

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8973 of 2020

M/s LC Infra Projects Pvt. Ltd., a company constituted under the Companies Act, 2013 having registered address at 409, ISCON Elegance, Prahladnagar Cross Road, SG Highway, Ahmedabad- 380015 through its authorized signatory/Manager Mr. Manish Mota aged 33 years son of Mota Navinchandra, Resident of W-605, Eden Cluster Nr Global International School, Godrej Garden City, Jagatpur Ahmedabad, Gujrat-382470.

... .. Petitioner/s

Versus

1. Bihar Urban Infrastructure Development Corporation Ltd., through its Managing Director, BUIDCo, West Boring Canal Road, Raja Pul, Patna-800001.
2. The Chief Engineer, Design, Planning & Monitoring, BUIDCo, West Boring Canal Road, Raja Pul, Patna-800001.
3. The Superintendent Engineer, Design, Planning & Monitoring, BUIDCo, West Boring Canal Road, Raja Pul, Patna-800001.
4. The Executive Engineer, Design, Planning & Monitoring, BUIDCo, West Boring Canal Road, Raja Pul, Patna-800001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Senior Advocate Mr. Apurv Harsh, Advocate Mr. Sujit Kumar, Advocate Mr. Manu Tripurari, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Advocate Mr. Rabindra Kumar Priyadarshi, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV ORDER

9 25-03-2021 Heard Mr. P.K. Shahi, learned senior counsel assisted by Mr. Apurv Harsh, learned counsel for the petitioner and Mr. Lalit Kishore, learned senior counsel assisted by Mr. Rabindra Kumar Priyadarshi, learned counsel appearing for the respondents-Bihar Urban Infrastructure Development Corporation Ltd.

2. Learned senior counsel for the petitioner at the very



outset submits that the petitioner will not claim consideration of his bid and is no more interested in the award of the present work contract. The petitioner confines its prayer against “blacklisting” and release of earnest deposit only.

3. By filing the present writ application the petitioner has prayed for quashing of the order dated 04.11.2020 (Annexure - “14” to the writ application) issued by Respondent No. 2 / Chief Engineer, Design, Planning & Monitoring, BUIDCo whereby petitioner’s company has been “blacklisted” for all work contracts of the concerned Department. Petitioner has further prayed that the respondents may be directed to release the earnest money of Rs. 3,40,00,0000 (Three Crore Forty Lakh) deposited by the petitioner in the form of Bank Guarantee.

4. The respondents-Bihar Urban Infrastructure Development Corporation (hereinafter referred to as the “BUIDCo”) vide NIT No. BUIDCo/Yo-1234/2019-54 (IN-NMCG-102757-CW-RFB) dated 05.08.2019 invited project / works contract for (i) design and building of Sewage Treatment Plant with capacity of 30 MLD including MPS (45 MLD) and all appurtenant structures and allied works; (ii) survey, review of designs, redesign where necessary and for building new



underground sewerage network of about 167.23 KM length including trenchless & survey, design, construction of 5 No. pumping stations and all appurtenant structures and allied works; and (iii) operation & maintenance of the complete works of sewage treatment plant, sewerage network and pumping stations at Munger, Bihar.

5. The petitioner in pursuance of the NIT participated in this bid in the name of LC Infra Enviro PCS Joint Venture and uploaded its bid on 07.01.2020 along with all supporting documents as required in the NIT dated 05.08.2019 in pursuance of the invitation for bids floated by the respondent- BUIDCo. The petitioner also furnished the bid security amount of Rs. 3.4 Crore by way of bank guarantee. Under Clause Section 01, 1.4 (a)(5B) of the bid document, qualification criteria with respect to experience in construction, operation and maintenance of the Sewage Treatment Plant and Sewerage Network is laid down. As per the aforesaid the bidder was supposed to provide evidence that the bidder had designed, developed, built, tested and commissioned at least 1 Sewage Pumping Station of 27 MLD capacity during the last 07 years preceding the bid submission date. The petitioner in pursuance of the aforesaid requirement submitted certificate of experience dated



