

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5190 of 2015

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1. M/s Sandhya Samrat Construction & Services Pvt. Ltd. through Managing Director, Sri Madhukar Kumar, Resident of D-204, Om Raj Apartment, Jamal Road, P.S.- Kotwali, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Patna.
2. The Engineer-in-chief, Road Construction Department, South Bihar Wing, Patna,
3. The Chief Engineer, South Bihar Wing (YA), RCD, Bihar, Patna.
4. The Superintending Engineer, RCD, Road Circle, Munger.
5. The Executive Engineer, RCD, Road Division, Sheikhpura.
6. The Chief Manager, Indian Bank, Main Branch, West Gandhi Maidan, Patna.
7. The Branch Manager, Indian Bank, Main Branch, West Gandhi Maidan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar
For the Respondent/s : Mr. GP20- NADEEM SERAJ
For the Bank : Dr. Binay Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 24-07-2015

Heard Mr. Sanjay Kumar for the petitioner, Mr. Nadeem Seraj for the State and Dr. Binay Kumar Singh for the respondent Bank. Parties have exchanged their pleadings.

The writ application has been filed by the petitioner who was one of the bidders pursuant to the Notice Inviting Tender (for short 'NIT') dated 25.2.2015 issued by the respondent Executive Engineer. The last date for uploading tender papers by the bidder was 18.03.2015. As per the terms of the NIT, parties intending to bid were required to furnish a Bank Guarantee in favour of Executive Engineer for certain amount under whose authority the notice was issued.



Petitioner applied for issuance of Bank Guarantee before the respondent Indian Bank (for short 'the Bank'). The same was issued on 16.3.2015 (Annexure-2) which was uploaded by the petitioner on the site and a hard copy thereof was enclosed along with the tender papers. The process of evaluation of the tender papers is in two parts i.e. evaluation of technical bid and thereafter evaluation of financial bid. The petitioner found that there was a mistake in setting out the correct name/designation of the officer under whose authority NIT was issued. The Bank Guarantee was required in favour of the Executive Engineer, RCD, Sheikhpura whereas the Bank Guarantee was incorrectly issued in favour of Executive Engineer, RWD, Biharsharif. The petitioner immediately applied for rectification in the Bank Guarantee already issued before the respondent Bank on 20.3.2015 (Annexure-4). The respondent Bank rectified the name of the officer in whose favour the same was issued and informed the Executive Engineer, RCD, Road Division, Sheikhpura. In the meanwhile, as per the stipulations in the NIT, the technical bid was opened and evaluated on 19.3.2015 by the Executive Engineer, Sheikhpura on the basis of paper submitted by the petitioner. The Executive Engineer put up a note that the Bank Guarantee was not furnished in the manner the bidder was required as per NIT and rejected the technical bid. The petitioner, in this background, filed the



present writ petition for acceptance of the bid papers. This Court after hearing the parties by order dated 17.04.2015 called upon the respondents to file counter affidavit and in the meantime directed that if the financial bid has not been opened till date, the same shall not be opened till further orders. From diverse pleadings, it appears that the financial bid was actually opened of the persons who were qualified in the technical bid on 21.4.2015. The respondents have thereafter in view of the restraint order refrained from further proceeding in the matter. The reason for proceeding with the evaluation of financial bid has been explained by the Counsel for the State as communication gap. The matter rests at this stage.

Contention of the petitioner is that there was no fault on the part of the petitioner in not filing the papers as per the requirements. Even the bank probably acted not diligently in issuing the first Bank Guarantee. Immediately, the mistake was brought to the notice of the respondent Bank and the same was rectified and the respondent Executive Engineer was informed on 20.3.2015. The papers were immediately submitted to the authority. The petitioner, in such circumstances, should not be debarred from consideration of the bid which may, in fact, benefit the State of Bihar in case there is more competing rate(s) quoted by the petitioner. The same shall also not prejudice the other bidders as no legal right till today has fructified in

their favour.

Mr. Seraj conversely submitted that the respondents have acted strictly in accordance with the provisions of the NIT as also the instructions of the government issued in this regard.

Counsel for the Bank has submitted that it was the mistake on the part of the petitioner in not getting the Bank Guarantee issued as intended by the petitioner. If there was any mistake, the same ought to have been brought to the notice of the Bank before receiving the same in so much so the petitioner uploaded the same on the site for bidding and filed the same alongwith the tender papers.

I have considered the rival submissions of the parties.

The mistake, in the present case, in not filing the Bank Guarantee as required under the NIT is of not much consequence since admittedly the petitioner intended to file the bid papers and requested the Bank for issuance of the Bank Guarantee which was obviously for the purpose of participating in the bid. He is, therefore, not to be blamed alone. The mistake in not incorporating the correct name/designation of the Authority was obviously the product of the circumstances.

There is another aspect of the matter. If the bid papers of the petitioner is directed to be evaluated afresh, the respondent State is also not going to lose in any manner. There might be a situation



where petitioner at the financial bid is found quoting rates which is/are found more competing and beneficial to the State Exchequer. The area of competition in terms of cost of work shall be expanded. Equitable jurisdiction of this Court can be invoked as the same shall serve the cause of justice. The interest of the other bidder(s) shall also not be prejudiced since no one has a vested legal right to get the largess at the cost of public interest. The factual scenario emerging from the records persuades this Court to invoke its writ jurisdiction which will serve the cause of justice. This Court is conscious that further delay in the matter would affect the interest of the State in diverse manner.

In the aforesaid background, this Court directs the respondent State authorities to evaluate afresh the technical bid of the petitioner accepting the request of the petitioner and the respondent Bank to treat the Bank Guarantee furnished by the petitioner as valid and acceptable and if there is no other defect in the technical bid of the petitioner then to consider its financial bid also alongwith other bidders who qualified at the technical bid and proceed in accordance with law. The process of evaluation of the technical bid of the petitioner shall be carried out either by the respondent Executive Engineer (respondent no. 5) or by the Committee constituted, if any, within 10 days from the date of receipt/production of a copy of this

order before the respondent no. 5.

The writ application is disposed of with aforesaid observation/direction.

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(Kishore Kumar Mandal, J)