IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5643 of 2015

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Simant Shekhar, son of Ram Prakash Khirhar, Resident of village- Aamghata, P.S. Sitamarhi, District-Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar through the Inspector General of Police, Prison, Bihar, Patna.
2. The District Magistrate, Sitamarhi, District- Sitamarhi.
3. The Superintendent, Mandal Jail, Sitamarhi, District- Sitamarhi.
4. Tanuja Kumari, wife of not known to the petitioner, Proprietor of M/S/ Sonu Supplier through the Superintendent, Mandal Jail, Sitamarhi, District- Sitamarhi.

.... Respondents

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Appearance :

For the Petitioner : Mr. Y.V. Giri, Sr. Advocate
Mr. Mahendra Thakur,
Mr. Sanjay Kumar, Advocates

For the State : Mr. Satyadeo Kumar- SC5

For Respondent No.4: Mr. Suraj Narain Yadav,
Mr. Durgesh Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 17-08-2015

The present writ petition has been filed for quashing the award of tender in favour of respondent no.4 without opening the financial bid of the petitioner as his technical bid was illegally rejected only on the ground that the petitioner was a contractor and not a supplier.

2. Mr. Y.V. Giri, learned senior counsel for the petitioner, invites attention to Part-*Ka* of the NIT as contained in Annexure-1 to the writ petition, one of the eligibility conditions whereof required furnishing of audit reports and audited balance sheet of three years in terms of Section 44 AB (a) of the Income Tax Act,

1961 (For short, “the Act”). It is submitted that the same has been duly complied with along with other documents required to be enclosed with the tender documents for Part-*Ka* of the NIT but the technical bid has been rejected on grounds de hors the requirements in the NIT. It is submitted that the petitioner was thus prevented from participating in the financial bid and the tender relating to Part-*Ka* of the NIT has been awarded to the respondent no.4.

3. A counter affidavit has been filed on behalf of the respondent no.3 stating that the petitioner’s technical bid has been rejected on the ground that the audit reports furnished by the petitioner disclose that he is a works contractor and not a food supplier, the two being distinct, as evident from the provisions of Sections 40 and 41 of the Bihar VAT Act. It is further stated in paragraph 7 of the counter affidavit that as per the tender notice published on 14.02.2015, a tenderer must be registered as a grain/food supplier whereas the petitioner is a works contractor.

4. Learned counsel for the private respondent no.4 appears and has also been heard.

5. Having heard the respective parties and on perusal of the materials on record, this Court is of the view that the writ petition must succeed. The tender notice merely required the petitioner to furnish, inter alia, audit reports and balance sheets for

three years in terms of Section 44AB(a) of the Income Tax Act which was admittedly complied with. The respondents are unable to show from any part of the NIT that a work contractor was ineligible to submit that tender and it was only open to a supplier of food and other articles. It is also not in dispute that the petitioner had fulfilled all the other requirements in terms of Part-*Ka* of the NIT including that of registration under the Bihar VAT Act, furnishing of bank guarantee and possession of licence under the Food Safety and Standards Act, 2006.

6. In this view of the matter, the rejection of the petitioner's technical bid is held to be illegal being de hors the stipulated conditions in the NIT published on 14.02.2015. The financial bid of the petitioner shall be opened and the authorities shall now proceed in the matter in accordance with law. The award of the tender to respondent no.4 with respect to Part-*Ka* of the NIT is hereby set aside and shall abide by the result obtaining after opening of the petitioner's financial bid.

7. The writ petition stands allowed.

(Vikash Jain, J)

B.T/-

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