

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11810 of 2016

=====

1. M/s S. S. Joint Venture, Triveni Niwas, Flat No. 101, R.K. Avenue Road,
Rajendra Nagar, Patna, through its Partner Sanjeet Kumar S/o Rajendra
Singh R/o Village - Utrain, P.S. - Konch, District - Gaya

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Road Construction Department, Bihar, Patna
3. The Engineer-in-chief-cum-Additional Commissioner-cum-Special
Secretary, Road Construction Department, Bihar, Patna
4. The Chief Engineer, South Bihar Road Construction Department, Bihar,
Patna
5. Superintending Engineer, Magadh Road Circle, Road Construction
Department, Gay.
6. Executive Engineer, Road Construction Department, Sherghati, Gaya

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Y.V. Giri, Sr. Adv. with
Mr. Sanjeev Kumar, Adv.

For the Respondents : Mr. R.B.P. Yadav, AAG XI with
Mr. Ashok Kumar Dubey and
Smt. Archana, ACs to AAG XI

=====

**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**
ORAL ORDER

2 20-09-2016 Heard the learned counsel for the petitioner and the
learned counsel for the State.

The petitioner seeks quashing of Memo No. 4682,
dated 12.07.2016, by which the petitioner was declared
unsuccessful in the technical bid under Clause 5.1 of the letter
dated 24.07.2012 and Clause 4.4A(C) of ITB of the CMBD in
respect of the work of improvement including construction work
of road from Imamganj Bazar to Pakari via Kothi, Salaiya road in
connection with NIT No. 1, RCD/CT (Division Sherghati) 2015-
16 and the consequential directions.

This is the second round of litigation in the matter
and earlier also the petitioner was declared unsuccessful and its



tender was ordered to be rejected, but, upon the petitioner approaching this Court by filing C.W.J.C. No. 14553 of 2015, this Court by order dated 24.02.2016, set aside the order dated 29.08.2015 passed by the respondents and directed that the petitioner be given a proper show cause and, thereafter, upon it submitting the show cause the decision be taken in accordance with law.

Consequent to the same, the show cause notice dated 21.04.2016 was given to the petitioner stating that under the CMBD, as per Annexure 3, the requirement was for total bituminous work of 2145.83 cubic meters. The lead partner in the joint venture of the petitioner, Systematic and Advance Construction Pvt. Ltd. was, thus, required to have fifty per cent of the said qualification in terms of Annexure 3, i.e., 1072.91 cubic meters, but it has been found in the technical bid that the lead partner has the experience certificate with regard to 643 cubic meter pertaining to PMC (Pre Mix Carpet) which does not come under bituminous work and, accordingly, the actual experience of the lead partner is of 702 cubic meters only, which is less than the qualification required for the lead partner. For the said reason, the petitioner was required to submit a show cause, including as to why action be not taken against it for submitting a false experience certificate under the Bihar Contractor Registration Rules, 2007. The petitioner filed his detailed show cause in the matter in which it was stated that in the experience certificate there was a typographical mistake and the matter was enquired by the Executive Engineer, Rural Works Department, Works Division, Jehanabad, in which it was reported that on account of typographical mistake SDBC in place of PMC has been typed in



the experience certificate and, therefore, it was stated in the show cause that it was not the fault of the petitioner and the document was not forged and fabricated.

The stand of the petitioner, further in the show cause was that the expression 'joint venture' connotes legal entity in nature of partnership and, thus, if the entire experience of both the partners is taken into consideration it had the experience of SDBC of 3841 cubic meters which is much more than the required limit which should be considered in the light of the decision of the Supreme Court in New Horizons Limited & Anr. Vrs. Union of India & Ors.; (1995) 1 SCC 478. The petitioner also showed further experience certificate issued in favour of the lead partner of the joint venture pertaining to the year 2013 dated 09.03.2015.

The show cause was considered by the respondents and by the impugned order dated 12.07.2016 it has been rejected with the direction to issue a fresh tender.

Learned counsel for the petitioner reiterated the stand taken in the aforesaid show cause reply in respect of the case of the petitioner. It is submitted that in view of the aforesaid decision of the Supreme Court, the entire experience of the joint venture should be taken into consideration, which is much more than the required qualification under the NIT.

On a consideration of the aforesaid decision in New Horizon's case (supra) it is evident that the same was under very different circumstances and had no such terms and conditions for joint venture separately stated in NIT; all that was stated was the terms and conditions and qualifications of the tenderer. In the said case it was found that the company in question was a joint venture company of five different companies, four of which were limited



companies and one of those entities was holding 40 per cent of the share and the corporate veil in such circumstance could be lifted and the experience of the said share holder company in the joint venture company could be taken into account for the requirement of qualification and experience.

In the present matter it is a question of the tender being considered in terms of Annexure 3 of the Instruction to Bidder for Construction-cum-Maintenance Bidding Document (CMBD) the criteria to be followed under which in bidding by joint ventures as partners is permitted with certain conditions that there should not be more than three partners and with the further qualification that the lead partner of the said joint venture must have at least 50 per cent experience as required and the other two partners must have 25 per cent experience and their liabilities in all matters shall be joint and several. Once, those conditions have been squarely laid down in the NIT and the CMBD, it is evident the criteria has to apply to all joint ventures. It is not open to the petitioner to rely upon a decision where specific criteria had not been laid down for a joint venture and which as a matter of fact did not provide for a lead partner as it is understood in the present bid process. In such case there can be no application of the decision of the Apex Court in New Horizons case (supra), as in the present matter. Learned counsel, in this regard, has also sought to refer to the joint venture agreement between the two partners of the petitioner under which their liabilities and obligations are joint. Any individual document of the petitioner can only create the rights and liabilities viz-a-viz each other. So far as the tender is concerned it may not bind the tendering party. As a matter of fact the provision with regard to joint venture provides that the liability



of the joint venture parties shall be joint and several. If the tender documents require that the lead partner must have certain experience then the same has to be satisfied by the lead partner of the joint venture and it is no answer to say that all the partners together fulfill the criteria.

I do not find any merit in the case. The writ application is accordingly dismissed.

(Ramesh Kumar Datta, J)

SA/-

U	✓		
---	---	--	--

