

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1683 of 2014

In

Civil Writ Jurisdiction Case No. 11254 of 2014

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Baldeo Singh, son of Late Ramadhar Singh, resident of
Mohalla- Satyendra Nagar (Kanak Bhawan), Aurangabad,
P.S. & District- Aurangabad, Bihar.

.... Petitioner- Appellant.

Versus

1. The State of Bihar through the Secretary, Rural Works
Department, Government of Bihar, Patna.
2. The Secretary, Rural Works Department, Government of
Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department,
Government of Bihar, Patna.
4. The Chief Engineer-1, Rural Works Department,
Government of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department,
Works Circle, Aurangabad.
6. The Executive Engineer, Rural Works Department, Works
Circle, Aurangabad.

.... Respondents-Respondents.

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Appearance :

For the Appellant/s : Mr. Raj Kishore Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

**HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

C.A.V. ORDER

**(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH)**

4 07-01-2015

The present appeal is filed against order, dated
25.07.2014, passed in C.W.J.C. No. 11254 of 2014,
whereby a learned single Judge of this Court has disposed
of the writ application with a direction that the writ
petitioner can participate in the fresh tender process for
the same work on the basis of fresh notice inviting tender

(in short, "NIT") without being required to pay any amount for the bill of quantities.

2. The writ petitioner-appellant filed writ application for quashing the decision, dated 19.06.2014, taken by the Departmental Tender Committee of Rural Works Department, Government of Bihar, whereby the Departmental Tender Committee decided to cancel the tender of Tender Group No. 02 PMGSY-102 of notice inviting Tender No. RWD/PMGSY /HQ/ET/14-003, dated 26.02.2014.

3. The relief, sought for by of the writ petitioner, is mainly founded on the ground that the tender was cancelled only in view of the letter No. 2046, dated 06.03.2014, issued by the Road Construction Department, Government of Bihar, though the same would not be applicable to the cases, wherein tenders had already been issued prior to 06.03.2014, i.e., the date on which the letter aforementioned was issued by the Road Construction Department, Government of Bihar.

4. In the present case, the notice inviting tender was published, on 26.02.2014, in a Hindi daily newspaper '*Hindustan*', for construction and maintenance of various rural roads under Pradhan Mantri Gramin Sadak Yojana. The writ petitioner, along with other tenderers,



participated in the tender process. The *technical bid* was to be opened on 31.03.2014; but due to Moral Code of Conduct having been applied with effect from 05.03.2014, the *technical bid* was not opened until the last week of May, 2014. The writ petitioner was declared qualified in the *technical bid* along with some others. The tender documents of one tenderer, namely, Bhim Singh, was found forged and fabricated and, hence, he was declared disqualified. Bhim Singh protested against the action of the State respondents disqualifying him. The *financial bid* was opened on 26.05.2014. The writ petitioner was found to be the second lowest bidder after Bhim Singh.

5. The case of the writ petitioner-appellant is that as Bhim Singh was declared disqualified in the *technical bid*, the writ petitioner-appellant became logically the lowest tenderer; however, instead of taking a decision to award the contract to the writ petitioner-appellant, the Departmental Tender Committee, in its meeting, dated 19.06.2014, decided to cancel the tender, as a whole, in terms of the letter No. 2046 (s), dated 06.03.2014, aforementioned issued by the Road Construction Department, Government of Bihar, and directed publication of NIT afresh. The decision, cancelling the tender, was impugned in the writ application seeking consequential

benefits.

6. As per the letter No. 2046, dated 06.03.2014, issued by the Road Construction Department, Government of Bihar, a tender ought not be awarded to a person, who quoted less than 10 per cent of the estimated cost, so as to minimize the profit to 10 per cent and to ensure transparency in award of contract.

7. It is not in dispute that the writ petitioner quoted much below 10 per cent of estimated cost. The case of the writ petitioner before the writ Court was that there was no such limitation in the letter of the Secretary, Road Construction Department, dated 26.11.2013, fixing lower limit of rates to be quoted by the bidder in a tender based upon the Standard Bidding Document and, as such, Clause 12A of Section 3 of Standard of Bidding Document could not have been applied to his case. Similarly, Circular, dated 06.03.2014, of the Road Construction Department, Government of Bihar, would also not apply to a case, wherein tenders had been invited prior to the issuance of the letter, dated 06.03.2014, aforementioned. The writ petitioner alleged that in spite of the Circular, dated 06.03.2014, there was, at least, one person, who had been awarded tender, though his offer was below 10 per cent of the estimated cost.



8. In order to explain the conflicting stand, the learned single Judge directed personal appearance of the Secretary, Rural Works Department, Government of Bihar, who assured the Court of taking appropriate action against the Executive Engineer, who was instrumental in awarding the contract to a person, though he had quoted below 10 per cent of the estimated cost despite the Circular, dated 06.03.2014, aforementioned.

9. The Secretary, Rural Works Department, Government of Bihar, explained before the learned single Judge that altogether 1121 lot of works were sought to be awarded by inviting tenders, but the Department took a policy decision not to award contract to any one, who had quoted below 10 per cent of estimated cost and, in order to maintain one common yardstick, the Department concerned cancelled all the tenders and decided to issue fresh tender notice. The learned single Judge, while not acceding to the prayer of the appellant to interfere with the decision cancelling the tender process, observed that the Government's decision, dated 06.03.2014, was sought to be applied to a large number of contracts numbering as many as 1121 and it cannot be said that the Department has applied selectively the Government's policy decision contained in its Circular, dated 06.03.2014, or only in the

case of the writ petitioner.

10. The appellant has reiterated the same stand, in the present appeal, which he had taken before the learned single Judge. It is submitted, on behalf of the appellant, that the Circular, dated 06.03.2014, aforementioned could not have been applied to the present case inasmuch as the Circular, dated 06.03.2014, aforementioned was issued subsequent to the tender process, wherein the appellant had emerged as the successful bidder. It is also pointed out, on behalf of the appellant, that the standard bidding documents had not fixed any lower limit of rates to be quoted by the bidders.

11. It is not in dispute that the Circular, dated 06.03.2014, of the Government, directing cancellation of all such tenders, where the bid was less than 10 per cent of the estimated cost, had not been issued prior to the opening of *technical and financial bids*. The Secretary, Rural Works Department, Government of Bihar, has clarified, in the writ petition, that the Government has cancelled the contract of each and every person, where the bid amount was less than 10 per cent of the estimated cost so as to minimize the profit in the interest of the work.

12. In the face of the facts of the present case, one cannot say that the Government's decision, to cancel

the tender process, is unreasonable, irrational or arbitrary. When a tender is cancelled for good and justifiable reasons, including interest of public, such cancellation of tender process cannot be interfered with in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India.

13. We entirely agree with the views of the learned single Judge that the respondents had not resorted to *pick and choose* policy in canceling the tender process, wherein the writ petitioner-appellant had participated; but it has cancelled all those tenders, where the bid amount was less than 10 per cent of the estimated cost. The learned single Judge, while disposing of the matter, has directed for issuance of fresh tender with liberty to the writ petitioner to participate in the same without incurring any further financial expenses towards purchase of Bill of Quantities, etc. The directions so given by the learned single Judge clearly safeguards the interest of the writ petitioner. The decision of the learned single Judge cannot be held to be so unreasonable or irrational that a reasonable and rational mind cannot accept the conclusion derived, and the decision taken, by the learned single Judge.

14. Situated thus, we find no merit in this

appeal. This appeal is accordingly dismissed.

(Samarendra Pratap Singh, J.)

I. A. Ansari, J. : I agree.

(I.A. Ansari, J.)

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