

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17889 of 2015

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M/s Star Build Max Pvt. Ltd. through its Managing Director Parwez Ahmad Khan, son of Hasin Ahmad Khan, resident of Mohalla- Balua Tal, Police Station Motihari Town, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Govt. of Bihar Rural Works Department, Patna.
2. Secretary Rural Works Department, Govt. of Bihar, Patna.
3. Engineer-in-Chief, Rural Works Department, Govt. of Bihar, Patna.
4. The Chief Engineer-3, Rural Works Department, Govt. of Bihar, Patna.
5. Joint Secretary Rural Works Department, Govt. of Bihar, Patna.
6. The Joint Secretary Water Resources Department, Govt. of Bihar Patna.
7. The Deputy Secretary-cum-Internal Financial Advisor, Rural Works Department, Govt. of Bihar, Patna.
8. The Superintending Engineer, Rural Works Department, Govt. of Bihar, Patna.
9. The Executive Engineer, RWD, Works Division, Dhaka
10. M/s Vishwa Construction, Balua Chowk, Gopalgang, Motihari

.... Respondent/s

with

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Letters Patent Appeal No. 582 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 17889 of 2015

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M/s Vishwa Construction, Balua Chowk, Gopalganj, Motihari

.... Respondent No. 10/Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Govt. of Bihar Rural Works Department, Patna.
2. The Secretary Rural Works Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Govt. of Bihar, Patna.
4. The Chief Engineer-3, Rural Works Department, Govt. of Bihar, Patna.
5. The Joint Secretary Rural Works Department, Govt. of Bihar, Patna.
6. The Joint Secretary, Water Resources Department, Govt. of Bihar Patna.
7. The Deputy Secretary-cum-Internal Financial Advisor, Rural Works Department, Govt. of Bihar, Patna.
8. The Superintending Engineer, Rural Works Department, Govt. of Bihar, Patna.
9. The Executive Engineer, Rural Works Department, Govt. of Bihar, Patna.
10. M/s Star Build Max Pvt. Ltd. through its Managing Director Parwez Ahmad Khan, son of Hasin Ahmad Khan, resident of Mohalla- Balua Tal, Police Station Motihari Town, District- East Champaran.

.... Respondent/s

with



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Letters Patent Appeal No. 592 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 17889 of 2015

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1. The State of Bihar through the Principal Secretary, Govt. of Bihar Rural Works Department, Patna.
2. Secretary Rural Works Department, Govt. of Bihar, Patna.
3. Engineer-in-Chief, Rural Works Department, Govt. of Bihar, Patna.
4. The Chief Engineer - 3, Rural Works Department, Govt. of Bihar, Patna.
5. Joint Secretary Rural Works Department, Govt. of Bihar, Patna.

.... Appellant/s

Versus

1. M/s Star Build Max Pvt. Ltd. through its Managing Director Parwez Ahmad Khan, Son of Hasin Ahmad Khan, Resident of Mohalla - Balua Tal, Police Station - Motihari Town, District - East Champaran.
2. The Joint Secretary Water Resources Department, Govt. of Bihar, Patna.
3. The Deputy Secretary - cum - Internal Financial Advisor, Rural Works Department, Govt. of Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Govt. of Bihar, Patna.
5. The Executive Engineer, Rural Works Department, Works Division, Dhaka.
6. M/s Vishwa Construction, Balua Chowk, Gopalganj, Motihari.

.... Respondent/s

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Appearance :

For M/s. Star Build Max Pvt. Ltd. :	Mr. P.K. Shahi, Sr. Advocate
	Mr. Ranjeet Kumar, Advocate
For M/s Vishwa Construction :	Mr. Dinu Kumar, Advocate
For the State :	Mr. G.P. Ojha, G.A.-7
	Mrs. Priya Gupta, A.C. to G.A.-7

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 06-02-2017

Re: C.W.J.C. No. 17889 of 2015

Heard learned counsel for the parties.

2. The challenge in the present writ application is to an
order dated 7th of October, 2015 passed in Appeal No. 3 of 2015



whereby, an appeal against the order of black-listing of the petitioner on 9th of June, 2015 was dismissed.

3. By way of a supplementary affidavit, the challenge is made to grant of tender to Respondent No. 10 pursuant to notice inviting tender on 8th of August, 2015.

