

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2095 of 2020**

M/s Hitesh Bhai Patel Through Its Proprietor Hitesh Bhai Patel, Malviya Nagar, Durg (Chhattisgarh), S/o Late Shri G.B. Patel, Aged About 53 Years, R/o E-9 Malviya Nagar, Durg (Chhattisgarh)

---- Petitioner**Versus**

1. Bhilai Steel Plant, Bhilai, Through Its Chief Executive Officer, District - Durg (Chhattisgarh)
2. Executive Director (Works), Bhilai Steel Plant, Bhilai, District - Durg (Chhattisgarh)
3. General Manager (Contract Cell Works), Bhilai Steel Plant, Bhilai, District - Durg (Chhattisgarh)
4. General Manager (In-Charge), (Coal Chemical Department), Bhilai Steel Plant, Bhilai District - Durg (Chhattisgarh)
5. Assistant General Manager (A.G.M.) (Contract Cell Works), Bhilai Steel Plant, Bhilai, District - Durg (Chhattisgarh)
6. Deputy General Manager (D.G.M.), (In-Charge) Coal, Battery And Hr (Co And CCD), Bhilai Steel Plant, Bhilai, District - Durg (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Mateen Siddiqui, Advocate.
For Respondents	:	Shri P.R. Patankar, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Order on Board**Per P. R. Ramachandra Menon, Chief Justice****25.09.2020**

1. The challenge in this writ petition is against the Annexure P/1 order dated 17.08.2020 suspending the business dealings with the Petitioner and the subsequent Annexure P/2 order dated 21.08.2020, whereby the work order awarded by the Petitioner has been terminated. There is a prayer to

direct the Respondents to permit the Petitioner to perform the remaining part of the contract awarded to him vide Annexure P/3 order dated 09.10.2019.

2. Heard Shri Mateen Siddiqui, the learned counsel appearing for the Petitioner and Shri P.R. Patankar, the learned counsel representing the Respondents at length.
3. The Petitioner who is a proprietorship concern had participated in the tender proceedings (Annexure P/5) dated 25.06.2019 and on coming out successful, the contract was awarded to the Petitioner as per Annexure P/3 dated 09.10.2019; which is in respect of "Operational and Mechanical Maintenance Activities in CCD-3 (Battery# 11 Complex)". The award value is to the tune of Rs.2,17,03,500.96 and the contract period was fixed as two years from 01.11.2019 to 31.10.2021. Pursuant to the award of work to the Petitioner, further steps were pursued and the work was going on. While so, Annexure P/4 show-cause notice dated 01.08.2020 was issued to the Petitioner w.r.t. the eligibility, mentioning that the Petitioner had successfully executed the work of only Rs.62,10,398.86 up to 31.05.2019 (which was an earlier contract awarded and performed by the Petitioner), whereas the experience certificate produced by the Petitioner showed that he had performed the work to an extent of Rs.67,31,607.08, which did not tally with the actual facts.
4. On receipt of the show-cause notice, the Petitioner submitted Annexure P/9 reply dated 04.08.2020 trying to explain the facts and figures to the effect that he had completed the work of more than the requisite extent, (to substantiate the experience in similar works). But, allegedly without

properly looking to the facts and figures and without proper application of mind, the Respondent-Company issued Annexure P/1 order dated 17.08.2020 suspending the business dealings with the Petitioner with effect from 18.08.2020 for a period of six months or till a final decision was taken by the Management. This was followed by Annexure P/2 dated 21.08.2020; whereby a finding was rendered to the effect that the experience certificate was factually not correct and cannot be considered to have the Petitioner treated as qualified with reference to the eligibility criteria and accordingly, the work order given was terminated asking to vacate the premises within seven days. This made the Petitioner to approach this Court challenging the above proceedings and contending that, the Petitioner is having the requisite qualification and experience as per the tender notification and that the finding of the Respondents to the contrary is not correct or sustainable. The Petitioner has also sought to rely upon Annexure P/8 experience certificate, Annexure P/10 calculation chart and Annexure P/11 forensic report as to the expert opinion on the signature of the Authority, who was issued Annexure P/8 experience certificate.

