

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7699 of 2020

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M/s Kabbu Khirhar a partnership firm through one of its partners namely Pankaj Kumar Agrawal male aged about 32 years, son of Shiv Kumar Prasad, resident of Ward No. 1, Shankar Chowk, Dumra, Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Building Construction, Govt. of Bihar, Patna.
2. The Secretary, Building Construction Department, Govt. of Bihar, Patna.
3. The Engineer in Chief cum Additional Commissioner cum Special Secretary, Department of Building Construction, Govt. of Bihar, Patna.
4. The Chief Engineer (North) Department of Building Construction, Vishveshwariya Bhawan, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal
For the Respondent/s : Mr. Lalit Kishore, Advocate General
Mr. Uday Shanker Sharan Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 15-09-2020

Heard Mr. Gautam Kumar Kejariwal, learned counsel for the petitioner and Mr. Uday Shanker Sharan Singh, learned counsel for the State.



This is an application challenging the order dated 29.07.2020 passed by Respondent No. 3, black-listing the petitioner for three months for having colluded with another construction company and thereby disturbing the process of tender.

The learned counsel for the petitioner submits that the aforesaid decision is absolutely misplaced and is unreasonable as well.

The Respondent / Building Construction Department of the Government of Bihar invited a tender for the work of construction of VV PAT Godown (warehouse) (with electrical and firefighting works) at Sitamarhi on 19.09.2019. The term of the tender period expired and therefore another tender had to be published. This also was not responded by the tenderers who had the capability of qualifying in terms of the conditions of the notice inviting tender. For the third time, the notice inviting tender was floated in which along with the petitioner, five other



bidders participated. Out of them, four including the petitioner were held to be technically responsive. Thereafter, before the contract could be concluded with anyone of the tenderers, the petitioner lodged a complaint regarding one Dinkar Construction Private Limited of not meeting the requirements under the notice inviting tender and the aforesaid entity having placed wrong information before the Tender Evaluation Committee. This complaint, on enquiry, was found to be true. However, later, the petitioner tried to retract from the aforesaid complaint without ascribing any reason. This led to a show-cause notice being served upon the petitioner asking him to explain why his license be not cancelled / suspended or black-listed for having colluded with a party which had offered its papers with the intention of disturbing the entire tender process. The notice was responded to by the petitioner by stating that the facts have come to the knowledge of the petitioner only after the



bidders were held to be technically responsive and for the safety, the complaint was being withdrawn. The explanation was vague and it was not accepted by the authority. Resultantly, the license of the petitioner has been suspended for three months.

Mr. Gautam Kumar Kejariwal, learned counsel for the petitioner has pointed out that there was no evidence before the Tender Evaluation Committee / Purchase Committee of the Department which has taken the decision of black-listing it for three months about any collusive practice by the petitioner. The explanation offered by the petitioner could be vague but that did not *ipso facto* gave any impression of the action of retracting the complaint being collusive in nature or for the purposes of disturbing the tender process.

He further submits that apart from such decision being arbitrary, it is not ensconced with the



proper competence of the authority in black-listing the petitioner.

In support of the aforesaid contention, he has drawn the attention of this Court to Rule 11 of the Bihar Contractors Registration Rules, 2007 and has submitted that for black-listing or suspending the license of a contractor, such bidder or contractor has to be found guilty of acts of indiscipline or misconduct. Such black-listing could be ordered if a bidder fails in execution of work in accordance with the terms of the agreement or guidelines. If a bidder sublets his work to another contractor without the consent of the Department or causes sale of government property like cement, steel, bitumen etc. or furnishes wrong document or invalid security for the purposes of tender, the license could be cancelled / suspended or could be black-listed for a determinate period.



None of the grounds mentioned in Rule 11 of the Bihar Contractors Registration Rules, 2007 permit black-listing of the petitioner for withdrawing a complaint which was made by it with respect to one of the bidders.

After having heard the counsel for the parties, I am of the considered opinion that even though the explanation offered by the petitioner for taking back his complaint midway is vague, but there is no material to infer that such attempt at withdrawal of the complaint was because of any collusion amongst the bidders or for the purposes of disturbing the entire tender process. No reason has been assigned in the order for suspending the license of the petitioner even for a short period of three months.

Black-listing a firm has serious civil consequences. It is the civil death of a contractor. It cannot be resorted to in a casual or cavalier manner.



Black-listing prevents an entity from participating in any government contract which in a way is an emasculation of the authority in a person to take part in a tender for earning his livelihood. Therefore, any decision of black-listing has to be invested with reason and it cannot be arbitrary or whimsical.

Apart from this, I do not find that the reason for black-listing the firm of the petitioner is in tune with the requirements under Rule 11 of the Bihar Contractors Registration Rules, 2007.

There could be myriad reasons for withdrawing a complaint. Had there been any intention of putting the tender process in jeopardy, the petitioner, in the first instance, would not have raised any complaint.

Apart from this, the complaint on investigation was found to be correct.

There could have been some doubt about collusion if the petitioner would not have complained



about a particular bidder about it not being technically responsive even if it had the knowledge for the same. However, later, withdrawing the complaint does not automatically lead to the conclusion that in a back-handed manner, the tender process is sought to be jeopardized.

For the aforesaid reasons, the order impugned is not found to have passed the test of reasonableness. The order is also not sustainable on the ground that the reason which has been assigned for black-listing the firm does not fall in the categories of the peccadilloes for which black-listing could be ordered.

True it is that the list in Rule 11 is not exhaustive; nonetheless withdrawing a complaint, which though was found to be correct, cannot conclusively be said to be collusive.

For the aforesaid reasons, the order impugned is set aside.



The matter is remitted to the Tender Evaluation Committee / Purchase Committee for taking a fresh call on the matter, if they so desire, after giving a fresh notice to the petitioner.

With the aforesaid observation / direction, the writ petition stands allowed.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	16.09.2020
Transmission Date	

