

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7692 of 2016

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1. Barun Singh, aged about 45 years son of Late Ram Swaroop Singh, Resident of Village- Karya Nand Nagar, Lakhisarai, Police Station & District- Lakhisarai.

.... Petitioner/s

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 Chief Engineer-cum-Additional Commissioner-cum- Special Secretary, Rural Works Department, Govt. of Bihar.
4. The Technical Bid Committee through the Superintendent Engineer, Rural Department, Works Circle, Munger.
5. The Executive Engineer, Rural Works Department, Works Division, Lakhisarai.
6. The Superintending Engineer, Rural Works Department, Works Munger Circle-cum-Member of the Technical Bid Committee.
7. The Executive Engineer, R.W.D., Works Division Lakhisarai-cum- Member of the Technical Bid Committee.
8. The Accounts Officer, Rural Works Department, Works Division, Lakhisarai-cum- Member of the Technical Bid Committee.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv.
For the Respondent/s : Mr. Mithilesh Kumar Pathak, SC7
MR. Anuj Kumar, A.C. to S.C.7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 15-07-2016

Heard Mr. Arun Kumar, learned counsel for the petitioner and
Mr. Anuj Kumar A.C. to S.C.7 for the State.

The petitioner prays for issuance of an appropriate writ in the
nature of certiorari for quashing the decision of the Technical Bid
Committee dated 26.3.2016 as contained in letter No.463 dated
26.3.2016 whereby the candidature of the petitioner for the contract in
question has been rejected. A copy of such order is impugned at
Annexure-1 to the writ petition.



This matter was heard on 11.5.2016 when it was argued by Mr. Arun Kumar appearing for the petitioner that the petitioner's technical bid has been rejected and the reasons assigned by the Technical Bid Committee as reflected in its decision present at Annexure-1 is, that the required papers did not accompany the tender. The respondents were directed to file counter affidavit on the issue raised and initially, a counter affidavit was filed on 18.5.2016 but since it related to a different matter, also connected with the writ petitioner, that learned counsel for the State sought permission to file a supplementary counter affidavit in response to the writ petition and which has since been filed on 23.6.2016.

Mr. Anuj Kumar learned State counsel in reference to the discussion made at paragraph 6 of the supplementary counter affidavit on record has submitted that the reasons can be found in sub paragraph (xiv) of the supplementary counter affidavit in which it has been explained that since Clause 4.5 A(b) of the Standard Bidding Document required all tenderers to have an experience of atleast one similar work of a value not less than 25 % of the estimated value and which eligibility admittedly, the petitioner does not possess hence he has been unsuited.

The arguments of Mr. Anuj Kumar has been contested by Mr. Arun Kumar in reference to the tender present at Annexure-1 to submit that the respondents cannot be permitted to supplement the



reasons. He submits that paragraph 31 of the Notice Inviting Tender present at Annexure-1 merely speaks about the applicability of letter no. 4842 dated 14.11.2014, a copy of which is present at Annexure-4 to the writ petition and which in paragraph 3 discusses the criteria for evaluation of previous experience but which is only relatable to execution of a contract for a value in between 50 lacs to 2 crores. He next refers to paragraph 3.1.4 of the guidelines contained in letter No.4842 dated 14.11.2014 to submit that it is only where the value of work tendered ranges in between 50 lacs to 2 crores, that an intending tenderer requires to furnish experience certificate having a value of not less than 10% of the cost of the work tendered. He submits that since in the present case the value of work tendered is only 34.36 lacs, the said conditions cannot be made applicable. It is argued by Mr. Arun Kumar that it is for this reason that whereas the decision of the Tender Committee is silent on its reason, the reasons are being supplemented in the supplementary counter affidavit.

Mr. Anuj Kumar in responding to the issue raised submits with reference to the opening paragraph of the Notice Inviting Tender that the conditions of the Standard Bidding Document would be equally applicable on the work so tendered and although in so far as the work of a value in between Rs. 50 lacs to Rs. 2 crores, would be guided by the conditions present in the letter No. 4842 dated 14.11.2014 but where the work cost is below Rs. 50 lacs, it would be governed by the

stipulations present in the Standard Bidding Document.

I have heard learned counsel for the parties and perused the records.

In my opinion, the stand taken by the State in the counter affidavit at paragraph 6(xxiv) as advanced by Mr. Anuj Kumar is only noticed to be rejected and the reasons are not many. Firstly, the respondents cannot be permitted to supplement their reasons and in fact the rejection of the candidature of the petitioner vide Annexure-1 by the Tender Committee is fit to be set aside on this limited count of absence of reasons. However since the matter has progressed and the opinion of the respondents is now on record hence it would be futile to remand the matter for fresh consideration since the stand of the respondents is now open. The respondents are bound by the stipulations present in the Notice Inviting Tender which even while making a reference to the Standard Bidding Document, does specifically provide in paragraph 31 that it is the stipulation present in the letter No.4842 dated 14.11.2014 which would be applicable for disposal of the technical bid. There is neither any clarification nor any exceptions on this issue. In fact the stipulation is self eloquent and cannot be put to interpretation by the respondents. The incorrectness in the decision of the Technical Bid Committee is confirmed from the letter dated 14.11.2014 which is a guideline issued by the Rural Works Department in consideration of the stipulations present in the



Model Bidding Document (MBD for sake of brevity) and the Standard Bidding Document (S.B.D. for sake of brevity). In fact the advisory present at Annexure-4 i.e the letter dated 14.11.2014 is a clarification on the stipulations so present in those documents. Thus once guidelines have been issued by the department in consideration of the Standard Bidding Document and the Model Bidding Document and they have consciously required prior experience only where the work tendered is for Rs. 50 lacs or more, in my opinion, the attempt by the respondents to read down the guidelines and misinterpret it to suit their convenience, cannot be permitted. The absurdity of such interpretation is self reflecting for where a work tendered has a value of Rs. 50 lacs then an intending tenderer is only required to have an experience of having executed a work of Rs. 5 lacs but if the cost of work tendered is scaled down to Rs. 48 lacs then as per the interpretation of the respondents present at paragraph 6(xxiv) of the supplementary counter affidavit, the tenderer would have to give a work experience of Rs. 12 lacs. This is ridiculous and an absurdity on face.

Obviously, it cannot be the intendment of the State that where the value of the work is low then the intending tenders should have a better work experience than where the cost is higher. It is to remove such confusion that the guidelines has been issued by the Rural Works Department present at Annexure-4 which takes note of the stipulation

present in MBD and S.B.D. and has been consciously included in the Notice Inviting Tender at paragraph 31. The stipulations on eligibility are loud and clear and it is only in circumstances where the value of work tendered is more than Rs.50 lacs that a tenderer is required to furnish a certificate of previous work experience but where the cost falls below Rs. 50 lacs, the requirement of previous work experience stands waived. The respondents have unnecessarily tried to import a condition which is not present in the Notice Inviting Tender.

For the reasons so discussed, the rejection of the candidature of the petitioner by the Tender Committee impugned in the letter No.463 dated 26.3.2016 present at Annexure-1 to the writ petition cannot be upheld and is set aside. The Tender Committee is directed to consider the Technical Bid of the petitioner for cross over to the Financial Bid stage along with other qualified tenderers, if the petitioner is found suitable in other respects.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	1-08-16
Transmission Date	