

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10319 of 2015

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M/s Deo Construction, a Partnership firm having its office at Old G.T. Road, Aurangabad (Bihar), through one of its Partner Sri Kishori Singh son of Late Deo Sharan Singh resident of Old G.T. Road, Aurangabad, P.S. Town Thana Aurangabad, District - Aurangabad (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Government of Bihar, Patna
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna
3. The Engineer-in-Chief, Building Construction Department, Government of Bihar, Patna
4. The Additional Secretary, Building Construction Department, Government of Bihar, Patna
5. The Chief Engineer (South Wing), Building Construction Department, Government of Bihar, Patna
6. The Superintending Engineer, Building Construction Department, Building Circle, Gaya
7. The Executive Engineer, Building Construction Department, Building Division, Gaya

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Raj Kishore Prasad, Advocate

For the Respondent/s : Mr. Md. Raisul Haque, SC-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

6 09-10-2015 Heard Mr. Raj Kishore Prasad, learned counsel appearing on behalf of the petitioner and Mr. Krishna Kant Singh, Assisting Counsel to SC-4.

The petitioner is aggrieved by the order dated 29.6.2015 of the Chief Engineer (South) whereby the tender filed by him has been rejected and order has been passed for re-tender. A copy thereof is impugned at Annexure-4 which is a letter of the Chief Engineer (South) addressing the Executive Engineer, Building Division on the issue.



Facts of the case are in a very narrow compass. A notice inviting tender was issued with regard to construction of a building, a copy of which is placed at Annexure-1 to the writ petition. The last date for submitting the tender was 19.2.2015. The technical bid was to open on 20.2.2015 and the financial bid was to be opened on 21.2.2015. The petitioner along with some others responded to the tender as it is reflected from Annexure-2. The petitioner succeeded in the Technical Bid and thus was found entitled for participation in the financial bid.

According to Mr. Raj Kishore Prasad, learned counsel appearing for the petitioner, the letter dated 16.4.2015 of the Chief Engineer (South) itself is demonstrative of the fact that no infirmity was found in the technical bid papers of the petitioner. He submits that although there were other contestant as well to the contract but it is the petitioner alone whose tender bid papers crossed over for the financial bid. Mr. Prasad referring to Annexure-2 submits that even the financial bid of the petitioner was opened and found to be above the estimated cost. He thus submits that the process having been completed, the only exercise remained was to formally award the contract followed by agreement but before it could take place that the impugned order was passed on 29.6.2015 by the Chief Engineer (South) whereby the tender was cancelled and no reasons were assigned.



Mr. Prasad, learned counsel for the petitioner referring to the counter affidavit filed on behalf of the respondents has referred to paragraph-9 thereof to submit that the explanation for the cancellation is found in the said paragraph where now they point out some defects in the bank certificate and the experience certificate submitted by the petitioner. It is submitted that these were considerations to be examined at the time of technical bid and the very fact that the petitioner was found fit for participation in financial bid, the respondents cannot be permitted to review the financial bid papers at this stage especially where it does not go to the root of the matter. It is further submitted with reference to Annexure-7 that the respondents have gone ahead with a fresh tender notice but under the order of this Court the process has been stayed.

Mr. Krishna Kant Singh, learned counsel appearing on behalf of the State has contested the argument of the petitioner to submit that since the documents relating to Bank and experience suffered infirmity, it made the petitioner ineligible to participate in the financial bid and it is on this account that a decision to such effect has been taken. Even while canvassing as such Mr. Singh had to rely upon the statement made in the counter affidavit to give the reasons for such cancellation because the decision taken present at Annexure-4 is silent.

I have heard learned counsel for the parties and I have perused the records.

The limited issue which falls for consideration in the present case is whether the matter is fit to be remitted or the issue stands concluded by opening of the financial bid. In my opinion, the issue stands concluded in favour of the petitioner for the technical bid has crossed over to the financial bid and apparently, there is no infirmity in the financial bid document. The documents submitted by the petitioner at the stage of technical bid are supportive of his eligibility to the participation and nothing further. The very document present at Annexure-2 which is a letter of the Chief Engineer (South) addressed to the Executive Engineer, is by itself reflective of the decision of the Chief Engineer (South) over the technical bid documents of the petitioner when he affirms his participation for the financial bid. In this background and after the matter has reached the financial bid stage, the respondents cannot be permitted to cancel the exercise. The cancellation of the tender of the petitioner is apparently illegal on this ground as well as in absence of reason and the respondents cannot be permitted to supplement the same by way of counter affidavit. Reference in this context is made to the celebrated decision of the Supreme Court rendered in the case of ***Mohinder Singh Gill vs. The Chief Election Commissioner***

reported in *AIR 1978 SC 851*.

In the circumstances discussed where admittedly the petitioner has crossed over to the financial bid stage, the respondents cannot be permitted to undo the exercise by resorting to hyper technicality. Paragraph-9 of the counter affidavit shows that the required bank certificate was submitted by the petitioner albeit with some delay and the experience certificate did not carry the signature of the Executive Engineer. There is no finding that the certificate was either incorrect or forged. In my opinion, the petitioner has been subjected to unjust, arbitrary treatment at the hands of the respondent no. 5. The order impugned placed at Annexure-4 is unquestionably unsustainable and is accordingly set aside. The respondent Chief Engineer is directed to proceed in the matter in the light of his decision present at Annexure-3 in respect of the contract in question.

The writ petition is allowed.

In consequence of the order aforementioned, the tender notice present at Annexure-7 is set aside.

(Jyoti Saran, J)

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