31.05.2016 for the work undertaken for Ajmer Development Authority which was executed by the JV partner Enviro Infra Engineer Pvt. Ltd. of 40 MLD capacity pumping station which was beyond the required parameter. A copy of the experience certificate dated 31.05.2016 is attached as Annexure – “5” to the present writ petition. The petitioner in pursuance of the condition mentioned in Annexure –A, Part H Section 1.4 (a) (1 & 2) was required to provide proof of successfully designing, developing, building, testing and commissioning at least 01 treatment plant of 22 MLD capacity and for this requirement the petitioner submitted experience certificate dated 05.07.2016 for successfully designing, developing, building, testing and commissioning of 52 MLD Sewerage Treatment Plant at Bhatinda where the joint venture partner namely Enviro Infratech Engineers Pvt. Ltd. had done 49% of the entire work which is more than the prescribed requirement.

6. Further case of the petitioner is that with respect to subsequent condition no. 6A and 6B, the petitioner duly provided work certificate dated 12.10.2017 undertaken by the petitioner in the city of Halvad, Gujrat. Even the previous work certificate of the petitioner for Mehsana and Ajmer fulfills the required criteria / condition.



7. The petitioner has also submitted an additional work certificate for the works undertaken by it in the Okha Town underground Drainage Project District for sewer collecting system with House Connection Chambers Units for which the work had commenced on 03.12.2014 and was completed on 31.12.2017 and on the request of the petitioner the Executive Engineer, Gujarat Water Supply And Sewerage Board, Public Health Works Division, Devbhumi Dwarka Jamkhambhaliya issued a work certificate dated 21.05.2018. Copy of the work certificate dated 21.05.2018 is attached as Annexure – “9” to this writ application.

8. The petitioner received show cause letter from the employer / respondent under letter no. BUIDCo/Yo-1234/2019 (Part-III)-7552 dated 31.10.2020 alleging therein that the petitioner had uploaded false & fabricated experience certificate for work of underground drainage project of Okha Town of Jamnagar District (Now Devbhoomi Dwarka) in which total capacity of pumping station is mentioned 73.74 MLD whereas in course of verification of the experience certificate, the Executive Engineer, Gujrat Water Supply & Sewerage Board , Public Health Works Division, Devbhumi Dwarka, Jamkhambhaliya informed that the petitioner has built 10 nos. of



pumping stations with total capacity of 32.51 MLD. The show cause further says that it clearly shows that the certificate submitted by the petitioner is misleading, false and fabricated. Accordingly, the petitioner was called upon to submit his reply to the show cause as to why the petitioner's company should not be "blacklisted" as per clause no. 11.A (vii) of the Bihar Contractor Registration Act, 2007. Copy of the show cause is attached as Annexure – "10" to the writ application.

9. The petitioner was shocked after receipt of the show cause and immediately thereafter requested the Executive Engineer, Gujarat Water Supply & Sewerage Board, Public Health Works Division, Devbhumi (Dwarka), Jamkhambhalia to submit a clarification on the discrepancy pointed out by the employer/respondent vide petitioner's letter no. LC/HO/UGD-Okha/2020-21/423 (Annexure "11" to the writ petition). In response to petitioner's letter, the Executive Engineer, Gujarat Water Supply & Sewerage Board, Public Health Works Division, Devbhumi, Dwarka, Jamkhambhaliya clarified that total capacity of pumping station (including Wet Wall) has been shown as 73.74 MLD at serial no. 27 of the said certificate but subsequently there were some changes / variation in modalities and there was reduction in number of pumping stations and it



was 10 nos. pumping stations of total capacity of 32.51 MLD for all pumping stations. The Executive Engineer, Gujarat Water Supply & Sewerage Board, Public Health Works Division, Devbhumi Dwarka, Jamkhambhaliya also clarified that this discrepancy came to notice only during the course of verification of experience certificate sought by BUIDCo's vide letter dated 21.03.2020.

10. Accordingly, by correcting the discrepancy actual capacity of all the pumping stations executed was confirmed and reported to BUIDCo under his letter no. AB-1/Okha UGD/431 dated 30.03.2020. The letter of clarification regarding the alleged discrepancy was also endorsed to the employer / respondent.

