

(2006) 11 PAT CK 0099
In the Patna High Court
Case No : CWJC No. 8701/06

M/s Vishal Builtech (I) Pvt. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-11-2006

Acts Referred:

Citation : (2007) 1 PLJR 278

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Chandrashekhar, A.K. Upadhyay, Yashraj Bardhvan and Bishwa Bibhuti Kumar Singh, for the Appellant; Shyam Kishore Sharma and Mr. Kaushal Kumar Jha For the Union of India, for the Respondent

Judgement

Navaniti Pd. Singh, J.—Heard the parties. The present writ application had been filed by the petitioner initially for restraining the respondents from cancelling the contract awarded to it. Subsequently by two separate interlocutory applications prayer was made to restrain the respondents from re-tendering the remaining works and for quashing the order blacklisting the petitioner for having failed to complete the contract given to it.

2. State has filed counter affidavit and the National Highway Authority appeared.
3. With the consent of the parties this writ application is being disposed of at the admission stage itself.
4. It is not in dispute that work on National High way No. 31 had to be done. Notice inviting tenders was issued. Petitioner filed its tender. It was selected for the work considering the urgency of the work. Work order was immediately issued awaiting formality of agreement and deposit of full amount of earnest money. The petitioner asserts that while working on the site he found that the ground work was not such that it could do its part of the work. With reference to Annexure C to the counter affidavit it is submitted that it is evident that even the State Engineer took that the entire work has to be re-estimated and as such

petitioner sought extension of time on the aforesaid ground which the petitioner was granted in May, 2006. Petitioner asserts that in June, all of a sudden the authority changed their attitude instituted prosecution, cancelled the contract, re-tendered the remaining work and blacklisted the petitioner. This is what he challenged.

5. The State, on the other hand, has brought on record documents to show that indeed after work order was issued to the petitioner the site was surveyed, engineers were of the opinion that the work has to be made again as substantial additional work has to be done before petitioner could complete his part. This is evident from Annexure C to the counter affidavit of the State. State has rightly pointed out that Annexure C does not end there. It is a joint report in which petitioner also participated. The conclusion of that is that a decision was taken that with the amount already sanctioned and to the extent work was possible under the said amount petitioner would complete the work. He would enter into agreement for that purpose and deposit the balance earnest money. This letter is dated 27.12.2005. In my view, this is sufficient to show that after this petitioner was not required to wait any further. It had to commence and complete the work to the sanctioned financial limit. It appears that it represented thereafter to the authorities for extension of time. This is evident from Annexure 1. This was accepted by the authorities upto the Chief Engineer as is evident from Annexure 1 but the petitioner still did not execute the agreement nor deposit the earnest money. Be that as it may, the authorities then decided to cancel the work order and re-tender the work. To this in my view no exception can be taken. In that view of the matter the prayer of the petitioner to restrain the respondents from cancelling his work and re-tendering the work cannot be questioned.

6. The question then remains with regard to the other relief, as sought for. So far as work already done is concerned, as is evident from Annexures 6 and 7 the petitioner had been requested and was present when measurements were done with regard to work already done by it. Based on the said measurements and taking into account the earnest money, deposited so far, payments would be liable to be made by the State to the petitioner but the State cannot be restrained from re-tendering the work.

7. Coming to the question of blacklisting of the petitioner, it is now admitted position that blacklisting can only be done pursuant to the provision as contained in Rule 14 of the Enrolment of the Contract Rule as framed by the State Government. That rule clearly provides as to who is the appropriate authority for the said purpose. It provides that the proper authority would be the authority who had the power to register the contractor. In the present case it is clear that the notice in the proceedings was issued by one authority, show cause was filed before another authority and the order blacklisting was passed by a third authority with the approval of the competent authority. To my mind such a procedure is impermissible in fact and in law. It is well settled principle of natural justice that firstly a notice has to be given by a competent authority clearly

stipulating the grounds on which he intends to exercise his jurisdiction to take the action. The show cause has to be filed before the said competent authority who has himself to apply his mind to the show cause in an independent manner and then pass an order himself. He cannot delegate this authority specially when he is a designated authority under the statute rule.

8. In the present case, as noted above, this entire decision making process of blacklisting the petitioner stands vitiated and cannot be sustained. Therefore, this extent the petitioner is entitled to the relief sought for. The order blacklisting the petitioner is liable to be quashed and is hereby quashed. The writ succeeds in part.