

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1693 of 2014

IN

Civil Writ Jurisdiction Case No. 9927 of 2014

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Bhole Shankar Construction Private Limited through its Managing Director, Bittu Singh, S/o Late Ravindra Prasad Singh, R/o Near PHED Colony, Srikrishna Nagar, P.S. Aurangabad Town, District- Aurangabad, Bihar.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Rural Works Department, Government of Bihar, Patna.
5. The Chief Engineer, Rural Works Department, Government of Bihar, Patna.
6. The Superintending Engineer, Rural Works Department, Works Circle, Aurangabad, Bihar.
7. The Executive Engineer, Rural Works Department, Works Division, Aurangabad, Bihar.
8. The Secretary, Bihar Rural Roads Department Agency, Patna.
9. M/s Om Enterprises through Managing Director Binay Pandey, Resident of Mohalla Sri Krishna Nagar Ahari, P.O. + P.S. & District- Aurangabad, Bihar.
10. Chandan Kumar Singh, S/o Krishna Ballabh Singh, R/o Mohalla- Anandibagh, P.O. & P.S. Deo, Dist- Aurangabad.

.... Respondents

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Appearance:

For the Appellant : Mr. Rajendra Prasad Singh, Sr. Advocate.
Mr. Rajeev Kumar Singh, Advocate.

For the Respondent No. 10 : Mr. Y.V. Giri, Sr. Advocate.
Mr. Ashish Giri, Advocate.

For the State : Mr. Vinay Kirti Singh, G.A.-3.
Mr. Binay Kumar Pandey, AC to GA-3.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 25-03-2015

This Appeal is preferred against the order dated
25.07.2014 passed by the Learned Single Judge in C.W.J.C. No.
9927 of 2014.



The Road Construction Department, Government of Bihar has issued notice dated 17.02.2014 inviting tenders for construction of large number of roads in rural areas, including the one at Deo Block in the Aurangabad District. For the said works in all, three tenders were received including that of the appellant.

The Government of Bihar issued memo dated 06.03.2014 directing that such of the tenderers that quote less than 10% of the estimated value, would be disqualified. For the works referred to above, one of the tenderers quoted 13% less than the estimated value. Taking into account, the memo dated 06.03.2014, the said tender was held to be invalid. However, tenders of the appellant and other person were not taken into account, and fresh tenders were called.

Aggrieved by that decision, the Appellant filed C.W.J.C. No. 9927 of 2014. He pleaded that even if the L-1 who quoted less than 13% is to be disqualified under memo dated 06.03.2014, he would emerge as L-1 and he cannot be disqualified. The writ petition is opposed by the Respondents. The Learned Single Judge dismissed the writ petition through his order dated 25.07.2014. Hence, this appeal.

During the pendency of this appeal, fresh tenders were called and the person who has awarded work is impleaded as Respondent No. 10. It is stated that the Appellant did not

submit his tender for the second time, on account of the pendency of this Appeal.

Heard Sri Rajendra Prasad Singh, learned Senior counsel for the Appellant, Sri Y.V. Giri, learned Senior counsel for Respondent No. 10 and Sri Vinay Kirti Singh, learned Government Advocate-3 for the State.

As observed earlier, three tenders were received for the work. The lowest was the one in which the tenderer quoted less than 13% of the estimated value. He was disqualified on account of memo dated 06.03.2014. Then, there remain two other tenders, being that of the appellant and one that of another. The Respondents are no doubt vested with the power to invite fresh tenders. That however is possible if only there exist valid reasons. The mere disqualification of a tenderer on account of a memo, that too, issued subsequent to the tender notice, cannot be a ground to annul the entire tendering process and to go for fresh tenders.

Learned counsel for the 10th Respondent has placed reliance on a decision of Hon'ble Supreme Court reported in (2012) 8 SCC 216. It is in relation to the decision making process and the principle was discussed with reference to earlier precedents. In the instant case, however, we clearly find that the decision making process was vitiated on account of arbitrariness and unreasonableness. The mere existence of

power does not justify an administrative decision. There must exist the justification, for exercise thereof. Simply because the bid of one of the tenderers was found to be not acceptable, the other tenders, which were otherwise valid cannot be ignored.

The Respondents placed reliance upon Rule 164 of the Public Works Department Code. The Rule does not require that if one tender is disqualified, the rest of the tenders also must be disqualified.

We, therefore, allow the appeal and set aside the order dated 25.07.2014 passed by the Learned Single Judge in C.W.J.C. No. 9927 of 2014. The writ petition is allowed and the order awarding work to the 9th Respondent is set aside. The Respondents are directed to consider the tender of the Appellant and of another person submitted earlier and take appropriate decision within two weeks.

The Interlocutory Application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

Chandran/Md. Ibrarul

(Vikash Jain, J)

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