

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6663 of 2014

Intelligence Security of India, having its office at G 2E, Laxmikant Parishar, Jamal Road, Post GPO Patna- 800001 Bihar, through its proprietor Mr. Ajit Kumar Singh, S/o Sri Ramyash Singh

.... Petitioner

Versus

1. The State of Bihar, through Energy Secretary, Government of Bihar, 8, Daroga Rai Path, Patna
2. Bihar State Hydroelectric Corporation Limited, through its M.D., having office at 2nd Floor, Sone Bhawan, Birchand Patel Marg, Patna 800001, Bihar
3. Managing Director, Bihar State Hydroelectric Corporation Limited, having office at 2nd Floor, Sone Bhawan, Birchand Patel Marg, Patna 800001, Bihar
4. Chief Engineer, Bihar State Hydroelectric Corporation Limited, having office at 2nd Floor, Sone Bhawan, Birchand Patel Marg, Patna 800001, Bihar
5. M/s Aparna Detective and Securities Pvt. Ltd. through its director Shri Manhar Lal Krishna, having offices at above Jagat Jagini Mata Mandri, Rajendra Path, Peer Mohani, Patna- 800003

.... Respondents

Appearance :

For the Petitioner : Mr. Surendra Kumar Singh,
Mr. Prabhat Kumar Singh
Mr. Avinash Shekhar, Advocates
For the State : Mr. Sumant Kr. Singh, AC to GA-3
For Respondents 2 to 4 : Mr. Kamla Kant Upadhyay,
Mr. Chandra Bhushan Das, Advocates

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-05-2016

The present writ petition has been filed for a direction to the respondents to declare the decision/award of contract pursuant to the Tender 03/Elect/2013-2014 as illegal; accept the tender of the

petitioner and consider the technical and the financial bids submitted by the petitioner and reevaluate the same; and to cancel the present tender and start a fresh bid for award of contract.

2. The petitioner is the sole proprietor of a private security agency and has been running the same for the past over 24 years. He holds the requisite registration under the Contract Labour (Regulation and Abolition) Act, 1970; Shop and Establishment Act; Employee's State Insurance Act, 1948; Employees' Provident Funds and Miscellaneous provisions Act, 1952 and also an ISO 9001 certification. The aforesaid agency has been continuously providing security services to the respondents since 1994 to their satisfaction. Pursuant to Tender Notice No. 03/Elect/2013-2014 dated 18.12.2013 for providing security services in the office premises, projects and residential colonies located in different districts of Bihar and Jharkhand, the petitioner applied for the same and deposited the requisite amount. The petitioner's technical bid was, however, rejected on the sole ground that the petitioner was not a company registered under the provisions of the Companies Act, 1956.

3. Learned counsel for the petitioner submits that the technical bid of the petitioner has been arbitrarily rejected as on a reading of the tender notice it is evident that the tender was not restricted to a Limited Company. It is evident from the eligibility



criteria for the bidders as set out in the tender documents that the invitation for tender was open to all companies / corporations / limited concerns / registered firms / reputed contractors. It is further pointed out that a list of documents was required to be attached with the technical part of tender in support of the bidder's registration with various departments such as Provident Fund, ESI, Central Excise, Income Tax etc but there was no condition for possession of any document with regard to registration under the Companies Act, 1956. It is therefore submitted that such registration under the Companies Act was not an essential condition for the eligibility to participate in the tender.

4. Learned counsel for the respondent-Corporation, on the other hand, submits that a clear and specific condition was laid down as eligibility criteria no. (v) to the effect that "The bidder must be registered under Company Act 1956 with all statutory provision like EFP, ESI, Sales Tax, Income Tax, Labour licence etc". It is submitted that even if the term "registered firm" may have been used at some place in the tender document, this cannot detract from the essential condition that the bidders must be registered under the Companies Act, 1956, which constituted one of the eligibility criteria.

5. Learned counsel for the respondents relies on the counter affidavit, Annexure-B whereof discloses that as many as seven



tenderers have been found ineligible, not having satisfied the mandatory criteria of being a company registered under the Companies Act, 1956. It is further submitted that the mere fact that the petitioner has been providing security services uninterrupted for several years cannot, by itself, be a consideration for overlooking a mandatory condition of the tender which has not been fulfilled by the petitioner and hence the technical bid of the petitioner has been rightly rejected.

6. Having heard the parties and on careful consideration of the materials available on record, this Court finds that the eligibility criteria of the tender clearly requires the bidders to be registered under the Companies Act, 1956, which condition the petitioner admittedly did not fulfill. No doubt, the eligibility criteria for the bidders referred to 'registered firm' while describing persons entitled to apply for the tender. However, such general use of a term would not control/negate the specific requirement of registration under the Companies Act, 1956. Besides, the terms and conditions of the eligibility criteria in the tender documents were well known to the petitioner when he participated in the tender. Having been declared unsuccessful, he has now turned around to question of validity of the conditions of the tender, which is impermissible. This Court also takes note of the fact that the contract was for a period of upto three years from the date of

award of the work order subject to extension depending upon the performance of the agency. A substantial part of such time has already elapsed since the tender was awarded to the respondent no. 5 on 01.04.2014 and is thus close to its expiry. In such circumstances, it would not be proper for the Court to reset the clock.

7. In the above view of the matter, this Court is not inclined to interfere in the matter. The writ petition stands dismissed.

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
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