11. The petitioner submitted his reply to the show cause vide letter no. LC/ Tender/JV/Bihar/Munger/2020-21/429 dated 03-11-2020 (Annexure – “13” to the writ petition) along with copy of the letter of Executive Engineer, Gujarat Water Supply & Sewerage Board, Public Health Works Division, Devbhumi Dwarka, Jamkhambhaliya as referred hereinabove. In his reply the petitioner categorically denied any false declaration and highlighted that Executive Engineer, Gujarat Water Supply & Sewerage Board, Public Health Works Division, Devbhumi



Dwarka, Jamkhambhaliya vide letter no. AB-1/Okha UGD/2090 dated 03.11.2020 had clarified that this discrepancy had come to notice only during the course of verification of experience certificate sought by BUIDCo and it was due to oversight.

12. A counter affidavit has been filed on behalf of the respondent nos. 1 to 4 / BUIDCo stating therein that a complaint was received from one Sri Pavanbhai Patel stating therein that the petitioner's company has submitted completion certificate of 73.74 MLD pumping stations issued by "Gujarat Water Supply and Sewerage Board, Public Health Works Division, Dev Bhumi, Dwarka, Jamkhambhaliya" which is false and fabricated inasmuch as the petitioner's company has completed only 10 nos. pumping stations at different places of different size total of which comes to 32.51 MLD and not 73.74 MLD as mentioned in the completion certificate. Accordingly, the respondents issued a show cause on the basis of reply received from the Executive Engineer, Gujarat Water Supply and Sewerage Board, Public Health Works Division, Dev Bhumi Dwarka, Jamkhambhaliya confirming that only 10 nos. of pumping stations with total capacity of 32.51 MLD was completed by M/s LC Infra Projects Pvt. Ltd. formerly known as "Laxmi construction".



13. The petitioner's company submitted its reply to the show cause and after consideration of the same the impugned order of "blacklisting" has been passed.

14. A reply to the counter affidavit has been filed by the petitioner stating therein that the certificate submitted by the petitioner was not found to be forged and fabricated and it was inadvertent error on the part of the issuing authority i.e. Executive Engineer, Gujarat Water Supply and Sewerage Board, Public Health Works Division, Dev Bhumi, Dwarka, Jamkhambhaliya.

15. In support of the writ application, Mr. P.K. Shahi, learned senior counsel for the petitioner submits that the petitioner had uploaded the work certificate dated 21.05.2018 along with other certificates and bid document on 07.01.2020. Immediately after receipt of the show cause dated 31.10.2020 the petitioner's company sought a clarification from the Executive Engineer, Gujarat Water Supply & Sewerage Board, Public Health Works Division, Devbhumi Dwarka, Jamkhambhaliya vide its letter dated 03.11.2020 requesting therein to clarify the discrepancy in capacity of pumping stations and in response to the same the Executive Engineer, Gujarat Water Supply & Sewerage Board, Public Health Works



Division, Devbhumi Dwarka, Jamkhambhaliya vide his letter dated 03.11.2020 (Annexure -12 to the writ petition) informed that at the time of execution due to some changes / variation in modalities, there was reduction in the number of pumping stations up to 10 nos. pumping stations of total capacity of 32.51 MLD and this discrepancy was detected at the time of verification of experience certificate pursuant to BUIDCo letter dated 21.03.2020 and was corrected.

16. The Executive Engineer, Gujarat Water Supply & Sewerage Board, Public Health Works Division, Devbhumi Dwarka, Jamkhambhaliya has categorically mentioned in his letter that the discrepancy occurred was due to sheer oversight. Learned counsel next submits that the experience certificate of Ajmer Project of joint venture partner independently establishes the eligibility of the petitioner for the work in terms of the NIT and the petitioner in any case was qualified and fulfilled all the eligibility criteria and even the corrected certificate of 32.51 MLD issued by Executive Engineer, Gujarat Water Supply & Sewerage Board, Public Health Works Division, Devbhumi Dwarka was much above the criteria laid down in Annexure – A, Part H Section 1.4 (a)(5B) as such there was no occasion for the petitioner to produce false or forged experience certificate.



Moreover, learned counsel submits that at no point of time it has been suggested by the author of the certificate that the certificate in question uploaded by the petitioner was forged and fabricated but on the contrary due to oversight some discrepancy in relation to number of pumping stations was found.

