

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6614 of 2015

M/s S.K. Enterprises through its Sole Proprietor, Shailendra Kumar Singh aged about 45 years son of Late Jay Narayan Singh, Q. No. 1305, Ser 1/C B .S. City, Police Station B.S.C. District- Bokaro.

.... Petitioner

Versus

1. The State of Bihar through Secretary, Rural Works Department, Visheshwaraiya Bhawan, Patna.
2. The Secretary Rural Works Department Visheshwaraiya Bhawan, Patna.
3. Engineer-in-Chief, Rural Work Department, Visheshwaraiya Bhawan, Patna.
4. Executive Engineer-II, Rural Works Department, Visheshwaraiya Bhawan, Patna.
5. Tender Committee Rural Works Department, Visheshwaraiya Bhawan, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 6627 of 2015

M/s S.K. Enterprises through its Sole Proprietor, Shailendra Kumar Singh aged about 45 years son of Late Jay Narayan Singh, Q. No. 1305, Ser 1/C B .S. City, Police Station B.S.C. District- Bokaro.

.... Petitioner

Versus

1. The State of Bihar through Secretary, Rural Works Department, Visheshwaraiya Bhawan, Patna.
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3. Engineer-in-Chief, Rural Work Department, Visheshwaraiya Bhawan, Patna.
4. Executive Engineer-II, Rural Works Department, Visheshwaraiya Bhawan, Patna.
5. Tender Committee Rural Works Department, Visheshwaraiya Bhawan, Patna.

.... Respondents

with

Civil Writ Jurisdiction Case No. 6629 of 2015

M/s S.K. Enterprises through its Sole Proprietor, Shailendra Kumar Singh aged about 45 years son of Late Jay Narayan Singh, Q. No. 1305, Ser 1/C B .S. City, Police Station B.S.C. District- Bokaro.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Rural Works Department, Visheshwaraiya Bhawan, Patna.

2. The Secretary Rural Works Department Visheshwaraiya Bhawan, Patna.
3. Engineer-in-Chief, Rural Work Department Visheshwaraiya Bhawan, Patna.
4. Executive Engineer-II, Rural Works Department, Visheshwaraiya Bhawan, Patna.
5. Tender Committee Rural Works Department, Visheshwaraiya Bhawan, Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 6614 of 2015)

For the Petitioner/s : Mr. Sanjeev Ranjan, Adv.

For the Respondent/s : Mr. ASHOK KUMAR KESHARI, AAG-11

For the Intervener : Mr. Y.V. Giri, Sr. Advocate.

(In CWJC No. 6627 of 2015)

For the Petitioner/s : Mr. Sanjeev Ranjan, Adv.

For the Respondent/s : Mr. P.N. SHAHI- AAG10

(In CWJC No. 6629 of 2015)

For the Petitioner/s : Mr. Sanjeev Ranjan

For the Respondent/s : Mr. R.N. DUBEY, AAG-12

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 05-08-2015

I.A. No. 6081 of 2015

Mr. Kripa Nand Jha appears and submits that this Interlocutory Application has been filed in C.W.J.C. No. 6629 of 2015 for impleadment as private respondent(s). The applicant of this interlocutory application was also the bidder along with the petitioners inasmuch as he was selected in the financial bid after evaluation in the technical bid. The applicant is, therefore, not a stranger to the dispute raised herein.

2. Having heard the parties, this interlocutory application is allowed.

3. Heard learned counsel for the petitioner, State and the Intervener.

4. The present writ petitions have been filed for



quashing the communication dated 17.04.2015 sent through text message on the registered mobile phone whereby the technical bid submitted by the petitioner's firm M/S S.K. Enterprises for tender 1D-2014 ECBIH 32052-1 for construction of C.D. work's under Road name Jamdaha to Nakati has been rejected by the concerned Tender Committee during technical evaluation.

5. The petitioner is a sole proprietary concern having its principal place of business at Bokaro Steel City within the State of Jharkhand. In the regular course of its business, the respondents issued an advertisement on the e-portal of the Government of Bihar. Pursuant thereto, the petitioner submitted its online tender on 07.01.2015 and hard copy on 08.01.2015 within the permissible time, for construction of CD work under Road name Jamdaha to Nakati tender 1D-2014-ECBIH-32052-1 through e-procurement system. The cost of the work according to the tender document was Rs. 426.686 lacs and in accordance with Clause 8 of the NIT, the petitioner submitted a Bank Guarantee of Rs. 7 crores as earnest money issued by the Indian Bank, Bokaro Steel City, Jharkhand. It appears that the technical bid was opened on 09.01.2015 and over three months thereafter the impugned communication was received by the petitioner on 17.04.2015, intimating that the petitioner's bid has been "rejected during technical evaluation by the duly constituted

committee as per NIT".

6. As no reason has been assigned for such rejection of the petitioner's technical bid, it made enquiry in this regard and learnt that the technical bid had been rejected on the sole ground that the Bank Guarantee issued by the Indian Bank as aforesaid was insufficiently stamped with Rs.100/- whereas the appropriate stamp duty of Rs. 1,000/- was applicable in accordance with the amendment in the Bihar Stamp Act.

