

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1656 of 2015

In

Civil Writ Jurisdiction Case No. 5643 of 2015

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Tanuja Kumari, wife of Sri Suresh Prasad, Resident of Village Chajan
Hiray Tola, Police Station Kudhni (Turki O.P.), District Muzaffarpur, At
present Tanuja Kumari W/o Suresh Prasad, Proprietor of M/s Sonu Supplier
through the Superintendent, Mandal Jail, Sitamarhi, District Sitamarhi

.... Respondent/ Appellant

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

... ... Respondents/ Respondent nos. 1 to 3 in
Writ Petition

4. Simant Shekhar, son of Ram Prakash Khirhar, resident of Village
Aamghata, PS and District Sitamarhi

.... Petitioner/ Respondents

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Appearance :

For the Appellant : Mr. B K Sinha, Sr. Advocate
M/s Durgesh Kumar, Rajendra Kumar

For the Respondents : Mr. Satyadeo Kumar- SC 5
Mr. Bijay Kumar Pandey, AC to SC 5

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

3 12-10-2015

Aggrieved by the order, dated 17.8.2015, passed by

a learned single Judge of this Court in CWJC No. 5643 of 2015, the present appeal, under Clause 10 of the Letters Patent of the Patna High Court, has been preferred by the appellant, who was impleaded as respondent No.4 in the writ petition.

Respondent no.4 herein approached this Court by filing an application under Article 226 of the Constitution of India, giving rise to CWJC No. 5643 of 2015, seeking quashing of the award of tender in favour of the appellant without opening the financial bid of respondent No.4. According to respondent No.4, his technical bid was illegally rejected on the ground that he was a Works Contractor and not a Food Supplier.

It is not in dispute that pursuant to the Notice Inviting Tender (NIT), which was issued inviting tender for supply of certain food items in Mandal Jail, Sitamarhi, respondent No.4 herein participated and submitted his bid in respect of Part-Ka, but his technical bid was rejected on the sole ground that he was a Works Contractor and not a Supplier.

Learned single Judge, upon scrutinizing the terms of the Notice Inviting Tender and the materials on record, arrived at the conclusion that there was nothing, in the Tender Notice, to show that a Works Contractor was ineligible, or only Food Suppliers were eligible, to submit tender. The tender notice merely

required the bidders to furnish, audit reports and balance-sheets for three years in terms of Section 44AB (a) of the Income Tax Act, which the contesting respondent No.4 herein had, admittedly, complied with.

Considering the facts and circumstances, as indicated above, learned single Judge allowed the writ application filed by respondent No.4 in the following terms:-

“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.”

Learned Senior Counsel, appearing on behalf of the appellant, has not disputed the factual position that there was no requirement under the NIT that bidder must be a food supplier. He has, however, contended that by operation of the order under appeal, the award of tender, in favour of the appellant only, came to be cancelled, though the tender was awarded in favour of three other persons also.

We do not find much force in the submission so made on behalf of the appellant in view of the observations made by learned single Judge in the order under appeal, wherein, while

directing that the financial bid of respondent No.4 shall be opened and the authority concerned shall proceed in the matter in accordance with law, it was ordered that the award of tender to the appellant shall abide by the result after obtaining of the financial bid of respondent No.4.

Apparently thus, whether the tender would be finally awarded to the appellant or respondent No.4 herein or other bidder shall depend upon the result obtaining after opening of the financial bid of respondent No.4 as directed by learned single Judge. This order, under appeal, will certainly not prejudice the appellant's case for the purposes of award of tender, which shall be made on the basis of comparative bids tendered by all the bidders.

We do not find any reason to interfere with the order, under appeal, passed by learned single Judge as we do not find any legal or factual infirmity in the said order.

This proceeding stands closed accordingly.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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