

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13279 of 2015**

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1. M/s S S Joint Venture, a Joint Venture consisting of Sawan Raj Construction Pvt. Ltd. having its office at Karma Road, Aurangabad and M/s Shanti Construction having its office at Jai Prakash Nagar Karma Road, Aurangabad, through its Authorized Signatory Ravi Kumar Singh, son of Late Ram Naresh Prasad Singh, Resident of Karma Road, P.S. Town and District Aurangabad.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Vishweshwariya Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Vishweshwariya Bhawan, Bailey Road, Patna.
3. The Engineer-in-Chief-cum Additional Commissioner cum Special Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Additional Secretary cum Internal Financial Advisor, Road Construction Department, Government of Bihar, Patna.
5. The Chief Engineer, South Bihar, Road Construction Department, Government of Bihar, Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. S.D.Sanjay, Sr. Adv.  
Mr. Alok Kumar Agrawal, Adv.

For the Respondent/s : Mr. Ravi Verma, A.C to G.P.12

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**  
**ORAL JUDGMENT**  
**Date: 14-10-2015**

Heard Mr. S.D. Sanjay, learned Senior counsel for the petitioner and Mr. Ravi Verma learned A.C. to G.P.12 for the State.

The petitioner is aggrieved by the order dated 12.8.2015 of the Tender Committee whereby the technical bid of the petitioner in response to the Notice Inviting Tender impugned at Annexure-1 to the writ petition published on 24.4.2015 has been rejected inter alia on grounds of false representation. A formal order has been communicated vide Annexure-8 and which order in fact except informing the petitioner of his disqualification does not set out the

reasons which are present in Annexure-7. I have already noted that the tender bid of the petitioner has been rejected on grounds of false representation. It is following the rejection on 12.8.2015 that a fresh tender was notified on the same date vide Annexure-9 in which two persons have participated but in view of the interim order passed by this Court on 27.8.2015, the tender has not been acted upon.

In so far as the case of the petitioner is concerned as per tender stipulations, apart from other requirements, he had also to furnish information regarding details of the work completed by him as well as his existing work i.e the work being carried out. A certification to that effect is enclosed by the petitioner vide Annexures-4 and 4/A respectively in this regard. Annexure-4 is a Performance Certificate issued on 2.5.2015 which is duly signed by the Junior Engineer, Assistant Engineer and the Executive Engineer, Road Construction Division, Aurangabad and which confirms that the road construction work of the Aurangabad Hariharganj Road was completed on 2.12.2014. In so far as the construction of PCC road, the certification whereof is placed at Annexure-4/A is concerned, it was certified by the Executive Engineer, Road Construction Department vide certificate dated 28.4.2015 that the work was continuing and the estimated date of completion was 19.5.2014.

The certificate(s) enclosed by the petitioner with the tender



papers, was verified by the Chief Engineer, South Bihar (Mechanical) Sub-Division, Road Construction Department through the Executive Engineer, Road Construction Department, who vide letter dated 5.8.2015 present at Annexure-6 while informing the Chief Engineer that the work of construction of Aurangabad Hariharganj Road stood completed, further informed that the maintenance work for six months and post maintenance work for 4 months would be carried out by the petitioner. It is this remark of the Executive Engineer so present in his communication dated 5.8.2015 which did not accompany the certificate issued by the Engineers present at Annexure-4 which is the cause for the trouble faced by the petitioner, who after being charged with false representation, his technical bid has also been rejected.

A technical bid is a stage where the eligibility of the intending tenderers is verified and if they fulfil the same then they cross over to the financial bid stage. Thus it is only an eligibility of the tenderers which is put to test at that stage with nothing further. It is not in dispute that the certificate(s) furnished by the petitioner was either forged or fabricated or they lack in any details except that the maintenance issue was not mentioned which in my opinion hardly had any relevance for either its addition or subtraction would not have effected the entitlement of the petitioner to participate in the bid.

The second issue which is very relevant for the matter in



contest is, that the certificate(s) in question are issued by the department concerned and not designed by the petitioner and thus he is neither entitled to add anything nor to subtract therefrom any information. The certificate present at Annexure-4 is with regard to the completion of work and is issued by the Junior Engineer, the Assistant Engineer and the Executive Engineer who at that stage did not choose to mention that the completion of work was to be followed by a maintenance responsibility by the petitioner.

In these circumstances where the onus lay upon the concerned Engineers to mention the additional responsibility of the petitioner, certainly this onus cannot be shifted on the petitioner to disentitle him from the technical bid nor it can be attributed to as false representation. Even if there was some information lacking in the certificate so submitted by the petitioner which obviously is issued by the concerned Department then the proper course would have been to permit the petitioner to rectify the same. Even otherwise in my opinion the non mention of the maintenance contract had no telling effect on the eligibility of the petitioner. Despite law on this issue been settled by a catena of judgments of this Court and the Supreme Court that a willing tenderer cannot be disqualified on hyper technicalities yet the wisdom has evaded the respondents. Reference in this regard is made to the judgment of this court reported in **2010**

**(2) PLJR 153 (Ramsarup Industrial Corporation Vs. The State of Bihar & Ors.); (2013) 10 SCC 95(Rashmi Metaliks Limited & Anr. Vs. Kolkata Metropolitan Development Authority & ors.) and 2015(1) PLJR 772(United India Insurance Company Vs. The State of Bihar).**

Another aspect which persuades this Court to grant indulgence is that no sooner is the petitioner disqualified by the Tender Committee on 12.8.2015 that a fresh tender is published on the same date i.e. 12.8.2015, a copy of which is placed at Annexure-9, as if respondents were aware of the outcome.

For the reasons aforementioned, the decision of the Tender Committee in so far as it proceeds to disqualify the petitioner in the tender process as present at Annexure-7 along with its communication at Annexure-8, is set aside. Let the financial bid so offered by the petitioner pursuant to the Notice Inviting Tender present at Annexure-1 be considered and disposed of on its own merit expeditiously and preferably within four weeks from the date of receipt/production of a copy of this order.

As a consequence Annexure-9 is quashed and set aside.

The writ petition is allowed.

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**(Jyoti Saran, J)**