IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10464 of 2016

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M/s Aarpee Infraprojects (P) Ltd., a company registered under the provision of the Indian Company Act having its registered office at Infinity Square, 2nd Floor, Room No.201, Near P.C.M. Bus Terminus, 2nd Mile, Sevoke Road, Siliguri- 734001 through one of his director namely Sri Rajesh Kumar Garg, son of Sri Raushan Lal Garg, resident of Metro Heights, C-4/5, 4th Floor, P.O.- Salugara, Sevoke Road, 2nd Mile, District- Jalpaiguri, West Bengal- 734001.

.... Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principle Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Joint Secretary cum Internal Financial Advisor, Water Resources Department, Government of Bihar, Patna.
4. The Engineer in Chief (North), Water Resources Department, Government of Bihar, Patna.
5. The Chief Engineer, Water Resources Department, Government of Bihar, Patna.
6. The Executive Engineer, Champaran Division, Motihari, Water Resources Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Y.V.Giri, Sr. Advocate
Mr. Ashish Giri, Advocate

For the Respondent/s : Mr. Aag8- Gautam Bose

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL ORDER

3 30-09-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the decision of the Departmental Tender Committee dated 17.05.2016 by which the NIT bearing tender No.01/2016-17 has been cancelled and for consequential direction. By Interlocutory Application which was allowed, the petitioner has further sought quashing of the fresh notice inviting tender dated 26.08.2016 for the said purpose.

In the aforesaid NIT which was published on 18.04.2016 the work in question was related to erosion work for protection of Valmikinagar Forest on the left bank of river Gandak in the downstream of Valmikinagar Barrage. The last date for submission of the bid was 30.04.2016, the technical bid was to be opened on 02.05.2016 and the work itself was to be completed by 15.05.2016 for which the estimated cost was Rs.22,97,01,400/-. The petitioner and two other tenderers filed their tenders which were considered by the technical bid committee on 02.05.2016 and thereafter the financial bid was opened on 7.05.2016 and two of the tenderers, including the petitioner, were found technically qualified, the petitioner's bid being the lowest at 09.11 per cent above the BOQ. Thereafter, on 17.05.2016 the impugned decision was taken by the departmental tender committee for cancelling the tender on two grounds, namely, that the rate quoted by the petitioner was 9.11 per cent above the scheduled rate which was much higher and the period for completing the work also was much less and the work could not be done at the high water level.

Learned counsel for the petitioner submits that there was no justification for the respondents to have cancelled the tender and directed issuance of fresh tender for work period 31.05.2017 instead of negotiating with the petitioner, who had showed willingness to complete the work within a very short span of ten days and which was the reason for the petitioner quoting 9.11 per cent above the scheduled rate.

It is submitted that in case it was found that the work could not be completed in the present year and the tender had to be reissued for completion of the work by 31.05.2017, then in all fairness the petitioner ought to have been approached for reduction of the rates for which the petitioner was willing and there was no occasion for fresh tender in which the petitioner will have to again compete for the work.

It is submitted by learned counsel for the petitioner that the Courts have repeatedly held that it is not fair for the respondent-authorities to cancel the tender after opening the financial bid.

Learned counsel for the State on the other hand submits on the basis of the reason given in the impugned order as also the counter affidavit that the reason for cancellation was that the departmental tender committee came to know that the required water level of the Gandak river was increasing day by day, therefore it was not possible to complete the work within the stipulated period and, secondly, that the rate quoted by the petitioner was clearly above the scheduled rate whereas for the same nature of work in the same order most of the tenderers were allotted the work on less than 10% of the schedule rate. Further it is submitted that in the limited period left for anti erosion work, it was doubtful that it could be properly completed and only in the said circumstances, in public interest, it was decided to cancel the tender and thereafter the fresh tender notice was issued fixing the date of completion by 31.05.2017.

On a consideration of the aforesaid facts and circumstances and the respective stand of the parties, it is evident that the action of the respondents does appear to be in the public interest. It is true that the Courts have held that it is not fair to cancel the tender after opening of financial bid but if there is good and sufficient reason in public interest then in such circumstances the Court may not interfere with the cancellation of tender.

It is true that the petitioner had quoted much higher rate than the rates on which similar tenders have been allotted by the department to different tenderers for different similar works, for the sole reason that the work had to be completed within a very short span of approximately 10-15 days for which purpose there would be extra cost and expenditure in completion the work. Since it was found for good reasons by the departmental tender committee that there was very little likelihood of the work being completed in the year 2016 itself due to the increase of the water level and, as a matter of fact, it is stated in the counter affidavit that the water level of the Gandak had started to rise and hence the work had to be done only after the rainy season for the purpose of next year, accordingly, there was no point to allot the tender at such higher rate.

So far as question of negotiation with the petitioner is concerned, it is evident that if the time line itself got extended by a period of one year, then the work would have to be completed in usual course and not only the petitioner but others would be ready to work at lower rates and thus to negotiate with the petitioner may not be a fair approach as other contractors may not have come forward earlier due to the short time for completion of the work.

Thus on the ground of fair play the issuance of fresh tender may not be held to be unjustified and the same appears to be in the public interest.

The question now arises is that on account of the pendency of present writ application and the interim order passed on 21.09.2016, by which the respondents were directed to take no steps pursuant to fresh tender notice issued on 26.08.2016, as a result of which the writ petitioner was unable to participate in the tender process, if the writ application is simply dismissed, then it would keep the petitioner out of the tender process.

In the above circumstances, while dismissing the writ application it is directed, specially considering the fact that the period of completing the work is now till 31.05.2017, that either a fresh tender notice be issued by the department in which those who had already applied should be permitted to apply without payment of any additional EMD treating the EMD already paid as sufficient for the purpose or in the alternative to extend the date of submitting the tender papers by a reasonable period from the date of downloading the documents as against NIT No. 01/2016-17 dated 26.8.2016 so that all intending persons, including the petitioner, shall be in a position to participate in the said tender process.

(Ramesh Kumar Datta, J)

S.Pandey/B.Kr./-

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