17. The respondent authorities failed to appreciate that the certificate was issued to the petitioner in the year 2018 much before the issuance of NIT and the same was not procured by the petitioner for the present work and error in the certificate was due to inadvertent mistake / oversight on the part of the author of the said certificate.

18. Learned counsel further submits that the petitioner did not make any attempt to mislead the Department and immediately after having come to know the discrepancy in the experience certificate the petitioner enquired about the circumstances under which the said discrepancy had occurred in the work certificate issued by Executive Engineer, Gujarat Water Supply & Sewerage Board, Public Health Works Division, Devbhumi Dwarka, Jamkhambhaliya and in reply to the same the author of the certificate pointed out that it was due to sheer oversight and mistake that the quantity of work was not correctly mentioned.



19. Learned counsel thus submits that admittedly the certificate produced by the petitioner was genuine and was not declared forged and fabricated by the issuing authority. The order of “blacklisting” has been passed on superficial grounds. Learned counsel further submits that the conduct of the petitioner was not intentional inasmuch as the petitioner did not furnish the certificate in order to get any advantage as the petitioner in any case was qualified and fulfilled all the eligibility criteria and the corrected certificate issued by the Executive Engineer, Gujarat Water Supply & Sewerage Board, Devbhumi Dwarka Jamkhambhalia was much above the criteria laid down in the bid document. Learned counsel further submits that the impugned order of “blacklisting” visits the petitioner with civil consequences and is akin to civil death and the Respondent No. 2 by passing the order of “blacklisting” did not take into account the facts and circumstances of the matter in correct legal perspective.

20. On the other hand, Mr. Lalit Kishore, learned senior counsel appearing for the respondents /BUIDCo submits that the petitioner has signed and has self certified the certificate in question in which the quantity of work performed by the petitioner was wrongly mentioned as 73.74 MLD instead of



32.51 MLD and the petitioner having completed the said work was well aware about the quantity of the work completed by him as such the submission of incorrect experience certificate was intentional on the part of the petitioner to mislead the authorities.

21. I have heard learned counsel for the parties and have gone through the materials available on record. It appears that the petitioner has submitted the additional work certificate apart from the other work experience certificate submitted by the petitioner which otherwise fulfilled all the eligibility criteria and even the corrected certificate of 32.51 MLD issued by the Executive Engineer, Gujarat Water Supply & Sewerage Board, Public Health Works Division, Devbhumi Dwarka, Jamkhambhaliya was much above the criteria laid down in the bid document. From the corrected clarificatory letter issued by the author of the certificate it is very much clear that the certificate uploaded by the petitioner was not forged and fabricated rather the author of the certificate has accepted that due to oversight and mistake the quantity of work was incorrectly mentioned. It further appears that the certificate in question was issued in the year 2018 and the same was uploaded along with the bid document on 07.01.2020 as such it can not be



said that the petitioner procured the work certificate in order to secure the present contract with an intention to mislead the respondent authorities.

22. In view of the aforesaid discussion and conspectus of facts this Court comes to the conclusion that the petitioner did not make any attempt to mislead the respondent authorities and it was due to sheer oversight and inadvertent mistake on the part of the author of the certificate that there was some discrepancy in the quantity of work completed by the petitioner and was incorrectly mentioned. Merely because the petitioner signed all the documents including the work certificate in question at the time of uploading the bid document, it cannot lead to the conclusion that intention of the petitioner was to mislead the respondent authorities.

23. In the result, this writ application is allowed.

24. The order dated 04.11.2020 passed by Respondent No. 2 / Chief Engineer, Design, Planning & Monitoring, BUIDCo vide Memo No. 7558 is hereby quashed and the Respondent No. 2 / Chief Engineer, Design, Planning & Monitoring, BUIDCo is hereby directed to release the amount of earnest money of Rs. 3,40,00,0000/- (Three Crore Forty Lakh) deposited by the petitioner in the form of bank guarantee in case



the bank guarantee has been invoked by the respondent authorities and if the same has not been invoked, the petitioner is discharged from its liability to renew the bank guarantee.

25. There shall be no order as to cost.

(Anil Kumar Sinha, J)

Praful/- A.F.R.

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