd. through its Director Satyendra Kumar, son of Sri Bhagwan Das, resident of 202, Hira Enclave, New Dak Bunglow Road, P.S. Kotwali, District Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Rural works Department, Government of Bihar, Patna.
2. The Chief Engineer-2, Rural Works Department, Bihar, Patna.
3. The Superintending Engineer, Rural Works Department, Works Division, Bhagalpur, Bihar.
4. The Executive Engineer, Rural Works Division, Kahalgaon, Bihar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan with Mr. Chandan Kumar, Advocates

For the State : Mr. Pushkar Narain Shahi, AAG-6 with Mr. Dharendra Kumar, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

3 27-10-2016 I.A. Nos. 8395 & 8648, both of 2016

The interlocutory applications have been filed for amendment of the reliefs sought in the writ application by seeking direction on the respondents to delist/expunge the name of the petitioner firm from the list of debarred contractors as published and circulated by letter dated 4.1.2016 and, secondly, for quashing the decision of the Tender Committee dated 20.10.2016 in its review meeting by which the technical bid of the petitioner has again been rejected under Clause 4.7(ii) of the MBD on account of a pending work in the name of the petitioner.

In the facts and circumstances of the case, the prayer for amendment is allowed.

I.A. Nos. 8395 and 8648, both of 2016 are, accordingly, disposed of.



Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner had initially filed the writ application for quashing of the proceedings of the Tender Committee dated 3.10.2016 by which the technical bid of the petitioner had been rejected on the ground that the name of the petitioner firm has been included in the list of debarred contractors. Thereafter the aforesaid two amendments have been sought on account of the facts brought on the record in the counter affidavit. Thus no further counter affidavit is required with respect to the newly added reliefs.

The petitioner had filed its tender in question for construction of road being Shiv Narayan Pur to Kishandaspur via Tapua Ekchari Khawashpur and Dilor and further construction of road and CD work being Pirpanti to Govindpur village pursuant to NIT issued on 1.8.2016. The tender, which was to be opened on 24.8.2016, was ultimately opened on 3.10.2016 and the petitioner was declared defaulter by the Tender Committee and its technical bid was rejected on the ground that the name of the petitioner firm was included in the debarred list of contractors dated 4.1.2016. It is the stand of the petitioner that the said work, which led to the debarment of the petitioner, was completed fully and finally on 30.3.2016, which fact is accepted by the respondents in paragraph-32 of the counter affidavit.

On the basis of the said statement made in the writ application and after noting the submission of learned counsel for the petitioner, on the prayer of learned Additional Advocate General No.6 an adjournment was granted to him to seek instructions on the point and it was directed that in the meantime



the technical bid of the petitioner be considered by the Technical Bid Committee and, if the petitioner is found not to be otherwise ineligible, to open the financial bid of the petitioner along with those of others and the said consideration shall be provisional subject to the final orders that may be passed in the writ application.

In the counter affidavit a stand was taken that the case of the petitioner was again taken up in the Technical Bid Evaluation Committee on 20.10.2016 in its review meeting and the petitioner was declared defaulter on the ground of non-completion of two allotted works of Kahalgaon Division as per the report of the Executive Engineer, Rural Works Division, Kahalgaon. In support of the same a letter dated 28.9.2016 containing a list of 18 works by different contractors has been brought on the record. The said letter having been signed by the Executive Engineer, Rural Works Department, Works Division, Kahalgaon to the Chief Engineer-2, Rural Works Department, Bihar, Patna in which it is stated that with respect to two of the works the physical progress is only to the extent of 5% although the works had to be completed by 9.10.2015.

Challenging the aforesaid letter, learned counsel for the petitioner submits that till 20.10.2016 when the Tender Committee had reviewed the technical bid, no debarment order had been passed against the petitioner and thus the respondents could not have relied upon the said letter dated 28.9.2016 and rejected the technical bid of the petitioner.

Learned counsel for the State is unable to show from the counter affidavit that any such order of debarment has been passed against the petitioner. Thus in the absence of any debarment order



with respect to the works in question relating to Kahalgaon contract, it was not open to the Technical Bid Committee to treat the petitioner as debarred relying upon Clause 4.7(ii) of the MBD, in which it is provided that there must be evidence of confirmed record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, or financial failures, etc.

Nothing has been brought on the record in the counter affidavit to show that there is any such evidence as is required for invoking the provisions under Clause 4.7(ii) of the MBD. All that is being asserted is that one contract granted to the petitioner had been completed only to the extent of 5% whereas learned counsel for the petitioner submits that the petitioner has already completed more than 80% of the said works and till 20.10.2016 there being no order of debarment, hence it is not even open to the respondents to declare the petitioner defaulter and debarred from participating in future tenders. As a matter of fact, the respondents have chosen to do so and sought to rely upon Clause 4.7(ii) of the MBD, whereas no two works where the petitioner had committed inordinate delay in completion of the contracts have been brought on the record; a single case cannot be the basis of the same in view of the said provision.

Another submission was made by learned Additional Advocate General No.6 that the petitioner's name not having been removed from the debarment list, hence the debarment was still in existence. The circular of the Department provides for review of the debarment list every three months but in the present case the same has not been done. As a matter of fact at the time fixed for review the petitioner had already completed the works and as such



the name of the petitioner firm ought to have been struck off from the debarred list of contractors.

In my view, apart from the fact that such periodical review is essential so that automatically the names of the contractors are removed from the list of debarment but even without removal of the name of the petitioner it having completed 100% of the works, it is not open to consider the petitioner as debarred while examining the technical bid. If such information of completion is given to them by the contractor at the stage of consideration of technical bid then the same is required to be duly verified by them from their own records.

For the aforesaid reasons, the writ application is allowed. The impugned orders dated 3.10.2016 and 20.10.2016 are both quashed and it is directed that the respondents shall open the financial bid of the petitioner along with other bidders successful at the technical bid stage and finalise the tender in accordance with law.

(Ramesh Kumar Datta, J)

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