

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7885 of 2016

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Dhirendra Construction Pvt. Ltd. Resident of S.K. Nagar Motihari, P.S.- Nagar Thana, District- East Champaran, Motihari, through its Director Dhirendra Construction Pvt. Ltd. namely Rajeev Kumar, S/o Sri Jamuna Prasad Singh, Resident of Mohalla- Lakshman Chowk, Bankers Colony, Banjaria, P.S.- Motihari Town, District- East Champaran, Motihari

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary Rural Works Department, Government of Bihar, Patna
2. The Engineer-in-Chief, Rural Works Department, Bihar, Patna
3. The Chief Engineer-3, Rural Works Department, Bihar, Patna
4. The Superintendent Engineer, Rural Works Department, Works Circle, Motihari
5. The Executive Engineer, Rural Works Division, Dhaka, East Champaran, Motihari
6. M/S R.N. Construction through the Director Ravi Shankar Verma, son of Radha Krishna Verma, Resident of Bhavanipur Jirat, P.O. + P.S.- Chatauni, District- East Champaran, Motihari
7. The Iftkhar Alam, Son of - Kushmahwa, P.O.- Chanadan Bara, P.S.- Dhaka, District- East Champaran, Motihari

.... Respondents

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Appearance :

For the Petitioner : Mr. Ranjeet Kumar
Mr. Kundan Kumar
Ms. Ranjeeta Singh
For the State : Mr. Alok Ranjan, AC to GA-13

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL JUDGMENT

Date: 25-07-2016

I.A. No. 4561 of 2016:

The interlocutory application has been filed for amendment of the reliefs sought in the writ petition so as to seek setting aside of the recommendation of the Technical Bid Committee dated 12.5.2016 and to cancel the tender ID 39828 in terms of the notification dated 1.3.2016 issued by the Finance

Department and further for restraining the respondent-authorities from issuing fresh tender for the same and for other reliefs.

In the facts and circumstances of the case, the prayer for amendment is allowed.

I.A. No. 4561/2016 is, accordingly, disposed of.

I.A. No. 4640 of 2016:

The interlocutory application has been filed for amendment in the prayer portion and for addition of reliefs and setting aside the press notice dated 17.05.2016 and the notice inviting re-tender of the same date with regard to construction of road from Dhaka Ghodasahan to Kaswa Laukhan Paswan, Nonia and Yadav Tola, Ward No.1 and 2.

On a consideration of the facts and circumstances of the case, prayer for amendment is allowed.

I.A. No. 4640 of 2016 is, accordingly, disposed of.

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner is essentially aggrieved by the action of the Technical Bid Committee by which the petitioner has been disqualified in terms of Clause 3.1.2 of letter No. 4842 dated 14.11.2014 issued by the Engineer-in-Chief-cum- Additional Commissioner –cum- Special Secretary.



A notice inviting tender was issued by the Executive Engineer, Rural Works Department, Works Division Dhaka, East Champaran, Motihari being NIT No. RWD/MMGSY/DHAKA/ET/05- 2015-16. The present matter is confined to Sl. No. 15 of the said NIT relating to construction of Dhaka Ghorasahan Road to Kaswa Laukhan, Paswan, Nonia and Yadav Tola Ward No. 1,2 for which last date for submission of tender was fixed on 16.2.2016 on which date itself the bid was to be opened.

The petitioner along with two others, respondent nos. 6 and 7, filed their tender application. The petitioner applied to the Bank for issuance of Bank Guarantee incorporating the NIT No. in his application apart from three other works advertised by the said NIT which are not relevant in the present matter. The Bank Guarantee and Bank Certificate were duly uploaded by the petitioner. However, the Technical Bid Committee in its meeting held on 12.5.2016 declared the petitioner disqualified on the ground that the Bank Guarantee given by him did not mention the name of the road and in terms of para 3.1.2 of the letter No. 4842 dated 14.11.2014 of the Engineer-in-Chief cum-Additional Commissioner –cum Special Secretary, he was declared technically disqualified and the two other tenderers, namely, M/s.



R.N. Construction and Iftkhar Alam were found to be in possession of the minimum qualification and declared as qualified. However, so far as Iftkhar Alam is concerned, on the complaint made by the petitioner, the third contractor, namely, Iftkhar Alam, was also declared disqualified on an examination of the complaints by the Department and thus only M/s. R.N. Construction remained in the field; a decision was taken, albeit, after the writ application was filed that the tender should be cancelled since there is only a single tenderer after the technical bid, which has been challenged by filing the writ application. Thereafter a fresh re-tender has also been made on 17.5.2016 which has also been challenged by the petitioner.

Learned counsel for the petitioner submits that the disqualification of the petitioner is not at all in accordance with even Clause 3.1.2 of the letter dated 14.11.2014 as the same nowhere talks about the work being specified. The said Clause 3.1.2 merely provides that the BOQ mentioned in the notice inviting tender and earnest money deposit should be attached in proper form as prescribed.

