

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.914 of 2023

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Rajiv Kumar Son of Sri Awadh Kishore Sharma, Resident of Village
Bishunpur, P.O. Ghejan, P.S. Sakurabad, District Jehanabad, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Minor Irrigation Department, Government of Bihar, Patna.
2. The Engineer in Chief, Minor Irrigation Department, Government of Bihar, Patna.
3. The Chief Engineer, Minor Irrigation Department, Government of Bihar, Patna.
4. The Superintending Engineer (Head Quarters), Planning, Minor Irrigation Circle, Gaya, District Gaya, Bihar.
5. The Executive Engineer, Minor Irrigation Division, Nawada, District Nawada, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate
		Mr. Chandan Kumar, Advocate
For the Respondent/s	:	Mr. Ajit Kumar (GA- 9)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-03-2023

Heard learned counsels for respective parties.

2. Gist of the case is as follows:-

On 10.10.2022 Notice Inviting Tender No. 16/2022-23 pertaining to "Renovation Work of Shivpuri Reservoir". On 30th July, 2022, Irrigation, Gaya Division by Invitation Letter No. 13/2021-22, Group-2, 3, 4 and vide Invitation Letter No. 14/2021-22, Group-2, Complaint Letter No. 1728 dated 28.07.2022 Technical Bid was analyzed and meeting was held on 29.07.2022. Thereafter a decision was taken on 30th July, 2022. Thereafter, on 07.12.2022 Technical Bid



proceedings were undertaken for the second time. Further on 09.09.2021 petitioner is alleged to have tampered Madhubani Letter No. 969. Value of the work done is alleged to have been tampered by the petitioner. On this issue, a meeting was convened on 27.09.2022 and notice was issued to the petitioner on 11.10.2022. Nand Kishore Vs. State of Bihar filed C.W.J.C. No. 14260 of 2022. There was an interim direction '*No coercive action shall be taken against the petitioner*'. The Chief Engineer, MWRD, Patna issued a notice on 05.12.2022 insofar as debarring the petitioner and proposal for blacklisting. Thus, on 07.02.2023, Chief Engineer proceeded to blacklist the petitioner. Thereafter F.I.R. was also stated to have been registered on 17.02.2023 and on 20th February, 2023 petitioner was blacklisted. Hence, the present petition.

3. In the instant petition, petitioner has prayed for following reliefs:-

"1. That this is an application on behalf of the petitioner above named seeking issuance of appropriate writ, rule or direction for;

(i) Quashing of the decision of the Technical Bid Evaluation Committee dated 07.12.2022 in connection with Tender No. 27367 whereby, the Technical Bid of the Petitioner has been held to be no responsive merely on the ground that on an earlier occasion the Petitioner had annexed a forged document in connection with some other tender.

(ii) Restraining the Respondents from finalizing/ creating third party rights in connection with Tender ID NO. 27367 pursuant to the decision of the Technical Bid Evaluation Committee dated 07.12.2022 during the pendency of the writ application



without the leave of this Hon'ble Court."

4. On 14.03.2023 following order was passed:-

" *Prima facie*, petitioner has made out a case in so far as rejection of his technical bid. Reasons quoted for rejection of technical bid is not in consonance with the conditions stipulated in the tender notification, particularly, item nos. 22, 35 and 37, which read as under:-

"22. निविदाकारों द्वारा निविदा कागजातों के साथ संलग्न सभी कागजातों की सत्यता के सम्बन्ध में घोषण पत्र / शपथ पत्र (जो निविदा सूचना प्रकाशन के बाद का हो) मूल में दिनांक 10.11.2022 को समय 05:00 बजे अपराह्न तक संबंधित प्रमण्डल कार्यालय में निम्नवत रूप से जमा करना अनिवार्य होगा-

I, the undersigned, do thereby certify that all statement made in the require attachments are true and correct, and if found fake/ forget, the undersigned will be liable for infliction upon the F.I.R. and lawful punishment as well as black listing."

"Certified that statement showing values of all existing commitment and ongoing works as well as stipulated period of completion remained for each work attached with the tender is true and no fact has been hidden."