5. The Respondents have filed a 'preliminary objection' dated 16.09.2020 questioning the very maintainability of the writ petition, besides attempting to substantiate the merit involved with reference to the experience certificate produced. It is pointed out that the averment of the Petitioner that the Respondents have 'blacklisted' the Petitioner is not correct and that the matter is still to be considered by the Standing Committee, by virtue of which, the writ petition is premature. It is further pointed out that the Petitioner is having other efficacious alternative

remedy and the disputed questions of fact can't be considered in this petition by invoking discretionary jurisdiction under Article 226 of the Constitution of India. It is further pointed out that the work has already been awarded to M/s. Hindustan Steel Company Limited.

6. Shri Mateen Siddiqui, the learned counsel appearing for the Petitioner submits that the action pursued by the Respondents is *per se* wrong and illegal in all respects. Obviously, no opportunity of hearing was given to the Petitioner before 'blacklisting' the Petitioner, which is liable to be interdicted by this Court in view of the law rendered by the Apex Court on the point. The extent of work done by the Petitioner is certified in the experience certificate, which is much more than the extent as notified in the tender conditions. This has been certified in Annexure P/8 experience certificate, which has not been properly appreciated by the Respondents. It is contended that the action pursued by the Respondents is arbitrary in all respects. Existence of alternative remedy is not a bar and that the matter requires to be interfered by this Court invoking discretionary jurisdiction under Article 226 of the Constitution of India.
7. Shri P.R. Patankar, the learned counsel representing the Respondents submits that the idea and understanding of the Petitioner that the Petitioner is 'blacklisted' is far from the track of truth. Annexure P/1 order dated 17.08.2020 issued by the Respondents is only for "suspension" of business dealings with the Petitioner on a temporary measure, till the matter is considered and finalized as specified therein. The tender proceedings were finalized by the Respondents based on the materials supplied by the Petitioner and it was accordingly, that Annexure P/3 work order was issued on 09.10.2019. But it was thereafter, that the false and

fabricated nature of evidence produced by the Petitioner with regard to the alleged experience came to the notice of the Respondents. On enquiry, it was revealed that no such experience certificate as claimed by the Petitioner was ever issued by the Competent Authority. Further, as per the tender conditions, only the quantum of work executed till 31.05.2019 could be reckoned for deciding the eligibility. On scrutiny of facts and figures in this regard, it was revealed that the total work executed by the Petitioner before the cut-off date was only to the extent of Rs.62,10,398.86, whereas the minimum quantum required was to be satisfied was much more. It was on the strength of a fabricated certificate with regard to the experience, that the Petitioner succeeded in getting the work awarded in the name of the Petitioner Firm.

8. There is no dispute that, pursuant to Annexure P/5 tender notification, the work was awarded to the Petitioner and it was only thereafter, that the Respondents came across certain allegations amounting to misconduct on the part of the Petitioner as mentioned in Annexure P/1 dated 17.08.2020, deciding to keep the business dealings with the Petitioner in abeyance/suspension. But before issuing Annexure P/1, an opportunity of hearing was given to the Petitioner vide Annexure P/4 show-cause notice dated 01.08.2020 to explain the incriminating circumstances noted therein and it was in response to this, that the Petitioner submitted Annexure P/9 reply dated 04.08.2020. Obviously, it was only after considering the said reply, that the Respondent Authority took a conscious decision to keep the business dealings with the Petitioner in abeyance vide Annexure P/1 dated 17.08.2020 for a temporary period, pending investigation, in conformity with Annexure R/7 norms. The said

proceeding is not an act of 'blacklisting' of the Petitioner without affording an opportunity of hearing and hence the contention cannot but be repelled.

