

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13217 of 2018

M/s Abhyudaya Housing and Construction Pvt. Ltd. having its registered office at 2nd Floor, Abhudaya Tower, 2-Meerabai Marg, Hajratganj, Lucknow-226001, Uttar Pradesh through its authorized signatory namely Mr. Piyush Agarwal.

... .. Petitioner/s

Versus

1. The State Of Bihar through Urban Development & Town Planning Department, Govt. of Bihar Vikas Bhawan, New Secretariat, Patna.
2. The Principal Secretary, Urban Development and Town Planning Department, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
3. Bihar Urban Infrastructure Development Corporation Limited A Government of Bihar Undertaking throu havin his Office at 2nd Floor, Khadya Bhawan, Road No. 2,Daroga Prasad Rai Path, R Block, Patna - 800001.
4. The Chief General Manager, Bihar Urban Infrasturcture Development Corporation Limited A Government having its Office at 2nd Floor, Khadya Bhawan, Road No. - 2, Daroga Prasad Rai Path, R - Block, Patna - 800001.
5. The Project Director, SI - 4, Bihar Urban Infrastructure Development Corporation Limited A Governme having its Office at 2nd Floor, Khadya Bhawan, Road No. - 2, Daroga Prasad Rai Path, R - Block, Patna - 800001.
6. M/s Jyoti Buildtech Pvt. Ltd. having its registered office at 68/5339, Raigarpura, Karol Bagh, New
7. L.R. Sharma and Company Having its Office at V - 17, Green Park Extention, New Delhi - 110016.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sharad Kumar Sinha
For the Respondent/s : Mr. Ravindra Kumar Priyadarshi

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 01-07-2019 Learned counsel for the petitioner is permitted to make correction with regard to letter number in the first paragraph of the writ application in course of the day.

Petitioner in the present case is aggrieved by and dissatisfied with the order as contained in letter no.2228 dated 18.08.2017 issued under the signature of the Managing Director,



Bihar Urban Infrastructure Development Corporation Limited (hereinafter referred to as the 'BUIDCO') to the extent the petitioner has been debarred from participating in tenders relating to projects of the respondent no.3 for consecutive five years and steps have been proposed for blacklisting the petitioner.

For the purpose of setting aside of the impugned order, learned counsel for the petitioner has raised a short point for consideration. According to him, the impugned order suffers from violation of principles of natural justice as no notice to show cause was ever issued to the petitioner before passing of the impugned order.

It appears from perusal of the writ application that under a joint venture agreement (in short 'JV') dated 23rd day of January, 2016 (Annexure-3), M/s Jyoti Build Tech Pvt. Ltd., M/s Abhyudaya Housing & Constructions Pvt. Ltd. (petitioner) and M/s L.R. Sharma & Company agreed to join hands for purpose of participating in the bids for survey, review the designs, redesign where necessary and build new sewerage network of about 172 km length invited by the BUIDCO. In the joint venture agreement, M/s Jyoti Build Tech Pvt. Ltd. was made the lead partner of the JV and in terms of clause '3' of the



agreement the lead partner was authorized to represent the JV in its dealing with the client. For the purpose of submission of bid proposals, the parties agreed to nominate Mr. Eishvjeet Singh, Manager, M/s Jyoti Build Tech Pvt. Ltd. as their authorized signatory to sign and submit all documents and subsequent clarifications, if any, to the client. M/s Abhudaya Housing & Constructions Pvt. Ltd. and M/s L.R. Sharma & Company were expressly not authorized to submit any such proposals, clarifications or commitments to the client before securing the written clearance of the others partner which were to be expeditiously given by M/s Jyoti Build Tech Pvt. Ltd. to M/s Abhyudaya Housing & Constructions Pvt. Ltd. & M/s L.R. Sharma & Co.

In terms of clause 17 notices were to be given in writing by e-mail or by registered mail or commercial courier on the address of M/s Jyoti Build Tech Pvt. Ltd., 19-B, Lajpat Nagar, Chowk, Lucknow.

It appears that the JV was issued Letter of Acceptance (LOA) on 21.03.2017. For purpose of execution of agreement and submission of performance bank guarantee 30 days time as per Request for Proposal (RFP) was granted and JV was called upon to execute the sale deed. It further appears that later on one



performance bank guarantee with a validity period of 31.12.2020 was submitted by the JV, but on verification by BUIDCO, the Indusind Bank informed that the said performance guarantee was not issued by the bank, therefore it was a case where forged bank guarantee was submitted by the company. When this was brought to the notice of the JV through e-mail to M/s Jyoti Build Tech Pvt. Ltd., BUIDCO was informed that the consultant of the JV had submitted a wrong/forged bank guarantee. In these circumstances, the impugned action was taken and M/s Jyoti Build Tech Pvt. Ltd. along with this petitioner and other joint venture member have been debarred for a period of five years and further action were proposed towards black-listing.

