

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17776 of 2023

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Lalit Kishore Khurana Son of Lt Sh. Yash Pal Khurana Resident of 0/326,
Sunder Vihar, Paschim Vihar, New Delhi - 110087 proprietor of M/s Yash
enterprises having its place of business at Plot No. 68, Badli Industrial Area,
New Delhi - 110042.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Disaster Management Department, Government of Bihar Patna.
2. The Joint Secretary, Disaster Management Department, Government of Bihar, Patna.
3. District Magistrate, Disaster Management Branch, Munger, Bihar - 811201.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kejriwal, Advocate
Mr.Alok Kumar Jha, Advocate
Mr.Mukund Kumar, Advocate
Mr.Aditya Raman, Advocate
For the Respondent/s : Mr.P.K. Shahi (AG)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-03-2024

The petitioner, a successful bidder, pursuant to a
Notice Inviting Tender (for brevity “NIT”) for supply of



polythene sheets in the Districts of Munger, Jamui, Sheikhpura and Khagaria is aggrieved with the order issued by the District Magistrate, Disaster Management Branch, Munger, Bihar cancelling his work order by Annexure- P/14 dated 26.09.2023. The petitioner also seeks a mandamus to direct payment for the 41,000 polythene sheets supplied to Districts of Khagaria, Sheikhpura, Jamui and Munger pursuant to the purchase order dated 28.05.2022. The petitioner has also been blacklisted which too is challenged in the aforesaid writ petition.

2. We have heard learned counsel for the petitioner and the learned Government Advocate.

3. The petitioner is a manufacturer and dealer of LDPE polythene sheets, cross laminated films and such other similar articles. The Disaster Management Authority, Munger which is headed by the District Magistrate of Munger, notified as the Nodal Officer, had issued a NIT for purchase of Low Density Polythene Black Sheets for not only the District of Munger, but also Jamui, Sheikhpura and Khagaria; which are flood prone. The petitioner's tender was accepted and the purchase order was placed on 28.05.2022 for supply of 41,000 polythene sheets; different numbers to the various districts. The polythene sheets were also to be certified by the Central



Institute of Plastic Engineering and Technology, Hajipur (for brevity “C.I.P.E.T”); as per the specification in the purchase order itself. The quality and quantity was also to be tested by the Committee formed at the district level. The purchase order stipulated that when the supply is made, a sample would be taken and send for testing to the C.I.P.E.T. Only on receipt of the quality verification report as also the weighment of the material supplied; by the Inspector of Weights and Measures, the payment would be released. So much is evident from the purchase orders produced as Annexure-P/2 by the petitioner in the writ petition.

4. The petitioner had made the supplies to the various districts and on sampling and sending it for testing, they were found to be not in consonance with the specifications, by the C.I.P.E.T. The petitioner was also supplied with the C.I.P.E.T reports. The petitioner’s contention is that the samples were taken not immediately after delivery, but after two months and this led to deterioration in the quality of the supplied materials. It is also the contention of the petitioner that the C.I.P.E.T reports were only supplied on 31.03.2023 along with the office order dated 25.03.2023.

5. A detailed counter affidavit has been filed by the



respondent wherein the procedure of sampling, transmission for testing and receipt of the reports is explained in detail. We would first look at the order impugned which is produced as Annexure-P/14. The District Magistrate, Munger has specifically referred to the random selection of the polythene sheets supplied by the petitioner which was sent to C.I.P.E.T, Hajipur for quality testing. The discrepancies with respect to the report was also detailed, with reference to the standard specifications in a tabular form in the order. It was noticed that earlier also such defective supplies were made by the petitioner which was returned vide an office letter no. 1137/AP, dated 01.07.2022. The petitioner was directed to supply polythene sheets in accordance with the specifications to Munger and Jamui districts from where the supplied sheets were returned for being not in accordance with the specifications. The request of the petitioner for re-examination of the polythene sheets was acceded to and the C.I.P.E.T, Hajipur again examined the same wherein also glaring discrepancies were noticed. This is the reason for cancellation of the work order issued to the petitioner.

6. We do not find any reason to interfere with the same at this point since the rejection has been done by the District Magistrate, Munger who heads the Disaster



Management Branch at the Collectorate, Munger after getting technical report from an expert institute which revealed the supplied material not being in accordance with the specifications of the purchase order.

7. As we noticed the counter affidavit specifically indicates that the District Magistrate, Munger had issued the short term tender for purchase of Low Density Polythene Sheets, the specifications of which were available in the tender itself. Munger was designated as the Nodal district for purchase of polythene sheets for all the districts coming within the Munger division vide order dated 20.04.2018 which is produced as Annexure-A. The first supply was made of a quantity of 500 packets on 17.06.2022 which was checked randomly and found it to have not met the required specifications. The In-Charge Officer of the District Management Section, Munger had immediately issued a letter on 01.07.2022, with a direction to take back the supplied polythene sheets and to replace them with material in accordance with the specification. The rejected materials were also taken by the petitioner on 05.07.2022. Later to that also the petitioner had supplied defective material, which defects were also noticed specifically in the report of the C.I.P.E.T.



8. As we observed, when an expert body has tested the material and submitted a report clearly finding the supplied material to be not in accordance with the specification in the purchase order, there can be no invocation of Article 226 of the Constitution of India either against the cancellation or for payment of the amounts for the supplies made. The petitioner would have to approach the Civil Court and lead evidence insofar as the assertion of quality and compliance with the standards as indicated in the purchase order or request for an arbitration. We absolutely find no reason to interfere with the order of the District Magistrate which was based on the test report of the C.I.P.E.T.

9. As far as the blacklisting is concerned, we notice that there is no period specified which is against the dictum of the Hon'ble Supreme Court in ***Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731***. In such circumstances, insofar as the blacklisting is concerned, the petitioner would be entitled to make a representation, in which eventuality, the authority shall consider the same and issue a speaking order, fixing a period in consonance with the gravity of the misconduct; subject of course to any legal proceeding taken by the petitioner; by way of a civil suit or an arbitration.



10. The writ petition hence, would stand dismissed
reserving the above liberty to the petitioner.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.03.2024
Transmission Date	

