IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12772 of 2015

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Richa Industries Limited having its registered office at Plot No. 29, D.L.F. Industrial Area, Phase-II, Faridabad, 121 003, Haryana through its signatory and Deputy Manager (Legal), namely Mr. Rajeev Kumar

.... Petitioner

Versus

1. Bihar State Building Construction Corporation Limited through its Chief General Manager, Hospital Road, Shastri Nagar, Patna- 800023
2. The Chief General Manager, Bihar State Building Construction Corporation Limited, Hospital Road, Shastri Nagar, Patna- 800023
3. The General Manager (North), Bihar State Building Construction Corporation Limited, Hospital Road, Shastri Nagar, Patna- 800023
4. The Deputy General Manager, Bihar State Building Construction Corporation Limited, Muzaffarpur
5. The Deputy General Manager, Bihar State Building Construction Corporation Limited, Vaishali

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Amarendra Nath Verma, Advocate
For the Respondent/s : Mr. Aditya Prakash Sahay, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

3 18-10-2016 Heard learned counsel for the petitioner and learned counsel for the Bihar State Building Construction Corporation Limited.

The petitioner seeks quashing of the letter dated 13.5.2015 by which the letter of allotment of contract dated 21.2.2015 issued to the petitioner and the letter of acceptance dated 26.2.2015 issued by the respondent Corporation have been withdrawn and further it is stated therein that the work was being re-tendered due to the indisciplined act of the petitioner and the petitioner was henceforth being declared unfit to participate in any tender of Bihar State Building Construction Corporation Limited.

The petitioner participated pursuant to the tender notice dated 20.11.2014 for construction of godowns of different

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dimensions and numbers at several places, including the districts of Muzaffarpur and Vaishali. After opening of the technical bid and the financial bid the petitioner was found to be the lowest tenderer. Letter of Acceptance was issued and the work was decided to be allotted in its favour but only at the price mentioned in the original B.O.Q., whereas the petitioner had quoted 10% above the scheduled rates. The petitioner was informed thereafter by letter dated 9.4.2015, in response to its letter dated 27.3.2015, that any extra amount over the approved B.O.Q. rate had not been possible and if he was not willing to do the work on the said rate he had to intimate the same to the authorities within a week so as to cancel the tender and to debar the petitioner from participating in any tender of works of the Corporation for five years, otherwise agreement was to be executed by him within three days from the date of issue of the letter and the work was to be started immediately. The petitioner protested to the said letter by letter dated 13.4.2015 stating as to under what circumstances of the tender clause the petitioner was forced to accept the LOA and also expressed his shock to see the reply in which the aforesaid statements have been made, including relevant provisions of the contract and it was stated that there was nothing in the 'Award of Contract' which showed that the contract could be awarded without the acceptance of bidder and further stated that the petitioner could not be debarred nor on the threat of debarment could be forced to accept anything. Again by letter dated 29.4.2015 the petitioner reiterated that it could only work at the quoted price and not on the scheduled rates and as such the letter of command could not be followed as the same would lead to heavy losses for the petitioner and accordingly a request was made

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to either return the earnest money deposit or award the tender at the quoted rates and not at the scheduled rates. Thereafter the impugned letter dated 13.5.2015 has been issued by which the letter of allotment of work dated 21.2.2015 and subsequent letter of acceptance issued by the Deputy General Manager, BSBCCL, PIU, Muzaffarpur dated 26.2.2015 were withdrawn and further it was stated that the work was being re-tendered and due to indisciplined act the petitioner was declared unfit to participate in any tender of Bihar State Building Construction Corporation Limited. Aggrieved by the same the petitioner has come up before this Court.

In the counter affidavit filed on behalf of the respondents the facts stated in the writ application are not denied, except to state that the petitioner by his action had wasted the valuable working period of the Corporation by wasteful correspondences. It is further stated that a fresh NIT was published on 21.5.2015 and the contract was awarded to another contractor who has started the work. Apart from the same nothing has been stated to counter the stand of the petitioner as to under what law the respondents were entitled to declare the petitioner unfit to participate in future tenders of the Corporation as he had allegedly performed indisciplined act.

In reply to the aforesaid, learned counsel for the petitioner submits that the respondents had acted in an unbecoming manner by forcing the petitioner to do the work on the BOQ rates under the threat of debarment instead of negotiating with the petitioner to arrive at any other reasonable rate. It is submitted that the said action is highly arbitrary and unreasonable and in gross violation of the provisions of Article 14 of the Constitution.

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It is further submitted that there is no authority in the respondent Corporation, which is State under Article 12 of the Constitution, to have declared the petitioner unfit and debarred from participating in future tenders of the Corporation and further the respondents had adopted pick and choose method for the purpose of allotment of the works.

Learned counsel for the respondent Corporation has reiterated the stand taken in the counter affidavit but is unable to show how the action of the respondents to insist upon the petitioner to do the work on BOQ rates and the petitioner's act is indisciplined and how the petitioner was not entitled to enter into the correspondences.

It is evident that the respondent authorities of the Building Construction Corporation have acted in an unbecoming manner, being undoubtedly State under Article 12 of the Constitution, and expected not to act in an arbitrary and whimsical manner, and the respondents ought to have acted in a just and fair manner.

From the facts of the case it is evident that if the rate quoted by the petitioner at 10% above the scheduled rate which is not acceptable to the respondents then in all fairness they ought to have negotiated with the petitioner for arriving at a reasonable rate and in case any final agreement could not be arrived at on the basis of such negotiation then they could have re-tendered the work but there is no provision of law or Constitutional principle that the respondent authorities can compel the petitioner to do the work on the rate which was not offered by the petitioner.

It is now well established that notice inviting tender is only an invitation to offer and those who filed their tenders pursuant to the said notice are really making offer which could

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only become final when it is accepted by the authorities inviting the tender and in case the offer is not acceptable to the authorities at the rates that have been quoted, then neither under the law of contract nor on Constitutional principles they could compel a person to accept the work at the rate that they insist upon and to do so under the threat of debarring the tenderer from any future contracts is in fact an indisciplined act of the concerned authorities and not of the contractor who refused to do the work at the rate which it had not quoted in the tender papers.

For the aforesaid reasons, I am of the view that the impugned order dated 13.5.2015 in so far as it states that the petitioner has performed an indisciplined act in the matter and further has been declared unfit to participate in the tenders of the Corporation are arbitrary and discriminatory and it is therefore quashed to the said extent.

The writ application is, accordingly, allowed with the aforesaid observations and directions. The respondents shall also pay a cost of Rs.5,000/- to the petitioner.

(Ramesh Kumar Datta, J)

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