35. इस निविदा में वैसे ही निविदाकारों के निविदा पर विचार किया जायेगा, जो किसी भी विभाग से Blacklisted/ Debarred नहीं हो एवं उनके स्तर पर लघु जल संसाधन विभाग द्वारा आवंटित कोई कार्य, कार्य समाप्ति की अवधि तक लंबित नहीं है। कार्य समाप्ति की अवधि तक कार्य लंबित



अथवा शत प्रतिशत पूर्ण नहीं रहने पर उनके निविदा को अमान्य कर दिया जायेगा एवं इस हेतु संवेदक द्वारा किया गया दावा मान्य नहीं होगा।

37. संवेदक को कार्य के दौरान विभागीय पदाधिकारियों एवं अन्य कर्मचारियों के साथ सचरित्रता एवं सदव्यवहारिकता से संबंधित शपथ पत्र मूल में संलग्न करना अनिवार्य होगा अन्यथा संवेदक को अयोग्य कर दिया जायेगा।"

Since third party right has already created, therefore at the best this Court could compensate to the petitioner by getting a cost from the respondents. In this regard, learned counsel for the State is hereby directed to secure instruction. It is reliably learnt that petitioner has quoted lowest bid and this event may also be taken note of.

Re-list this matter on 21.03.2023."

5. Respondents have filed supplementary counter affidavit.

Learned counsel for respondents relied on para 5 of the supplementary counter affidavit, which reads as under:-

"5. That it is submitted that as per Clause 22 of the NIT, the bidders had to submit declaration on affidavit with regard to authenticity of the tender documents in following form:-

"I, the undersigned, do hereby certify that all statements made in the required attachments are true and correct, and if found fake/ forged, the undersigned will be liable for infliction upon the F.I.R. and lawful punishment as well as blacklisting."

"Certified that statement showing values of all existing commitment and ongoing works as well as stipulated



period of completion remained for each work attached with the tender is true and no fact has been hidden."

from the above affidavit it is clear that the petitioner has willfully provided fabricated and false information in order to get technically qualified and grab the tender even after swearing affidavit. It is apparent that submission of such fabricated and false information makes him liable to be not only technically disqualified but also initiate other punitive actions under relevant sections of IPC/ Cr. PC and under the provisions of Bihar Contractors Registration Rules, 2007."

6. Core issue involved in the present *lis* is whether petitioner who has undertaken contract on an earlier occasion bearing Notice Inviting Tender No. 13/2021-22, Group-04, with reference to earlier contract the official respondents have noticed certain conduct of the petitioner at the time of scrutiny of tender and it is alleged that petitioner is stated to have manipulated or misled the concerned authority in trying to obtain tender work in his favour and it was subject-matter of correspondence among the concerned officials and the petitioner. In that regard, it has attained finality in passing order of blacklisting him on 20.02.2023 whereas petitioner's bid for later Tender No. 06/2022-23 has been rejected insofar as petitioner is concerned in the Technical Bid with reference to alleged misconduct stated to have been committed by the petitioner with reference to earlier Tender Notification No.



13/2021-22. Here it is to be noted that the last date was 22.11.2022 whereas communication of blacklisting is on 20th February, 2023. The proposed action to be taken by the official respondents pursuant to the earlier tender would not come in the way of considering petitioner's application for new tender, namely, 06/2022-23.

Recently Bombay High Court in the case of *Nanak Construction Vs. State of Maharashtra, through its Secretary and Others* reported in *2023 SCC Online Bom 176* held that in the absence of any finality insofar as blacklisting is concerned, the same would not come in the way of considering tender application for new tenders. In the present case, petitioner has been punished pre-maturely with reference to blacklisting him on 20th February, 2023 with reference to the earlier tender.

7. Learned counsel for the respondent vehemently contended that the petitioner was supposed to disclose pendency of certain proposed proceedings against petitioner in relation to blacklisting him with reference to earlier tender notification. NIT does not specify and give instruction to such of those applicants to disclose any pendency of proceedings of blacklisting. Therefore, applicant cannot presume things which



are in the mind of the respondents beyond the conditions imposed in the NIT, in particularly, Item No. 22, 35 to 37, which read as under:-

"22. निविदाकारों द्वारा निविदा कागजातों के साथ संलग्न सभी कागजातों की सत्यता के सम्बन्ध में घोषण पत्र / शपथ पत्र (जो निविदा सूचना प्रकाशन के बाद का हो) मूल में दिनांक 10.11.2022 को समय 05:00 बजे अपराह्न तक संबंधित प्रमण्डल कार्यालय में निम्नवत रूप से जमा करना अनिवार्य होगा-

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"Certified that statement showing values of all existing commitment and ongoing works as well as stipulated period of completion remained for each work attached with the tender is true and no fact has been

hidden."