7. Learned counsel for the petitioner submits that the rejection of statutory bid without affording reasons whatsoever is wholly arbitrary and illegal and he cannot be excluded from participating in the financial bid in this manner. The petitioner further invites attention to the terms and conditions of the NIT, Clause 8 whereof reads as follows:

**" Earnest money pledged in favour of
EE of the concerned Division of Rs. -----(as per
column no.6) as mentioned in Bihar Financial Rule.
For work costing more than one crore, Bank
Garantee from any scheduled bank in the state. (If
issued from any bank outside state then it will be
converted from any bank within state before
executing the work agreement)".**

8. It is therefore submitted that the NIT itself permitted, in cases where the work cost exceeded rupees one crore as in the present case, to furnish Bank Guarantee from any Bank outside the State with the rider that the same could



be converted from any Bank within the State before executing the work agreement. It is submitted that the document of Bank Guarantee furnished as earnest money on Non Judicial Stamp Paper of Rs. 100/- has been sufficiently stamped on the basis of the law in the State of Jharkhand where such document was executed.

9. It is further submitted that just a day prior to the communication of rejection of the technical bid, the very same tender committee has accepted another tender of one Manoj Kumar and as such the respondents cannot arbitrarily apply separate standards for separate tenders.

10. Learned counsel for the State appears and relies on his counter affidavit to oppose the claim of the petitioner. According to the counter affidavit, it is admitted that the reason for rejection for the petitioner on technical bid was the fact of Bank Guarantee having been submitted on Non Judicial Stamp Paper of Rs. 100/- which however did not meet the requirement in accordance with the amendment in the Stamp Act applicable in the State of Bihar requiring stamp of Rs. 1,000/-.

11. Learned Senior counsel Mr. Y.V. Giri appearing for the Intervener submits that even though reasons have not been communicated while rejecting the petitioner's technical bid, the same would not prove fatal so long as there



are reasons to be found on the file of the tender committee. It further transpires that the petitioner has subsequently been blacklisted from JSRRDA from participating in any further Tender and debarred due to non-completion of their previous project as evident from the letter dated 27.04.2015 issued by the Secretary, Road Construction Department, Jharkhand, which fact has been suppressed in the petitioner's affidavit enclosed with the bid document. It is further stated that after opening of the financial bid, the petitioner was found suitable on the basis of lottery among more than one contractor found eligible.

12. Heard the rival submissions of the parties at length. It is nowhere in dispute that the rejection of the technical bid of the petitioner does not contain any reason whatsoever and the petitioner has been kept away from participating in the financial bid without disclosing the reason therefor, and without offering an opportunity for rectifying any defect in its technical bid. It is submitted that in fact there was no deficiency or insufficiency as regards stamp duty paid in respect of the Bank Guarantee and the technical bid was fully competent and valid.

13. In ***Rashmi Metaliks Limited vs. Kolkata Metropolitan Development Authority (2013) 10 SCC 95***, the tender bid was disqualified after assigning the reason that the Company had not submitted the latest income tax return



alongwith the bid. In that context the Hon'ble Apex Court held in para-18 of the judgment that " *the Tendering Authority ought to have brought this discrepancy to the notice of the appellant Company and if even thereafter no rectification had been carried out, the position may have been appreciably different*". The case at hand is a more glaring one where no reason whatsoever has been assigned for rejecting the petitioner's bid.

14. The Hon'ble Apex Court in **AIR 2014 SC 9 (M/s. Kulja Industries Limited v. Chief Gen. Manager, W.T. Proj., BSNL)** has reiterated the rule of reason and rule against arbitrariness and discrimination involving contractual rights. It has been held that:

" the manner, the method and the motive behind the decision of the authority whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. All these considerations that go to determine whether the action is sustainable in law have been sanctified by judicial pronouncements of this Court and are of seminal importance in a system that is committed to the rule of law".

15. This Court also finds that the objection on behalf of the Intervener with regard to suppression of fact regarding blacklisting of the petitioner is ill-founded inasmuch as such blacklisting was communicated through letter dated

27.04.2015 being well after submission of the bid document on 07.01.2015 by the petitioner. It further appears from the supplementary affidavit of the petitioner that such blacklisting has since been revoked in terms of Letter No. 4018 dated 23.05.2015 issued by the Hindustan Steelworks Construction Limited.

16. Having regard to the entirety of the facts and circumstance of the case, therefore, this Court finds merit in the writ petition. Accordingly, the impugned communication dated 17.04.2015 rejecting the technical bid of the petitioner is hereby quashed and the writ petition is allowed with a direction for opening the financial bid of the petitioner and to proceed in accordance with law. It is made clear that in case the bid of the petitioner is found to be higher than that of the Intervener there may not be any occasion to interfere with the result of the lottery which enured to the Intervenor's favour.

(Vikash Jain, J)

Md. Ibrarul/-

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