

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.433 of 2017
In
Civil Writ Jurisdiction Case No.97 of 2012

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1. The State of Bihar through Principal Secretary, Water Resource Department
 2. The Principal Secretary, Water Resource Department, Govt. of Bihar, Patna.
 3. The Engineer in Chief (Central), Water Resource Department, Govt. of Bihar, Patna.
 4. The Chief Engineer, Water Resource Department, Birpur, Bihar
 5. The Executive Engineer, Irrigation Division, Birpur.

... .. Appellant/s

Versus

I V R C L Ltd. (Infrastructure and Project Limited), M-22/3 RT, Vijay Nagar Colony, Hyderabad (A.P.) through its Manager Project Sri Y. Raghunand Reddy, S/o Shri Ramamuni Reddy Resident of C- 7, Kosi Colony, Birpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Dinesh Maharaj, Advocate Mr. R.B. Prasad Yadav, AAG-11
For the Respondent/s	:	None

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-04-2024

We see that notice was issued and served on the respondent but none appears. We have heard the Government Advocate.

2. The State is in appeal before this Court against the common judgment passed in two cases. The writ petitions were considered together since both the writ-petitioners were bidders who were awarded with contracts and later blacklisted for



reason of the poor performance of the contract. These appeals were filed from the common judgment. Two of the appeals were filed from the very same writ petition i.e. CWJC No. 97 of 2012. L.P.A. No. 1313 of 2014 was dismissed as infructuous. We should take it that the dismissal was only on account of both the appeals having been filed from the same judgment.

3. The State had filed LPA No. 639 of 2017 from CWJC No. 19809 of 2011 which was also closed as infructuous.

4. In the present case, the State is aggrieved with only the setting aside of blacklisting issued in the case of IVRCL Ltd. ('Infrastructure and Project Limited' for brevity), which was the writ-petitioner in CWJC No. 97 of 2012.

5. The facts have been detailed in the judgment of the learned Single Judge and what transpires is that the blacklisting was said to be based on Clause 3.3 and 4.8 of the Standard Bid Document ('SBD' for brevity), which has been extracted in the impugned judgment and which we extract hereunder:-

"3.3. Bidders shall not be under a 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.

4.8. Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have:

made misleading or false representations in the forms, statements and



attachments submitted in proof of the qualification requirements; and/or

have record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history, or financial failures etc; and/or

participated in the previous bidding for the same work and had quoted unreasonably high bid prices and could not furnish rational justification to the employer.”

6. Clause 3.3 is a beneficial provision enabling the bidder to be absolved from any ineligibility for reason of the delay, failure or corrupt and fraudulent practices by any of the State Government or Central Government or Public Undertaking or any Autonomous Body. This does not empower the awarder to blacklist a contractor and is a benefit conferred on the contractor.

7. Clause 4.8 again, as rightly argued by the petitioners before the learned Single Judge, can be invoked only in situations relating to a period prior to entering into the bidding process and not for a defalcation after the contract is awarded.

8. Clause 4.8, according to us, enables the awarder to disqualify a contractor even if the qualifying criteria is satisfied, in three situations, as indicated thereunder. The first situation is where any misleading or false representation is made in the



forms, statements and attachments submitted in proof of the required qualification for being awarded the contract. There is no such allegation levelled against the respondent herein.

9. The next situation is where there is a record of poor performance; like abandoning the work, non completion of a contract, causing inordinate delay in completion, history of litigation and financial failures or the like. The very words used being 'having record of poor performance' indicates the same to be a situation which occurred prior to the award of the contract.

10. The third situation is the participation in any previous bidding for the same work and quoting unreasonably high bid prices for which no rational justification could be offered to the awarder. This again is a situation prior to the instant bid.

11. The situations contemplated under Clause 4.8 relate to the past instances of either poor performance or quoting unreasonably high bid prices and also a present instance of a misleading or false representation made in the bid document. None of these conditions appear in the present case and the contention of the State is only that the instant work awarded to the contractor was delayed. Definitely if a cancellation is effected for the delay; that may act as a debarment in the further



contracts, but however there is no power conferred to pass an order of debarment.

12. Then, the State relied on a circular issued by the Department in 2011 i.e. dated 25.11.2011 which was after the debarment order.

13. The learned Single Judge rightly found the circular to be not applicable in so far as the instant contract is concerned.

14. We find absolutely no reason to interfere with the order of the learned Single Judge.

15. The Letters Patent Appeal stands dismissed.

16. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	30.04.2024
Transmission Date	

