

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15172 of 2023

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M/s Hardware Tools and Machinery Projects Pvt. Ltd. a Company registered under the Indian Companies Act, 1956 having its Registered Office at 803/902, Shapath-1, Rajpath Club ke Samne S.G. Highway, P.S. Satellite, Town and District Ahmedabad, Gujarat through its Authorized Signatory, Desai Paresh, Aged about 66 years, Male Son of Sri Gajendrabhai, Resident of 8, Jaybharat, Apartment, Nr Hiramoti Market, Maninagar, Ahmedabad City, Ahmedabad, P.S. Maninagar Town and District- Gujarat.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Water Resources Department, Government of Bihar, Sicha Bhavan, Patna.
2. The Additional Chief Secretary, Water Resources Department, Government of Bihar, Sicha Bhavan, Patna.
3. The Engineer-in-Chief, Head Quarter, Water Resources Department, Government of Bihar, Sicha Bhavan, Patna.
4. The Chief Engineer (Mechanical), Water Resources Department, Government of Bihar, Sicha Bhavan, Patna.
5. The Superintending Engineer, Planning and Monitoring Cell, Circle- 2, Water Resources Department, Sicha Bhavan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Mohit Agarwal, Advocate Mr. Lokesh Kumar, Advocate Mr. Vikash Kumar, Advocate Ms. Jaya Sanam, Advocate
For the Respondent/s	:	Mr. Kunal Tiwary AC to GA-2

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-09-2024

The short controversy that has to be decided here, is as to whether the petitioner, a bidder as against a tender floated, had to disclose the blacklisting imposed on it by the Government of Rajasthan or the requirement was only to



disclose the blacklisting with respect to the contracts awarded by the Central Government.

2. Learned Senior Counsel Mr. S.D. Sanjay took us through the documents and argued that the essential qualification of the bidder did not have such a condition. The affidavit was separately marked to the petitioner and any mistake committed would not result in either disqualification or blacklisting. In the present case, blacklisting has been imposed for a period of ten years; grossly disproportionate to the misconduct alleged, if at all it is valid. Further, it is argued that there was no show cause notice issued specifically threatening blacklisting and Annexure-P/3 issued, merely called for some clarification. Reliance is placed on a decision of this Court in the *State of Bihar Road Construction Department, through its Principal Secretary and Others Vs. Espan Infrastructure (I) Limited Earlier 2023 SCC OnLine Pat 7047* and a decision of the Hon'ble Supreme Court in the case of *UMC Technologies Private Limited Vs. Food Corporation of India and another* reported in *(2021) 2 SCC 551*. Without specifically indicating the nature of the penalty there could not have been blacklisting imposed. Reliance is also placed on Bihar Registration of Contractors (Rural Works Department) Rules, 2007.



3. Mr. Kunal Tiwary AC to GA-2 appears for the respondents and points out that Annexure-P7 issued is the show cause notice while Annexure-P/3 is only a clarification sought for; which led to the issuance of the show cause notice dated 18.08.2023. Admittedly, the petitioner had been debarred in the year 2020 for having abandoned a work awarded to the petitioner by the Irrigation Department, Government of Rajasthan. The same was not disclosed in the affidavit; which required a debarment or abandonment of work with respect to any governmental contracts issued within the Country. There was hence, clearly an attempt to fraudulently obtain the contract which resulted in the blacklisting. Reliance is also placed on ***S.P Chengalvaraya Naidu vs Jagannath*** reported in (1994) 1 SCC 1 to argue that fraud vitiates everything. Further it is pointed out that the show cause notice issued specifically referred to the provision which threatens the imposition of penalty of blacklisting on account of many contingencies; one of which is the false claims made in the tender document. The reliance is on Bihar Registration of Contractors Rules, 2007 as distinguished from the rules framed for the Rural Works Department produced by the petitioner himself, along with Annexure-P/8. The specific clause being Clause-11(क)(vii); has been referred to in the show



cause notice.

4. The imposition of blacklisting for ten years for a fraudulent claim made is based on the guidelines issued by the government regulating the discretion of the authorities as produced at Annexure-N dated 14.03.2016. ***Kulja Industries Vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited & Ors reported in (2014) 14 SCC 731,*** frowned upon the practice of leaving discretion to the authorities in deciding the period of blacklisting which leads to arbitrary exercise of such power by different authorities without reference to the gravity or the nature of the misconduct alleged and proved.

