IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1630 of 2018
In
Civil Writ Jurisdiction Case No.4486 of 2017

CNR No. BRHC010039402018

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1. The State Of Bihar through the Secretary, Rural Works Department, Govt. of Bihar, Patna.
2. The Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer-3, Rural Works Department, Government of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Works Circle, Motihari
6. The Tender Committee through its Member and Nodal Officer, Rural Works Department, Government of BI
7. The Engineer-in-Chief-Cum- Tender Committee, Rural Works Department, Government of Bihar, Patna.

... ... Appellant/s

Versus

1. Kamakshi Minakshi Construction Private Limited, having its Registered Office at Flat no. 03, Pocket Son of Sri R.B. Bharti, resident of C-68, Section-49, Police Station-49 Sector, District-Noida, Uttar Pradesh and Presently Residing at Flat no. 401, Hari Govind Apartment, Exhibition Road, Police Station-Gandhi Maidan, District- Patna, Bihar
2. M/s Laxman Kumar through its proprietor, namely , Laxman Kumar Prasad aged about 44 years, son of Sri Harihar Sah, R/o Mohalla – Ashiana Nagar, District-Patna

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Pratik Kumar Sinha, AC To GA- 5
Mr. Saurav Kumar, Adv.
Mr. Rakesh Kumar Ranjan, Adv.
For the Respondent/s : Mr. Ashish Kumar Lal, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
and
HONOURABLE MR. JUSTICE VIKASH KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : 28-10-2026

The present intra court appeal has been preferred against the judgment dated 18.05.2018 passed by learned Single Judge

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in C.W.J.C. No. 4486 of 2017 whereby the appellants have been directed to pay a cost of Rs. 5,00,000/- to the writ petitioner for arbitrarily ousting him from the tender work.

2. The brief facts giving rise to the present appeal is that pursuant to NIT No. RWD / NABARD / SBD / 11 / E- Tender / 2015-16, the respondent / writ petitioner participated in the tender process along with other bidders. The respondent-writ petitioner along with four other bidders was found eligible by the Tender Committee in its meeting held on 30.01.2017. Upon opening of the financial bid on 03.02.2017 the respondent-writ petitioner was declared as L-1. Subsequently, on the basis of a complaint made by a Member of the Legislative Assembly (MLA) an enquiry was conducted. On consideration of the alleged enquiry report the Tender Committee came to the conclusion that L-1 & L-2 bidders had not complied with Clause 4.5B(b) of the Standard Bidding Document inasmuch as the stamp paper on which the affidavit had been executed had not been issued in the name of the person making the affidavit. Consequently, both L-1 & L-2 bidders were declared ineligible. The tender process was cancelled and a fresh tender was directed to be issued.

3. The respondent-writ petitioner approached this Court by

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filing writ petition challenging its exclusion from the first tender process. During pendency of the writ petition fresh tender process started and the respondent no. -2 was declared L-1 and work was awarded in his favour. By order dated 12.04.2017 the writ petitioner was granted liberty to participate in the fresh tender subject to final outcome of the writ petition.

4. The writ petition filed by the respondent bearing C.W.J.C. No. 4486 of 2017 was disposed of by order dated 10.08.2017 holding that previous proceeding suffers from illegality and ground of rejection of technical bid of the writ petitioner was not sustainable at all. Accordingly, the learned Single Judge directed that second tender will not be taken into consideration and the concerned authority shall issue a fresh tender and the writ petitioner, if so advised, may participate in the fresh tender.

5. The respondent no. 2 in the present L.P.A. namely, M/s Laxman Kumar, who was awarded tender in the second tender process challenged the order dated 10.08.2017 passed in C.W.J.C. No. 4486 of 2017 in L.P.A. No. 1419 of 2017. The L.P.A. was disposed of on 20.11.2017 and order of learned Single Judge dated 10.08.2017 was quashed and the matter was remanded back for fresh re-consideration.

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6. The respondent-writ petitioner had challenged its exclusion from the original / first tender process and ultimately succeeded to the extent that the ground on which its technical bid was rejected was found to be unsustainable however, by the time the matter came to be considered for a consequential relief, the tender process had undergone substantial changes and the work had been allotted to the subsequent tenderer i.e. respondent no. 2.

7. The learned Single Judge though arriving at the conclusion that the respondent no. 1 / writ petitioner was arbitrarily ousted from the first tender process taking note of the subsequent development, the position of the work and the fact that work has already been completed to a substantial extent of 80% did not direct restoration of the work in favour of the respondent - writ petitioner but while moulding the relief the learned Single Judge directed the appellants to pay a sum of Rs. 5,00,000/- to the writ petitioner-respondent no. 1.