Learned counsel for the petitioner submits that on perusal of the joint venture agreement it is evident that the lead member of the joint venture was M/s Jyoti Build Tech Pvt. Ltd. and all representations for purpose of the bid and other matters were to be done by the lead partner. It is submitted that the debarment of five years from participating in any of the related bids of BUIDCO is a serious matter as it has got a civil consequence and in such circumstance where any such action was proposed to be taken, the principles of natural justice



required that a chance of hearing be given to the petitioner. It is also submitted that the address of the registered office of the petitioner-company is very much available in the joint venture agreement, therefore the BUIDCO could have easily issued show cause notice to the petitioner giving an opportunity to take its stand for consideration before passing the impugned order, but that has not been done. Therefore, a punitive order of the present nature has been passed against the petitioner without giving it an opportunity to explain its stand. This according to learned counsel for the petitioner, would render that the entire order as against the petitioner suffers from violation of principles of natural justice and shall be liable to be set aside.

Mr. Ravindra Kumar Priyadarshi, learned counsel representing the BUIDCO has filed a counter affidavit and then in view of the stand of the petitioner in paragraph '18' of the writ application saying that no notice to show cause was served upon the petitioner when this Court vide its order dated 25.06.2019 called upon for specific affidavit, now a supplementary counter affidavit has also been filed. A perusal of the supplementary counter affidavit would show that the respondent BUIDCO has been relying upon clause '17' of the joint venture agreement to submit that the notice sent on the



said address would be taken as an opportunity to the petitioner as well to show cause and, therefore, the principles of natural justice stands complied with. As it appears from the records that earlier one of the joint venture members had moved this Court alleging violation of the principles of natural justice this Court while hearing writ application being CWJC No.1864 of 2018, without entering into the merit of the case, disposed of the same by setting aside the impugned order giving liberty to the 'BUIDCO' that in case any show cause notice has been served upon the petitioner of the said case it will be open for the 'BUIDCO' to move this Court for recall of the judgment. A copy of the judgment is available at Annexure-13 to the writ application. More than one year have gone after passing of Annexure-13.

Learned counsel for the 'BUIDCO' submits that now steps are being taken to file an appropriate application for recall of the order. It is thus submitted by Mr. Priyadarshi that the impugned order is not fit to be set aside on the ground of violation of principles of natural justice. He has submitted that in terms of clause '6' the parties have undertaken that they shall be jointly and severally liable to the client in the discharge of all the obligations and liabilities as per the contract with the client



and for the performance of contract awarded to their JV. He has thus submitted that for the wrong committed by the JV, the JV member would also be responsible.

Learned counsel for the State is present, however, this being a contest between the petitioner and the BUIDCO he has not much role to play.

Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that the impugned order is liable to be set aside on the ground of violation of principles of natural justice. It is well said that the principles of natural justice like a brooding omnipresence which prevails everywhere. It becomes all the more necessary to comply with this principle when it comes to exercise a drastic power which may have an effect of taking away the bread and butter of a party. It is well understood in the legal parlance that debarment of a business entity from participating in the bid in future has got a civil consequence and it is in the nature of a civil death to the entity who is being debarred and is blacklisted. To this Court, thus, it appears that while passing an order of debarment or taking action for blacklisting a show cause notice was required to be served upon the petitioner who was a JV member but not lead partner of the JV. What will be the



responsibility of the JV member is not the issue before this Court. The Court is not entering into the merit of the allegations and is not deciding as to whether or not the petitioner is jointly or severally liable or not for the act of JV. The question is limited as to whether being a JV member if the petitioner was going to be debarred for next five years and any action for its blacklisting is proposed would it not be required to be served by a show cause notice giving an opportunity to explain its conduct and other matters. As the facts reveal from the records, the place and address of notice provided in clause '17' of the JV agreement is that of the lead partner and said address was given for the purpose of any communication with regard to the work in question which is undertaken by the JV.

In the opinion of this Court by sending a notice on the registered office of the JV alone, the requirement to give an opportunity of hearing to this petitioner who is a different business entity having its own registered office at the different address is not complied with. A perusal of clause '3' of the JV agreement strengthens the belief of this Court in taking a view that a notice to show cause was required to be served upon the petitioner if any action was going to be taken to debar the petitioner for next five years and action for blacklisting was to be taken because clause '3' while granting express authority to deal with the contract matters



in the JV lead partner also expressly prohibits this petitioner from submitting any proposals, clarifications or commitments to the client. Thus the role of the petitioner was also expressly mentioned in clause 3. The lead partner was authorized to deal with the client in the matter of submission of bid proposals, there was no authorization to represent the petitioner if occasion so arises in the matter like the present one where the petitioner may be fastened with a liability individually.

In effect, this Court comes to a conclusion that it is a case in which so far as the petitioner is concerned, the order of debarment and proposed action for blacklisting has been passed without giving an adequate opportunity to the petitioner to represent its case, therefore, the impugned order cannot sustain the test of law and is liable to be set aside. Accordingly, the impugned order as contained in letter no.2228 dated 18.08.2017 is hereby set aside. The setting aside of the impugned order would however not preclude the respondents from proceeding a fresh in accordance with law, if so advised.

The writ application is allowed to the extent stated hereinabove.

(Rajeev Ranjan Prasad, J)

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