

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.359 of 2016

IN

Civil Writ Jurisdiction Case No. 6614 of 2015

- =====
1. The State of Bihar, through Secretary, Rural Works Department, Visheshwaraiya Bhawan, Patna.
 2. The Secretary, Rural Works Department, Visheshwaraiya Bhawan, Patna.
 3. Engineer-in-Chief, Rural Work Department, Visheshwaraiya Bhawan, Patna.
 4. Executive Engineer-II, Rural Works Department, Visheshwaraiya Bhawan, Patna.
 5. Tender Committee Rural Works Department, Visheshwaraiya Bhawan, Patna.
 6. Sai Shiv Construction Pvt. Ltd., through its Proprietor Satya Narayan Yadav, S/o Sri Choudhary Yadav, R/o Anna Pathar, PS- Sono, Distt- Jamui.

.... Appellants

Versus

M/s S.K. Enterprises, through its Sole Proprietor, Shailendra Kumar Singh, son of Late Jay Narayan Singh, Q. No. 1305, Ser 1/C B.S. City, Police Station B.S.C. District- Bokaro.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Brajesh Kumar, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 04-07-2016

- 1.** The State of Bihar has preferred the instant Letters Patent Appeal against the order, dated 05.08.2015, passed in C.W.J.C. No. 6614 of 2015 (M/s. S.K. Enterprises Vs. State of Bihar and Others), whereby a learned single Judge quashed the communication, dated

17.04.2015, rejecting the technical bid of the petitioner (respondent herein) with a further direction to open its financial bid and to proceed in accordance with law.

2. The learned single Judge quashed the order rejecting technical bid of the petitioner as the same did not disclose any reason nor offered an opportunity to the petitioner to rectify the defects. Coming to the said conclusion, the learned Single Judge relied upon the decision of the Supreme Court in case of **Rashmi Metaliks Limited Vrs. Kolkata Metropolitan Development Authority**, reported in **(2013) 10 SCC 95**. In the said case, the technical bid of the appellant was disqualified after assigning the reason that the Company had not submitted the latest Income Tax Returns along with the bid. After hearing the parties, the Supreme Court observed, "*..... the Tendering Authority ought to have brought the discrepancy to the notice of the Appellant and if thereafter, no rectification is carried out, the position may have been appreciably different*".

3. The relief of the appellants is founded on the ground that the technical bid of the petitioner was rightly rejected as Bank Guarantee was submitted on non-judicial stamp paper of Rs.100/-, which did not, however, meet the requirement of amendment in the Stamp Act,

applicable in the State of Bihar, requiring Bank Guarantee on non-judicial stamp paper of Rs.1,000/-.

4. Before we consider the rival submissions of the parties, it would be necessary to notice the facts of the case necessary for adjudication of the matter.

5. The writ petitioner-respondent is a sole proprietary concern, having its principal place of business at Bokaro Steel City, within the State of Jharkhand. Pursuant to an advertisement, issued by the respondents-appellants on e-Portal of the Government of Bihar, the petitioner submitted its online tender, on 07.01.2015 and hard copy on 08.01.2015, for construction of CD work under road name Jamdaha to Nakatai, through e-Procurement system. The cost of the work was Rs.426.686 lakh. In view of Clause 8 of the NIT, the petitioner submitted a Bank Guarantee of Rs.7.00 crore as Earnest Money, issued by the Indian Bank, Bokaro Steel City, Jharkhand. The technical bid was opened on 09.01.2015 and three months thereafter, the writ petitioner received the impugned communication of rejection of its technical bid on 17.04.2015. As no reason was assigned, the petitioner made enquiry, whereupon it learnt that the technical bid had been rejected on the sole ground that the Bank Guarantee was issued on a non-

judicial stamp paper worth Rs.100/- instead of Rs.1,000/-.



6. The appellants' case is that the petitioner's technical bid was rightly rejected as the latter submitted Bank Guarantee only on the non-judicial stamp paper of Rs.100/- instead of Rs.1,000/-, which was necessary in view of Bihar Amendment in Stamp Act. According to the appellants, as per Clause-8 of the NIT, the earnest money pledged should be in accordance with the Bihar Financial Rules, which are in harmony with the revised stamp duty as per amendment in Indian Stamp Act, 1899 (as inserted by the Bihar Finance Act, 2001) (Act No. 11 of 2002). Hence, according to the appellants, the Bank Guarantee should have been on non-judicial stamp of Rs.1,000/. The appellants further contend that the bidding system is under public domain and the respondent should have opened the online portal for knowing the reasons for rejection of its tender, but the respondent did not bother to do so.

7. The writ petitioner, who is respondent in this appeal, submits that the order, under appeal, is just and proper inasmuch as its technical bid was rejected without affording an opportunity to rectify the mistake, if any, and without assigning any reason. It is the further case of the petitioner-respondent that it fulfilled all the conditions of

the notice inviting tender and it was the appellants, who had misconstrued the provisions and, as such, it was necessary that the petitioner should have been given an opportunity to explain the matter.

8. We have heard learned counsel for the parties.

9. It is not in dispute that the technical bid of the petitioner-respondent was rejected on the sole ground that it submitted the required amount of Bank Guarantee on a non-judicial stamp of Rs.100/- in place of Rs.1,000/-. It is the case of the petitioner-respondent that it submitted the Bank Guarantee on the non-judicial stamp paper worth Rs.100/- as per the law prevailing in the State of Jharkhand, wherein the Bank, in question, which issued the Bank Guarantee is located. On the other hand, the appellants submit that the Bank Guarantee ought to have been prepared in terms of Bihar Financial Rules, as per Clause 8 of the NIT.

As both sides have relied upon Rule 8 of the NIT in support of their rival contentions, it is necessary to notice the relevant Clause, which is reproduced hereinbelow:-

*"Earnest money pledged in
favour of EE of the concerned Division
of Rs. ----- (as per column no.6) as*

mentioned in Bihar Financial Rule. For work costing more than one crore, Bank Guarantee from any scheduled Bank in the State. (If issued from any bank outside State then it will be converted from any Bank within State before executing the work agreement)".

10. It would appear from perusal of Clause 8 of the NIT that for a work costing more than Rs.1.00 crore, Bank Guarantee, *"if issued from any Bank outside the State" of Bihar, the same "will be converted from any Bank within the State of Bihar, before executing the work agreement."*

11. In our considered opinion, the said Clause itself provides an opportunity to the tenderers, who have got their Bank Guarantees from any Bank outside the State, to convert it appropriately from any Bank within the State, prior to execution of the work. In view of Clause 8 of the Tender Notice itself, the appellants ought to have given an opportunity to the petitioner to convert the Bank Guarantee from any Bank within the State of Bihar on appropriate value of non-judicial stamp paper as per Bihar Financial Rules.

12. Situated thus, we do not find any reason to interfere with the order of the learned single Judge setting aside the impugned communication, dated 17.04.2014,

rejecting the technical bid of the petitioner with a further direction to open its financial bid and to proceed in accordance with law. The learned single Judge, while passing the aforesaid order, also made it abundantly clear that in case the bid of the petitioner is found higher than that of the intervener, there may not be any reason to interfere with the tender allotted in favour of the intervener.

13. In view of the reasons assigned hereinabove, we find no merit in this appeal and the same is accordingly dismissed.

(Samarendra Pratap Singh, J.)

I. A. Ansari, ACJ. - I agree.

(I. A. Ansari, ACJ.)

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