8. Mr. Pratik Kumar Sinha, learned A.C. to G.A. No. 5 appearing for the appellants submits that learned Single Judge failed to appreciate that no concluded contract had come into existence in favour of the respondent – writ petitioner merely on its being declared L-1 could not have treated the petitioner as

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have suffered a compensable loss. It is submitted that the petitioner had no vested right to claim award of work and therefore the direction to pay Rs. 5,00,000/- as compensation has no legal or factual basis.

9. The petitioner had been granted an opportunity to participate in the fresh tender but it chose not to participate. Having failed to avail the said opportunity, the petitioner could not subsequently claim a monetary benefit on the basis that it had been deprived of the work.

10. Learned counsel submits that subsequent tender was validly awarded to the respondent no. 2 who was declared as L-1 and after agreement the work was executed by the respondent no. 2. The learned Single Judge having himself found that disturbing the work would not be in public interest could not at the same time have imposed a financial liability upon the State without determining any actual loss suffered by the writ petitioner.

11. In a proceeding under Article 226 there was neither any pleading nor any evidence regarding expenditure incurred by the writ petitioner, mobilisation of men or machinery, loss of profit, loss of business or any other pecuniary loss. The mere fact that petitioner had been declared L-1 could not furnish a

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basis for awarding compensation particularly when the petitioner never obtained the work order and the work was never started. Lastly, it has been submitted that the principles governing award of compensation in exercise of writ jurisdiction requires the Court to examine the nature of the right violated and the material establishing the consequential loss. In the present case even assuming that the ground for rejection of the technical bid was unsustainable, that finding could not by itself create a right to monetary compensation in absence of any concluded contract or proof of actual loss. Reliance has been placed upon the judgment of Rabindra Nath Ghosal v. University of Calcutta, (2002) 7 SCC 478, Sube Singh v. State of Haryana, (2006)3 SCC 178, W.B. SEB v. Dilip Kumar Ray, (2007) 14 SCC 568 and Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association, (2011) 14 SCC 481.

12. We have heard learned counsel for the parties and have gone through the material on record.

13. The respondent - writ petitioner was found eligible by the Tender Committee in the technical bid and upon opening of the financial bids he was declared L-1. Subsequently, on the intervention of an MLA the writ petitioner - respondent was declared ineligible on the ground that the stamp paper on which

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the affidavit had been sworn had not been purchased in the name of the person making the affidavit. The said ground had no basis in the tender conditions. More importantly when the Court specifically enquired from the State authority as to whether there was any such condition in the NIT, learned counsel appearing for the State fairly submitted that there was none. In absence of such a stipulation in the NIT, the respondent -writ petitioner could not have been declared ineligible on such trivial ground. The learned Single Judge came to the conclusion that ouster of the writ petitioner- respondent from the tender process was arbitrary. Learned Single Judge was therefore justified in holding that rejection of the technical bid was unsustainable. The subsequent re-tender also does not alter the position.

14. The writ petition challenging the rejection of the respondent-writ petitioner's bid was already pending when the work was awarded to the respondent no. 2 pursuant to the subsequent tender. Further this Court had specifically directed on 12.04.2017 in the writ petition filed by respondent that participation in the fresh tender and any action pursuant thereto would remain subject to the result of the writ petition. The subsequent award therefore could not cure the illegality committed in rejecting the respondent's tender in the original /

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first tender process.

15. The learned Single Judge rightly took the view not to interfere in the second tender process after taking into account the progress of the work to the extent of 80%. Interference at that stage by directing that the work be handed over to the respondent / writ petitioner would have resulted in disruption of an ongoing public work. The learned Single Judge therefore did not direct the award of tender in favour of the writ petitioner at the advanced stage of the work but has rightly moulded the relief and directed for payment of Rs. 5,00,000/- as compensation.

16. The action of the respondent authority was intrinsically arbitrary and award of compensation in the facts of the case cannot be said to be illegal. The judgments relied upon by the appellants are not applicable in the facts of the present case

17. We therefore find that the learned Single Judge has neither interfered with a concluded contract nor awarded contractual damages. The relief has been moulded after balancing the established illegality in the original tender process at the behest of an MLA against the subsequent progress of public work. Accordingly, no ground has been made out for interference with such exercise of discretion by learned Single

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Judge.

18. In the result, the present L.P.A. is devoid of any merit and the same is accordingly dismissed.

19. Pending interlocutory application(s), if any, also stands disposed of.

(Anil Kumar Sinha, J)

Vikash Kumar, J: I agree.

(Vikash Kumar, J)

praful/-

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