5. We have given our anxious consideration to the contentions raised. The work tendered was by Annexure-P/1; by the Irrigation Mechanical Division, Darbhanga under the Water Resources Department of the Government of Bihar. The qualification of the bidder though does not specifically provide for disqualification on the ground of an earlier debarment or abandonment of work; by Clause 4.3(j) of Section-1:Instructions to Bidders, it requires information regarding any litigation, current or during the last five years in which the bidder is involved. The affidavit which is the bone of contention also is a



part of the tender documents and it is not one subsequently marked to the petitioner; as contended by the learned Senior Counsel. The affidavit is a part of the qualification information to be filled in by the bidder (Section-2 of the tender documents) which requires an undertaking that the bidder has not been blacklisted nor has abandoned any work in a “Government Department, India”; nor any contract awarded for such works having been rescinded during last five years prior to the date of the bid.

6. What falls for interpretation is the words employed “Government Department, India” (underlined above); which the learned Senior Counsel for the petitioner asserts; is a reference to the Central Government. We are unable to accept the said contention especially since India is referred to after the “Government Department”. That phrase would only mean any government department within the Country and specifically takes in all governmental contracts.

7. Admittedly, the petitioner had been debarred after having abandoned the work awarded by a Government Department in the State of Rajasthan. The learned Senior Counsel would further argue that the debarment has been set aside by a Court of Law; but that does not absolve the bidder



from the liability of non-disclosure. The fact to be recorded was as to whether any debarment or abandonment of work having occurred insofar as a governmental contract for the five years prior to the date of tendering. The petitioner ought to have disclosed the debarment and if necessary, added a clarification that it was set aside; if it had been set aside prior to the last date of the bid itself. The petitioner obviously did not disclose the fact of debarment for reason of abandonment of work, by a State Government which stands against the petitioner.

8. We cannot also accept the contention of the petitioner that there was no proper show cause notice issued and Annexure-P/3, as has been argued by the learned Counsel for the respondent, is just a clarification sought on receiving complaints about false statements made by the bidder. Annexure-P/7 is a show cause notice issued specifically referring to Clause-11(क)(vii) of the Bihar Contractors Registration Rules, 2007. The Rural Works Department Rules relied on by the petitioner applies only to the Rural Works Department and in the present show cause notice specific reference is to the Bihar Contractors Registration Rules, 2007.

9. We also notice that Rule-11(क)(vii) of the Bihar Contractors Registration Rules, 2007 speaks of the misconduct



of incorrect documents having been submitted to procure the tender; in which circumstance the penalties are blacklisting, suspension for a period or demotion to a lower class. We find that there is a show cause notice with the specific provision as per the Rules of 2007, issued to the petitioner.

10. The further contention of the petitioner is with respect to blacklisting having been not specified when there are optional penalties provided in Rule-11(क)(vii) of the Bihar Contractors Registration Rules, 2007; which argument was sought to be buttressed with reliance on the decisions cited. ***Espan Infrastructure (I) Limited*** (*supra*) was a case in which the Company was never informed about the intention of the respondents to blacklist, which was interfered with by a Division Bench of this Court.

11. ***UMC Technologies Private Limited*** (*supra*) in paragraph no. 13 held that “*the basic principles of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against them so that he can defend himself. Such notice should be adequate and the ground necessitating action and penalty/action proposed should be mentioned specifically and unambiguously*”(sic). As is noticed from paragraph 25 the



Corporation's notice which was impugned therein was completely silent about blacklisting and as such, it was held that *"it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice"*.
(sic)

12. We find a subtle distinction in the instant case; wherein the show cause notice was issued specifically pointing out the consequence of a penalty under Rule-11(क)(vii) of the Bihar Contractors Registration Rules, 2007. The mere fact that there were three optional penalties which could have been imposed by the authority would not be material insofar as the provision having been stated, there is a reasonable ground for the noticee to infer that the maximum penalty would be proposed; which is of blacklisting without any period specified. A defect would have occurred only if a minor penalty was proposed and a graver penalty was imposed or no provision was indicated in the notice. The reference to the provision ought to have cautioned the petitioner and the petitioner should have inferred that the maximum penalty could have been imposed. The option available to the authority, to impose either of these penalties, would arise only after the explanation is received. The authority has considered the explanation and imposed the



penalty of blacklisting for 10 years; which period again is as per the guidelines issued by the Government.

13. On the above reasoning, we find no reason to interfere with the impugned order. The writ petition would stand dismissed.

14. Interlocutory application(s), if any shall stand closed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Ranjan/-..

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2024
Transmission Date	NA