4. The facts leading to the present writ application is that the petitioner was a bidder in response to tender notice dated 12th of December, 2014 for the construction of road from Bisrahiya Chowk to Purhani. There were two bidders, petitioner and Respondent No. 10. The petitioner was the lowest bidder. However, a complaint was made by a Member of Legislative Assembly that the petitioner has been black-listed in another process of grant of contract by the Water Resources Department, therefore, the petitioner is not the eligible tenderer. On the basis of the said complaint, the tender process initiated by an advertisement dated 12th of December, 2014 was cancelled and thereafter a fresh process was initiated for which advertisement was published on 8th of August, 2015.

5. In the meantime, the petitioner invoked the writ jurisdiction of this Court challenging the black-listing of the petitioner in C.W.J.C. No. 9437 of 2015 (M/s Star Build Max Pvt. Ltd. Vs. The State of Bihar & Ors.). The petitioner also challenged the order of cancellation of tender process by Engineer-in-Chief. This Court



directed the petitioner to file an appeal under the provisions of Bihar Contractors Rules, 2007 vide order dated 27th of July, 2015. It was also ordered that the petitioner shall be allowed to participate in the tender process which was ordered to be subject to the result of appeal.

The relevant extract from the order reads as under:-

“Let the Appellate Authority consider the appeal of the petitioner as quickly as possible within three weeks from the date of receipt/production of a copy of this order before the Appellate Authority along with a copy of the appeal memo (Annexure-10/A). In the meantime, the petitioner shall also be allowed to participate in the tender process which, of course, shall be subject to the result of the appeal.”

6. An appeal against the order of black-listing dated 9th of June, 2015 was dismissed on 7th of October, 2015. It is thereafter, the bids were opened and the contract awarded to Respondent No. 10.

7. The learned Single Bench hearing the writ application passed an interim order on 9th of February, 2016 setting aside the order of black-listing but since the petitioner has participated in a tender process, and the technical bid was rejected on the ground that the petitioner stands black-listed, the Court stayed the allotment of work to the successful tenderer i.e. Respondent No. 10 herein.

8. The Respondent No. 10 filed Letters Patent Appeal No. 582 of 2016 against the said order but while hearing the matter, we ordered that the writ application itself should be taken up for



hearing for expeditious disposal in view of the fact that the construction of road stands stayed by virtue of an interim order passed by the learned Single Bench. It is in pursuance of such an order, the writ application has been placed before this Bench.

9. The argument of learned counsel for the petitioner is that the rate offered by the petitioner is much less than the rate offered by the successful tenderer, therefore, the State would be spending more amount; had the contract been awarded to the petitioner. Learned counsel for the petitioner relies upon a Supreme Court order reported as Jagdish Mandal Vs. State of Orissa and others, (2007) 14 SCC 517, particularly paragraph 22 which reads as under:-

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a



grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”,

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

10. An appeal against the order of black listing of the petitioner was admittedly dismissed on 7th of October, 2015. Therefore, the State was competent to award contract to Respondent No. 10 as the participation of the petitioner in the subsequent tender



process was subject to the decision of the appeal only. Though the learned Single Bench has subsequently found the black-listing of the petitioner as illegal but that illegality in the black-listing will not render the award of contract to Respondent No. 10 as nugatory as the same was granted in favour of Respondent No. 10 in view of the fact that the tender submitted by the petitioner was only subject to result of appeal.

11. Therefore, we do not find that the process adopted by the respondents in awarding contract to Respondent No. 10 can be said to be unfair or arbitrary in any manner.

12. Having said so, the fact remains that the rates quoted by the petitioner are lower than the rates offered by the successful tenderer. It is for the State to take appropriate action including seeking revised rates from the successful tenderer. However, we do not wish to set aside the contract granted to Respondent No. 10 since the construction of road is in public interest.

13. We also give liberty to the petitioner to seek its remedy as may be available in law before the Civil Court in respect of damages, if any, if he wants to claim from the respondents.

14. The writ application stands dismissed accordingly.

Re: L.P.A. No. 582 of 2016

In view of the order passed in C.W.J.C. No. 17889 of



2015, the Letters Patent Appeal filed by Respondent No. 10 in the writ application stands dismissed as infructuous.

Re: L.P.A. No. 592 of 2016

Since the Letters Patent Appeal is directed against an interim order dated 9th of February, 2016 and that the writ application itself has been decided by a separate order, the Letters Patent Appeal is rendered infructuous and is dismissed as such.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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