

PATNA REGIONAL DEVELOPMENT AUTHORITY
AND ORS. ETC.

v.

M/S. RASHTRIYA PARIYOJANA NIRMAN NIGAM
AND ORS. ETC.

MAY 7, 1996

[J.S. VERMA AND SUJATA V. MANOHAR, JJ.]

Contract—Black-listing of Contractor—Effect of—Patna Regional Development Authority inviting tenders for construction of a building—Tender of lowest quotations submitted by a contractor who had been black-listed by the State Water Resources Department rejected and contract given to other bidder—Held, Tender Committee rightly took into account the fact of black-listing of the Contractor—This was a relevant consideration in deciding whether a contract should be given to him—The decision cannot be considered as arbitrary or unreasonable.

Code of Civil Procedure, 1908 :

Order VIII Rule 5—Pleadings—Theory of non-traversal—Proving of statement of facts made in pleadings—In spite of the tender of respondent offering lowest quotations, contract denied to him as he had been black-listed for five years—High Court setting aside the order passed by the Government black-listing the contractor on the ground that the order was not served on the contractor and the fact of non-service of the order was not denied by the Department and as such there was non-traverse of the statement made by the respondent that the order was not received by him—Held, the Department had clearly pleaded that the order black-listing the contractor was communicated to him—This cannot be construed as non-traverse—In view of the proviso to Order VIII Rule 5(1) CPC, the High Court should have asked that the receipt or non-receipt of the order be proved otherwise than by the alleged admission—It should not have set aside the order of black-listing after a lapse of four years only on the ground of alleged non-traverse.

Doctrine of non-traversal—Explained.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7829 of 1996 Etc.

From the Judgment and Order dated 22.12.95 of the Patna High Court in L.P.A. No. 912 of 1995.

B Soli J. Sorabjee, K.D. Prasad, A.N. Bardayar, T.N. Singh, Sushil Kr. Jain, A.P. Dhamija, Atul Chitale, Ms. S. A. Chitale for the appearing parties.

The following Order of the Court was delivered :

C Leave granted.

The Patna Regional Development Authority (hereinafter referred to as the 'appellants') invited tenders for the construction of a high rise building 'Maurya Towers' in the town of Patna, of the three bids which were submitted, the bid of the first respondent, namely, Rashtriya Pariyojana Nirman Nigam was found to be the lowest. The second lowest bid was of respondent No. 4. M/s. Walia Builders. Although the tender submitted by the first respondent was the lowest, the Committee took into account the fact that the first respondent had been black-listed for a period of five years by the Water Resources Department, Government of Bihar under a black-listing order dated 26.9.1991, and decided not to award the contract to the first respondent. Instead, it awarded the contract to the fourth respondent. The fourth respondent, after negotiation, agreed to do the work at the rates offered by the first respondent.

F This decision of the appellants was challenged by the first respondent by filing a writ petition being C.W.J.C. No. 3964 of 1995 which was filed on 13.6.1995 in the Patna High Court. The first respondent also filed another writ petition bearing C.W.J.C. No. 4064 of 1995 challenging the black-listing order of 26.9.1991. Writ Petition C.W.J.C. No. 4064 of 1995 was rejected by a learned Single Judge of the Patna High Court by his order dated 18.9.1995 on the ground of delay, since the order of black-listing was challenged more than four years after it was made. The first respondent filed an appeal to a Division Bench of the Patna High Court being L.P.A. No. 1473 of 1995.

H Writ Petition C.W.J.C. No. 3964 of 1995 filed by the first respondent against the decision not to award the contract to it, was allowed by a

learned Single Judge of the Patna High Court. He held, inter alia, that before the appellants decided not to award the contract to the first respondent on the ground of its being black-listed, no show-cause notice was issued by the appellants to the first respondent. Hence their decision was against the principles of natural justice and was bad in law. Two Letters Patent Appeals were filed from this judgment and order, being L.P.A. No. 912 of 1995 filed by the appellants and L.P.A. No. 1078 of 1995 filed by the fourth respondent, M/s. Walia Builders.

