

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10824 of 2021

Om Shankar Construction Pvt. Ltd. through its Director namely Indrajeet Upadhyay, aged about 48 Years, (Male), Son of Late Saryu Upadhyay, Resident of Mohalla-Nala Road, Near Shishak Sangh, Malabagh, Arrah, P.S.-Nawada, District-Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. The Secretary, Urban Development Department, Govt. of Bihar, Patna.
3. The Chairman, Bhagalpur Smart City Ltd. Municipal Corporation, Court Compound, Bhagalpur, Bihar.
4. The Managing Director, Bhagalpur Smart City Ltd. Municipal Corporation, Court Compound, Bhagalpur, Bihar.
5. The Chief Executive Officer, Bhagalpur Smart City Ltd. Municipal Corporation, Court Compound, Bhagalpur, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vikas Kumar, Advocate
For the Respondent/s : Mr. Shiv Kumar, AC to GA-3

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

14 09-05-2023

In the instant writ petition, petitioner has prayed for the following relief(s):-

“i. For quashing of Letter No. F/300/194/BSCL dated 27.03.2021 issued by Respondent No. 4 by which Contractor No. 5 dated 31.12.2020 executed between Bhagalpur Smart City Limited and petitioner for construction of Town Hall in Bhagalpur, Bihar with operation and maintenance for period of 5 years under smart city mission, has been terminated with immediate effect.

ii. For quashing of Letter No. F/300/213/BSCL dated 03.04.2021 by which petitioner has been debarred from participating in all future tenders with immediate effect and for indefinite period as the same has been issued without giving any show notice to the petitioner for debarment.



iii. For any other relief/reliefs for which the petitioner is found entitled to.”

02. The petitioner is not entitle to relief against the termination of contract vide Annexure-1 dated 27.03.2021, since reasons have been assigned after due notice. Petitioner is at liberty to invoke any other remedy in so far as termination of contract, since disputed issues are involved.

03. Insofar as blacklisting is concerned, Annexure-2 dated 03.04.2021 reads as under:-

BHAGALPUR SMART CITY LIMITED
CIN - U93090BR2016SGC03304

Annexure-2 (18)

पत्रांक : F/300/213/BSCL - दिनांक : 03/04/2021

प्रेषक,
नगर आयुक्त, भागलपुर-सह-प्रबंध निदेशक,
भागलपुर स्मार्ट सिटी लिमिटेड।

सेवा में,
सर्वे श्री ओम शंकर कन्स्ट्रक्शन प्रा० लि०,
मोला बाग, गाला रोड, आरा, मोरणा - 802301

विषय: निविदा में भाग लेने से बंघित (Debar) किये जाने के संबंध में।

संदर्भ - भागलपुर स्मार्ट सिटी लि० का पत्रांक 194/बीएससीएल० दिनांक 27.03.2021

महोदय,

उपर्युक्त विषय के संबंध में कहना है कि आपके द्वारा भागलपुर स्मार्ट सिटी लि० के निविदा संख्या BSCL/Town Hall/2020/32 दिनांक 14.09.2020 निविदा का नाम टेंडर हॉल का निर्माण कार्य में Earnest Money Deposit, Performance Security एवं Mobilisation Advance के एकज में जाली बैंक गारंटी उपलब्ध कराने हुए निविदा प्राप्त की गई एवं एकराजना सं० - 05 दिनांक 31/12/2020 कार्यान्वित किया गया। बैंक ऑफ इंडिया, प्रोफेसर कॉलोनी शाखा, महुली कोठी, क० जी० रोड, आरा पिन-802301 के द्वारा बैंक गारंटी के जाली होने की पुष्टि की गई है। इस संबंध में पत्रांक 107/बीएससीएल० दिनांक 04.03.2021 द्वारा आपसे कारण पूछा की गई जिसका जवाब संतोषप्रद नहीं पाया गया। समीक्षोपरान्त इस कार्यालय के पत्रांक 194/बीएससीएल० दिनांक 27.03.2021 द्वारा एकराजना सं० - 05 दिनांक 31/12/2020 को रद्द किया गया है।

एव निर्माण विभाग के आदेश ज्ञापक - प्र० 6/प० वि० नियम 03-03/2004 2131(9) दिनांक 13.03.2009 में यह प्रावधान किया गया है कि "Bidders shall not be under declaration of ineligibility for delay, failure or corrupt and fraudulent practices by any of the State Govt. or Central Govt. or Public undertaking or any Autonomous body." साथ ही इसका उल्लेख निविदा संख्या BSCL/Town Hall/2020/32 दिनांक 14.09.2020 के RFP के Clause 35 में भी है।

अतः उपरोक्त के आलेख में तत्काल प्रभाव से आपको भविष्य के सभी निविदाओं में भाग लेने से बंघित (Debar) किया जाता है।

विश्वासभाजन,
नगर आयुक्त, भागलपुर-सह-प्रबंध निदेशक,
भागलपुर स्मार्ट सिटी लिमिटेड।

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04. Perusal of the aforementioned decision of the respondent insofar as blacklisting the petitioner is concerned, it is not after due process of law like issuance of show-cause notice, obtaining petitioner's reply and other formalities. Further, show-cause notice must be very specific in terms of Apex Court's decision in the case of ***UMC Technologies Pvt. Ltd. vs. Food Corporation of India and Anr.***, reported in ***(2021) 2 SCC 551*** and later decision in the case of ***Isolators and Isolators Through Its Proprietor Mrs. Sandhya Mishra vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. and Anr.***, reported in ***2023 LiveLaw (SC) 330 (Para-34)*** and principles laid down therein.

05. Accordingly, the petitioner has made out a case so as to interfere with Annexure-2 dated 03.04.2021 and it is set aside.

06. The writ petition stands allowed in-part, reserving liberty to the concerned authority to proceed in accordance with law after taking note of the aforementioned decisions of the Apex Court. Further steps shall be taken by the authority insofar as blacklisting is concerned, within a period of four months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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