35. इस निविदा में वैसे ही निविदाकारों के निविदा पर विचार किया जायेगा, जो किसी भी विभाग से Blacklisted/ Debarred नहीं हो एवं उनके स्तर पर लघु जल संसाधन विभाग द्वारा आवटित कोई कार्य, कार्य समाप्ति की अवधि तक लंबित नहीं है। कार्य समाप्ति की अवधि तक कार्य लंबित अथवा शत् प्रतिशत् पूर्ण नहीं रहने पर उनके निविदा को अमान्य कर दिया जायेगा एवं इस हेतु संवेदक द्वारा किया गया दावा मान्य नहीं होगा।

36. निविदादाता को किसी भी कार्य विभाग द्वारा Debar एवं काली सूची में शामिल नहीं होने एवं लघु जल संसाधन विभाग में आवटित कार्य को पूर्ण किए जाने के संदभ में शपथ पत्र समपित करना अनिवार्य होगा

37. संवेदक को कार्य के दौरान विभागीय



पदाधिकारियों एवं अन्य कर्मचारियों के साथ सचरित्रता एवं सद्व्यवहारिकता से संबंधित शपथ पत्र मूल में संलग्न करना अनिवार्य होगा अन्यथा संवेदक को अयोग्य कर दिया जायेगा।"

Reading of the aforementioned clauses it does not stipulate or seek the applicant who intends to participate in the tender process was required to reveal in the affidavit that he was facing certain proceedings relating to blacklisting. On the other hand, what is the requirement in the event of applicant facing blacklisting order or debarred from any contract.

8. In the light of these facts and circumstances read with the order dated 14.03.2023 it is a case for award of compensation of Rs. 2,00000/- . The compensation shall be paid to the petitioner within a period of three months from the date of receipt of this order.

9. Accordingly, the present petition stands disposed of.

10. At this stage, learned counsel for the respondent cited a decision reported in **(2016)16 SCC 233** in the case of ***Shobikaa Impex Private Limited & Another Vs. Central Medical Services Society & Others*** in which para 20 and 21 read as under:-

"20. In *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (p) Ltd.*, it has been held



that (SCC p. 148, para 15) the State can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It has been further held that the State, its corporations, instrumentalities and agencies have the public duty to be fail to all concerned. Even when some defect is found in the decision-making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point.

21. In *Jagdish Mandal v. State of Orissa*, it has been ruled that: (SCC p. 531, para 22)

"22. ... When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interference even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes."

Perusal of the principle laid down by the Apex Court in the cited decision does not assist the respondent for the simple reason that the conditions stipulated in NIT is binding on the respective parties. Apex Court held that Court should not straightway apply the judicial pronouncement without analyzing the facts of the case. In the present case facts of the case is



required to be taken note of with reference to Clauses 22 and 35 to 37 which are cited (supra) are relevant. Therefore, the cited decision is distinguishable.

Further learned counsel for respondent cited a decision reported in **(2020)16 SCC 489** in the case of ***Silppi Constructions Contractors Vs. Union of India & Another*** wherein para 25 reads as under:-

"25. That brings us to the most contentious issue as to whether the learned Single Judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a State within the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway in this regard. Respondents 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done."

No doubt, the aforementioned principle is required to be taken note of, at the same time one cannot ignore that whimsically and contrary to conditions stipulated in NIT petitioner's application for tender has been rejected. In other words, before there being any finality in so far blacklisting is



concerned, pre-maturally a decision has been taken to reject the petitioner's tender/application in arbitrary manner. In this regard, Bombay High Court in the cited (supra) decision has elaborately considered. Therefore, para 25 of the above cited decision does not assist the State.

Recently Apex Court in the case of ***M.P. Power Management Company Ltd., Jabalpur Vs. Sky Power Southeast Solar India Private Limited and Others*** reported in ***(2023) 2 SCC 703*** analyzed arbitrariness in award of contract (para 53 to 75) while analyzing definition of arbitrariness and large number of judicial pronouncements have been taken note of. One of the decision is viz., ***Kumari Shrilekha Vidyarthi & Others Vs. State of U.P. & Others*** reported in ***(1991) SCC 212*** in which para 36 reads as under:-

"36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness.



Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always."

11. The present case would fit into arbitrary action of the concerned official respondent in rejecting the petitioner's Technical Bid only with reference to pendency of certain action to be taken against petitioner in an earlier tender. Petitioner was not made known to disclose any pending ATR so as to reject petitioner's Technical Bid. To that effect there is arbitrariness in taking action against the petitioner. Moreover, petitioner had quoted lowest. In not awarding contract to the petitioner, State is stated to have suffered financial loss about a sum of Rs. 80,00000/- (Rupees Eighty Lakhs).

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
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