It is evident from the above that the said Clause 3.1.2 does not at all provide the specification of the name of the concerned project/scheme in the Bank Guarantee itself. It is

submitted by learned counsel for the petitioner that the certificate of the Bank, as a matter of fact, mentioned the particular scheme in the tender and further the Bank Guarantee provided the details stating that the Bank Guarantee has been issued for the said particular scheme.

Learned counsel for the State, on the other hand, submits that the Bank Guarantee given by the petitioner was not on the format as provided in the SBD which is enclosed as Annexure-B/1 to the counter affidavit and thus in terms of Clause 3.1.2 of the letter dated 14.11.2014, the petitioner would stand disqualified as per the condition mentioned therein.

In reply learned counsel for the petitioner makes two submissions. It is firstly, submitted by him that the letter dated 14.11.2014 clearly directs the Chief Engineer to ensure that the guidelines mentioned in the said letter are incorporated in the special condition of the tender whereas no such thing was incorporated in the NIT in the present matter.

The second submission of learned counsel is that the Bank Guarantee was for the appropriate amount and it was irrevocable Bank Guarantee up to the date, which was in accordance with law and thus there was nothing in the Bank Guarantee which could be held to be against it in pursuance of the

details mentioned in the NIT itself.

Learned counsel submits that this Court has, in the case of United India Insurance Co. Ltd. Vs. The State of Bihar & Ors.: 2015(1) PLJR 772, after considering a large number of cases of the Apex Court and others, held that the law on this point is well settled by a large number of decisions that an authority inviting tender is not bound to give effect to every term mentioned in the notice in meticulous detail and is entitled to waive a technical irregularity of little or no significance. It is further submitted that this Court had held that the requirements of a tender process can be divided into essential conditions and others which are ancillary or subsidiary to the main object. While the essential condition would be required to be enforced rigidly, with respect to ancillary or subsidiary condition, it is open to the authority to deviate from and not to insist upon a strict literal compliance of what is a non-essential condition. Paras 24 and 25 of the judgment are quoted below:-

“24. I have considered the rival submissions of learned counsels for the parties. The first important issue to be considered is as to whether the rejection of the technical bid of the petitioner can be held to be valid. It is evident from Annexures C and D that they merely provide for certain undertakings to be given which



undertakings may themselves be relevant in order to bind the tenderer to the said conditions but the same is a general condition and not an essential qualification per se for the tenderer to be eligible for carrying out the work under which the tender has been floated. It is no ones case that the petitioner is not qualified to do so. The law on this point has now been settled by a large number of decisions, some of which have been cited by learned counsel for the petitioner, that an authority inviting tender is not bound to give effect to every term mentioned in the notice in meticulous detail and is entitled to waive a technical irregularity of little or no significance.

25. It has also been held that in all tender process the requirements can be broadly categorized as those which lay down essential conditions of eligibility and the others which are merely ancillary or subsidiary to the main object. In the case of essential condition of eligibility the authority issuing the tender would be required to enforce it rigidly while with respect to other ancillary or subsidiary condition it is open to the authority to deviate from and not to insist upon a strict literal compliance of such condition in appropriate cases.”

On a consideration of the rival submissions this



Court finds sufficient force in the submission of learned counsel for the petitioner. It is not open to the respondents to rely upon the circular letter dated 14.11.2014 which itself directs the Chief Engineer to ensure that the guidelines given therein should be incorporated in the special conditions of the notice inviting tender, which has admittedly not been done in the present matter. Even if a format is provided as it is stated to be in the SBD, the question as to whether the SBD would apply or not, rather the MBD or CMBD would apply are such technical issue which should not be left to the tenderers rather a clear stipulation of any essential condition according to the Department, ought to have been incorporated in the notice inviting tender so as to give it a binding effect. After the essential condition is substantially complied with, on mere technicality a tenderer ought not to be disqualified.

So far as the Bank Guarantee itself is concerned, nothing has been stated in the counter affidavit or by learned counsel for the State that in case the tender is given to the petitioner the Bank Guarantee would not be sufficient for the Department to recover the amount in case of any breach by the petitioner.

In the aforesaid circumstances, this Court does not find the stand taken by the respondents as legal and valid. It

appears to be a mere attempt on behalf of the respondents to disqualify the petitioner on a ground which was not available to them because of their lapse of not properly mentioning in the N.I.T. the terms given in the letter dated 14.11.2014 of the Engineer-in-Chief-cum-Special Commissioner-cum-Principal Secretary.

For the said reasons, the writ application is allowed, the impugned order dated 27.4.2016 of the Technical Bid Committee is set aside and the respondents are directed to open the financial bid of the petitioner along with that of M/s. R.N. Construction whose case was not considered for the sole reason that he remained as the single bidder after the technical evaluation and upon disqualification of respondent no. 7 Iftkhar Alam.

Since the order dated 27.4.2016 of the Technical Bid Committee has been quashed and direction is being issued for the opening of the financial bid, the subsequent re-tender notice dated 17.5.2016 is also quashed and it is directed that the authorities shall not proceed with the same.

(Ramesh Kumar Datta, J)

S.Pandey/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.9.2016
Transmission Date	