

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14243 of 2011

=====

Md.Azaz, Son of Md. Sulaiman Village - Sadatpur, P.O. - Kolhua, Paigambarpur,
P.S.- Kanti, District - Muzaffarpur

... Petitioner

Versus

1. The State of Bihar
 2. The Superintending Engineer (Mechanical), National Highway Road,
Mechanical Circle, Patna
 3. The Executive Engineer (Mechanical), N.H. Mechanical Division, Muzaffarpur
- Respondents
- =====

Appearance :

For the Petitioner : Mr. Prabhu Nath Pathak, Advocate

For the Respondents : Mr. Sanjay Prasad, AC to AAG 6

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 06-05-2016

This writ petition has been filed for quashing the letter containing Memo No. 190 dated 27.07.2011 issued by Superintending Engineer (Mechanical), Mechanical Circle, National Highway, Patna by which tender No. 1/10-11 has been cancelled and directed to the Executive Engineer (Mechanical), N.H. Mechanical Division, Muzaffarpur to initiate re-tender after deleting the condition No. 1 of the tender No.1/10-11 and for connected reliefs.

2. The short facts according to the petitioner are that a Technical Committee was constituted on 16.04.2008 by the Chief Engineer (Mechanical Wing), Road Construction Department, Bihar, Patna for inspection of central machines under N.H. Mechanical Division, Muzaffarpur. Upon inspection, the machines were found



unserviceable and found fit for condemnation. Accordingly, an auction notice was published on 13.02.2011 in which the petitioner also participated upon making payment of 25% of the tender amount and proposal for the tender was accepted. All of a sudden, the Superintending Engineer (Mechanical), N.H. Road Mechanical Circle, Patna issued a letter on 27.07.2011 to the Executive Engineer (Mechanical), N.H. Road Mechanical Division, Muzaffarpur by which the respondent-Superintending Engineer has cancelled the said tender no. 1/10-11 and asked the Executive Engineer to re-tender after deleting the condition No. 1 of the aforesaid auction tender.

3. Learned counsel for the petitioner makes a short submission to the effect that the order of cancellation of tender No. 1/10-11 and the further direction to re-tender after deleting the Condition No. 1 is wholly without jurisdiction. According to the auction notice itself (Annexure-5), the authority to cancel the tender without assigning reason lay with the Committee alone and such power exercised by the Superintending Engineer is, therefore, arbitrary and unsustainable in law.

4. Learned counsel for the respondents has filed a counter affidavit as well as supplementary counter affidavit to submit that the respondent-Superintending Engineer has acted within his authority as he happened to be the Chairman of the Technical Committee of the

auction in question.

5. Having heard the parties and on careful consideration of the materials available on record, this Court finds merit in the writ petition. According to the auction notice, the Tender Committee alone was empowered to cancel the tender without assigning any reason. The decision to cancel the auction is not shown by the Respondents to have been taken by the Committee. The Superintending Engineer is also not stated to have acted in the capacity of the Chairman of the Committee while cancelling the auction tender and hence the power vested in the Committee could not have been exercised by him alone.

6. In the above view of the matter, the impugned letter contained in Memo No. 190 dated 27.07.2011 (Annexure-1) is hereby quashed. The writ petition stands allowed.

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.05.2016
Transmission Date	N/A