These two Letters Patent Appeals along with L.P.A. No. 1473 of 1995 were heard together by the Division Bench of the Patna High Court. It has held that the order of black-listing must be set aside because the order was not communicated to the first respondent. It has further held that since the order of black-listing has been set aside, the question of award of tender must be re-examined by the first respondent.

In our view the impugned decision of the Division Bench of the Patna High Court cannot be sustained. The decision of 26.6.1991 taken by the Water Resources Department to black-list the first respondent for five years was communicated by a letter of the same date to the first respondent. The High Court has, however, held that the letter of 26.9.1991 addressed by the Water Resources Department, Government of Bihar to the first respondent was not served on the first respondent. This conclusion is arrived at by the High Court only on the ground that the allegation of non-service of the letter, made by the first respondent in their pleading is not denied by the appellants in their pleading. But as the High Court's judgment itself records, the appellants had, in fact, stated in their pleading that the letter of 26.9.1991 was communicated to the first respondent. The High Court, however has proceeded on the basis that there was non-traverse of the statement made by the first respondent that the letter of 26.9.1991 was not received by the first respondent. The appellants had clearly pleaded that the order of 26.9.1991 was communicated to the first respondent. This cannot be construed as non-traverse. In any case, the proviso to Order VIII Rule 5(1) of the Civil Procedure Code states that the court may, in its discretion, require any fact so admitted to be proved otherwise than by such admission. Looking to the nature of the pleadings the High Court should have asked that the receipt or non-receipt of the order of 26.9.1991 be proved otherwise than by the alleged admission. It should not have set aside the order of black-listing after a lapse of four

A years only on the ground of alleged non-traverse.

B The decision of the Tender Committee taken on 30.5.1995 not to award the contract to the first respondent has been set aside by the Division Bench of the High Court only on the ground that the order of black-listing is not a valid order. Hence the decision of the Tender Committee requires to be re-considered. The very basis for this finding is defective. In considering whether the decision of the Tender Committee to award the tender to the fourth respondent is arbitrary or unreasonable, one will have to examine the existing circumstances at the time when the decision was taken. The Tender Committee rightly took into account the fact that the Water Resources Department of the State of Bihar had black-listed the first respondent for a period of five years. This was a relevant consideration in deciding whether a tender should be awarded to the first respondent. There was no challenge to the black-listing order at the relevant time. The performance record of the first respondent while executing previous contracts was relevant in deciding whether to award the contract to the first respondent or not. The impugned decision thus took into account relevant factors. It cannot be considered as arbitrary or unreasonable.

E The first respondent contended that the order of black-listing was not in force because even after 1991 it had been awarded two contracts. The first contract referred to in this connection by the first respondent is a contract for the construction of the Lok Nayak Bhawan given to it by the Patna Zilla Parishad. This contract was awarded to the first respondent before 27.2.1991 and prior to the order of black-listing. The second contract relied upon is by the Chief Engineer, Rural Engineer Organisation of Chotta Nagpur and Santhal Pargana Wing. This contract relates to the Bihar Plato Development Project and was awarded to the first respondent in 1994. On enquiry from the appellants, the Chief Engineer of the Rural Engineering Organisation informed the appellants that when the contract was awarded to the first respondent, the fact of its having been black-listed in the State of Bihar was not brought to his notice. It was because of the suppression of this information that the work was allotted of the first respondent. This contention of the first respondent, therefore, has no force.

H The first respondent also contends that the disqualification imposed by the State Government will not automatically disqualify the first respon-

dent qua the appellants, an autonomous body. The appellants, however, can legitimately take into account the fact that the first respondent has been black-listed by the Water Resources Department, State of Bihar, in deciding whether to give work to the first respondent or not. A

There was also no question of issuing of any show-cause notice to the first respondent before the Tender Committee of the Appellants took the decision on 30.5.1995. The appellants were merely taking note of an existing order. There was no question of their sitting in judgment over the black-listing order. Nor was this a case of the appellants themselves issuing an order black-listing the first respondent. B

The appeals are, therefore, allowed. The impugned judgment and order of the Patna High Court is set aside and Writ Petitions bearing C.W.J.C. Nos. 3964 and 4064 of 1995 filed in the Patna High Court are dismissed with costs. C

R.P.

Appeals allowed.