

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9153 of 2015

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M/s. Birampur Construction Private Limited, having its Registered Office at Quamuruddinganj Bihar Sharif, Nalanda, through its Managing Director Nilesh Kumar, son of Arun Kumar Singh, resident of 406, Nilgiri Bhawan, West Boring Canal Road, P.S.- S.K. Puri, District- Patna.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Middle, Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Government of Bihar, Patna.
5. The Superintending Engineer, Monitoring Circle, Water Resources Department, Government of Bihar, Patna.
6. The Executive Engineer, Flood Controls Division, Darbhanga.
7. Phular Construction Company Pvt. Ltd. Through its Managing Director, Umesh Prasad Singh At P.O.- Khabra, Adarsh Nagar, P.S.- Sadar, District- Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ajay Kumar Singh,
Mr. Raj Kumar
Mr. Vijay Kumar
Mr. Rajneesh Kumar, Advocates
For the State : Mr. Ravish Chandra, AC to SC16
For Respondent No.7: Mr. Vikash Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 13-08-2015

The present writ petition has been filed for quashing a part of the proceeding of Departmental Technical Bid Evaluation Committee dated 17.06.2015 whereby the technical bid of respondent no.7 has been approved and decision taken to open its financial bid despite non-fulfillment of the mandatory requirements in submitting the requisite affidavit in the proper format in terms of the

Department's Letter No.536 dated 13.06.2015, and for connected reliefs.

2. The petitioner is a Private Limited Company engaged in execution of construction works in the ordinary course of its business. Pursuant to NIT No.01/2015-16 related to the Water Resources Department, the Executive Engineer invited tenders for construction of barrage-cum-irrigation project in Bidwapur Block in the district of Madhubani. The petitioner as well as the respondent no.7 participated in the bid by submitting their tenders.

3. Learned counsel for the petitioner submits that respondent no.7 ought to have been disqualified in the technical bid for the reason that the affidavit submitted by it was not in accordance with the requirements of Clause 27 of the NIT which stipulated such affidavit to be filed in accordance with the formant specified in Water Resources Department's Letter No.536 dated 13.06.2013 and Letter No.686 dated 19.08.2014 which was a mandatory requirement. Paragraphs 2 (ka) (v) and 2 (ja) of Letter no.536 dated 13.06.2013 require an affidavit in terms of Section 2 of the SBD to be filed in the amended format specified in Appendix-III. The relevant extract from the affidavit reads as follows:-

“ 5. The undersigned also hereby certifies that our firm M/s ...is not able to disqualify under the provisions made in Clause 3.3 & 4.8 of ITB under section (1) of SBD.”



4. It is thus submitted that the respondent no.7 has suppressed the material fact that it had been debarred in terms of the order passed by the Engineer-in-Chief, Government of Bihar. It is also submitted that to the detriment of the petitioner, the respondent-authorities have applied double standards as evident from the minutes of the Evaluation Committee dated 08.01.2015 in connection with another NIT, whereby the petitioner had been disqualified in the technical bid precisely for the reason that his affidavit was not in accordance with the format prescribed in the Model Affidavit.

5. Learned counsel for the respondent no.7, on the other hand, submits that the requirements of the affidavit have substantially been complied with in view of the fact that the matter of its debarment was sub-judice in LPA No.849 of 2015 in which the Water Resources Department was already a respondent, and a copy of the order dated 08.05.2015 passed therein by a Division Bench of this Court was duly enclosed with the bid and there was thus no suppression of fact on its part. It is submitted that in view of the debarment having been upheld in the judgment of the learned Single Judge in CWJC No. 12566 of 2014 being the subject matter of the aforesaid LPA, the respondent no.7 could not have given the statement required in terms of paragraph 5 of the Model Affidavit without incurring risk of making a mis-statement.

6. Having considered the submissions on behalf of the parties and perused the materials on record, this Court is unable to accept the submission on behalf of respondent no.7.

7. It is well-settled that conditions of the technical bid must be strictly complied with. The requirements of letter no.536 dated 13.06.2013 are specific and if the appeal against the debarment of respondent no. 7 was pending before the Court, it could very well have made an averment to that effect, in absence of which, the respondent no.7 cannot be said to have made proper disclosure of the fact of its debarment. The respondent no.7 simply filed a copy of the order dated 08.05.2015 passed in LPA which incidentally merely permits the participation by respondent no.7 but does not in any way exempt it from complying with the mandatory requirements of such affidavit. Moreover, the said order does not also contain details of the debarment of respondent no.7 and hence enclosing the same along with the bid document would not be sufficient to make the Tender Committee aware about such facts especially in absence of anything having been mentioned by respondent no.7 in its affidavit. The very intent and purpose behind the affidavit thus stood defeated. The text of the said order in LPA is reproduced hereinbelow for ready reference :-

“ Post on Wednesday for admission.
In the meanwhile, if the appellant

submits tender for the work under NIT No.01/2015-16, it shall be received. If in the technical bid, the appellant qualifies, the same shall be kept aside. Further step shall not be taken till Thursday. If, on the other hand, the appellant does not qualify in the technical bid, further steps can be taken without any hindrance”.

8. It is also significant that the action of the Evaluation Committee in rejecting the petitioner’s tender on 08.01.2015 in the other NIT on the ground that the affidavit submitted by it was not in accordance with the Model Affidavit prescribed in terms of Letter No.536 dated 13.06.2013 which was a part of the mandatory requirements of the technical bid, has resulted in discrimination towards the petitioner.

9. In the above facts and circumstances of the case, therefore, the decision of the Departmental Technical Bid Evaluation Committee dated 17.06.2015 to the extent that it has treated the technical bid of respondent no.7 as valid, is hereby set aside. It is not in dispute that the petitioner now remains the only successful tenderer in the technical bid. The authorities shall now proceed in accordance with law.

10. The writ petition stands allowed.

(Vikash Jain, J)

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