

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10382 of 2015

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M/s Mass Powertech Pvt. Ltd. a Private Limited Company having its office at K-4, Sector - 5, Bawana, Industrial Estate, Delhi - 110042 through its authorized Signatory Gaurav Jindal Son of Sri Sudesh Kumar Jindal R/o 16-B, Rajbagh, P.S. - Sahibabad, District Gaziabad, U.P. - 201005.

... .. Petitioner

Versus

1. The Bihar State Electricity Board now known as Bihar State Power (Holding) Co. Ltd., having its office at Vidyut Bhawan, Bailey Road, Patna through its Chairman.
2. The Chief Engineer (S & P), North Bihar Power Distribution Co. Ltd. having its registered office at Vidyut Bhawan, Bailey Road, Patna.
3. The Electrical Superintending Engineer (Purchase), Bihar State Power (Holding) Co. Ltd, Vidyut Bhawan, Bailey Road, Patna.
4. The Electrical Executive Engineer (Purchase), Bihar State Power (Holding) Co. Ltd., Vidyut Bhawan, Bailey Road, Patna.

... .. Respondents

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Appearance :

For the Petitioner : Mr. S.D. Sanjay, Sr. Advocate.
Mr. Mohit Agarwal, Advocate.

For the Respondents : None

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 18-12-2018

The present writ petition has been filed for the following reliefs -

- “(i) For quashing of the order issued vide letter no. 2354 S&P/12/NB dated 03.12.2014 by respondent no. 2 whereby the petitioner was debarred from participation in future tender of the respondents for one year and further directed to forfeit the performance guarantee furnished by the petitioner as being wholly arbitrary, illegal and malafide ;*
- (ii) For a direction to the respondents to allow the petitioner to participate in future tenders of the respondents and other power holding companiis/Electricity Boards as the impugned order is nonest in law and was passed for ulterior motives and was also in violation of principles of natural justice;*



(iii) For directing the respondents to refund the performance guarantee to the tune of Rs. 48,88,800/- furnished by the petitioner along with interest as the impugned action is arbitrary and bad in law, and/or for any other relief(s) for which the petitioner may be found entitled to in the facts and circumstances of the present case."

2. Mr. S.D. Sanjay, learned senior counsel appearing for the petitioner invites reference to paragraph-32 of the writ petition wherein a specific stand has been taken that the impugned order has been passed in violation of natural justice as no prior hearing was ever given to the petitioner.

3. None appears on behalf of the respondents despite repeated calls. Yesterday the matter was passed over in view of non-appearance on behalf of the respondents. Even though the writ petition was filed as far back as in the year 2015, the respondents have not filed any counter affidavit controverting the averments in the writ petition. This Court is not inclined to adjourn the matter any further.

4. Having heard learned senior counsel for the petitioner and on consideration of the materials on record, this Court finds substance in the submission of the petitioner. The categorical stand that the impugned order was passed without grant of prior hearing has not been disputed by the respondents. Failure to grant



opportunity of hearing vitiates any adverse order and cannot be sustained in law.

5. In the above circumstances, the impugned order dated 03.12.2014 is accordingly set aside. However no fruitful purpose will be served in remitting the matter for fresh decision inasmuch as the period of one year for which the petitioner had been debarred in terms of the impugned order dated 03.12.2014 has since already elapsed.

6. As regards the prayer for refund of performance guarantee of Rs. 48,88,800/-, the petitioner shall be at liberty to approach the concerned authority for refund of the same with a fresh representation within four weeks hereof. If any such representation is filed within the stipulated period, the same shall be considered and disposed of in accordance with law expeditiously and preferably within a period of eight weeks thereafter.

7. It is made clear that in case the stand of the petitioner is found to be incorrect, the respondents shall be at liberty to approach this Court for recall of this judgment.

8. The writ petition stands allowed.

(Vikash Jain, J)

lbrar/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21.12.2018
Transmission Date	N.A.