9. It is asserted by the Respondents in paragraph-3 of the preliminary submission, that during the scrutiny of the contract file by the Vigilance/Concerned Department, it was found that the Petitioner had submitted false documents in support of his eligibility to participate in the Annexure P/5 Notice Inviting Tender (in short 'NIT'). It is pointed out that the Petitioner had originally submitted the work completion/executed certificate issued to him in pursuance to the award dated 15.03.2018 (given earlier) in terms of 'Clause 2.5' of the eligibility criteria of the NIT. The said work does not come under the term "similar work" as given in Clause 2.5 of the NIT and in the said circumstance, Annexure R/2 mail was sent to the Petitioner on 09.08.2019 requiring him to submit work experience certificate as per 'Clause 2.5' of the NIT. In response to this, the Petitioner had submitted experience certificate along with covering letter dated '10.08.2019' and it was on the basis of such experience certificate that the Committee found the Petitioner as technically qualified and on getting placed as 'L-1', the work was awarded to the Petitioner vide Annexure P/3.
10. In fact, the said contract was awarded on the basis of 'self-attested copies' of the work experience certificate, but later, on scrutiny the contract file, it was observed that the contract file contained the work experience certificate dated 16.08.2019 (Annexure R/4) bearing Dispatch No.78 with covering letter dated '10.08.2019', which *prima facie* created a doubt as to the genuineness, as it was not possible for the Petitioner to

have attached the experience certificate dated '16.08.2019' along with pre-covering letter dated '10.08.2019'. On further scrutiny by the Standing Tender Committee, it was found out from the Despatch Register of the Concerned Department that no work experience certificate was issued to the Petitioner on '16.08.2019', but for sending Annexure R/6 letter dated 09.08.2019 (with Despatch entry at Sl.No.78) as disclosed from Annexure R/5. With reference to the said proceedings, it is contended by the Respondents that the Petitioner has played mischief and has filed false experience certificate, which was never issued by the Department and hence, the said act is in violation of Clause 1.23(iii)(a) of the NIT attracting action under sub-clause (b) of the very same Clause. It was on discovery of the above mischief, that Annexure P/4 show-cause notice was issued to the Petitioner, which was replied by him as per Annexure P/9 trying to explain that he was having sufficient experience. From the materials produced, it is clear that the value of work done by the Petitioner till 31.05.2019 was not sufficient to make him eligible to be qualified under the NIT and it was accordingly, that the tender already awarded to the Petitioner was terminated vide Annexure P/2 dated 21.08.2020.

11. It is pointed out by the Respondents, whether the Petitioner should be 'blacklisted' or not, will be decided only after elaborated consideration of the facts and figures, after the investigation by the Standing Tender Committee, in accordance with the procedure laid down in Annexure R/7, of course after affording an opportunity of hearing to the Petitioner. As such, the writ petition is stated as premature, with regard to the question of 'blacklisting'. It is further pointed out that the Petitioner is having further

remedy, if aggrieved, against the decision of Standing Tender Committee by way of 'Appeal'; besides the remedy by way of 'Arbitration' under Clause 93 of the General Conditions of the Contract. It is asserted by the Respondents that the issue projected herein involves disputed questions of fact, which requires to be proved by evidence. It is also noted from the preliminary objection placed on record that, pursuant to the proceedings taken against the Petitioner, the disputed work has been awarded to M/s. Hindustan Steel Company Limited as it is a critical contract for the running of the Respondent Steel Plant.

12. In the above circumstances, this Court is of the firm view that the matter involves serious disputed questions of fact which cannot be gone into by this Court assuming the role of a fact finding agency, invoking the power and jurisdiction under Article 226 of the Constitution of India. The Petitioner is at liberty to pursue the matter, if aggrieved, before the Standing Tender Committee and such other Authorities by way of Appeal or Arbitration, in accordance with law both with respect to the termination of contract and also as to the steps for 'blacklisting' the Petitioner, Without prejudice to the rights and liberties as above, interference is declined. The writ petitions stands dismissed.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge