

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 19627 of 2015

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Pappu Singh, Son of Sri Krishna Bihari Singh, Resident of village - Nichali Kila,
Garhpar, P.O. Biharsharif, P.S. Bihar, District - Nalanda at Biharsharif.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer - 1, Rural Works Department, Patna.
5. The Superintending Engineer, Rural Works Department, Work Circle, Nalanda.
6. The Executive Engineer, Rural Works Department, Works Division, Biharsharif, District - Nalanda.
7. Sri Ravi Shastri Son of not known to the petitioner Resident of village, P.O. and P.S. Harnaut, District - Nalanda at Biharsharif.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Manglam, Advocate.
For the Respondents No. 1 to 6:	:	Mr. Ritesh Kumar, S.C. 33.
For the Respondent no. 7	:	Mr. Ranjeet Kumar,
	:	Ms. Ranjeeta Singh,
	:	Mr. Akash Kumar &
	:	Mr. Kundan Kumar, Advocates.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 11-02-2016

Heard learned counsel for the parties.

The challenge in the present writ application is to quash the decision of the Technical Bid Evaluation Committee contained in Memo No. 4614 dated 10.12.2015 by which the technical bid of the petitioner has been rejected on the ground that the petitioner did not deposit the earnest money in accordance with Clause 16.1 of the Standard Bidding Document (S.B.D.). It appears that the petitioner had submitted the earnest money enclosing post office term deposit of 5 years whereas according to the S.B.D., the term deposit had to be for a period of

1 year/2 year/3 year.

Learned counsel for the petitioner submits that his technical bid was rejected only on the ground that he had not furnished the earnest money in terms of Clause 16.1 a. of the S.B.D. which was a technicality and could not have resulted in rejection of his technical bid itself. It is submitted that though as per the provision, post office term deposit of 1 year/2 year/3 year was required but the petitioner in bonafide impression has submitted the post office term deposit of 5 years and the fact that the Executive Engineer had forwarded it to the concerned Post Master for pledging it in his name clearly indicates that the authorities themselves did not hold this to be of the nature of rejecting the technical bid entirely. Learned counsel submits that the object of depositing earnest money/Bid security is to ensure that the Government is secured in the event the contractor is unable to fulfill the obligations under the agreement and thus there being no controversy that the petitioner had pledged the amount though not strictly in terms of the S.B.D. but the actual amount being pledged in the name of the authority of the State Government, the condition ought not to have been given a very narrow and strict interpretation so as to reject his bid. He further submits that if at all there was strict compliance of such term required from the petitioner then the concerned Executive Engineer while referring the document to the concerned post office for pledging ought to have pointed it to the petitioner such



shortcoming and the petitioner would have readily complied with the terms of the aforesaid clause of the S.B.D. Learned counsel further submits that the authorities are only to come to a conclusion as far as the technical bid is concerned with regard to the general condition which the tenderer fulfills or not while moving to the next stage of considering the financial bid and the general public interest should be kept in mind and further the authorities are also obliged to ensure that there is wider participation as in the present case only one tenderer was left after the rejection of the technical bid of the petitioner and the third one having withdrawn his tender. Learned counsel for the said proposition has relied upon a decision of the Hon'ble Supreme Court in the case of **B.S.N. Joshi & Sons Ltd v. Nair Coal Services Ltd.** reported in **(2006) 11 SCC 548**, the relevant being at paragraphs 61 and 66 as well as the decision of the co-ordinate Bench of this Court in **United India Insurance Company Limited vs. State of Bihar** reported in **2015(1) PLJR 772**, the relevant being at paragraphs 24 and 25.

Learned counsel for the State submits that the writ petition is misconceived for the reason that the N.I.T. itself clearly disclose that the same was S.B.D. based i.e., the terms and conditions of the S.B.D. were applicable and clearly Clause 16.1 a. stipulated that the Indian post office term deposit should have been for 1 year/2 year/3 year and further Clause 16.3 also made it very clear and unambiguous that if the bid was not



accompanied by an acceptable Bid Security and not secured as indicated in Sub-Clauses 16.1 and 16.2, the same shall be rejected by the employer as non-responsive. Learned counsel submits that in matters relating to judicial review of issue relating to grant of government contract, the Hon'ble Supreme Court has laid down the parameters in a catena of decisions more particularly in the case of **Directorate of Education v. Educomp Datamatics Ltd.** reported in **(2004) 4 SCC 19**, the relevant being at paragraphs 9 and 12 as well as in the case of **Global Energy Ltd. v. Adani Exports Ltd.** reported in **(2005) 4 SCC 435**, the relevant being at paragraphs 5 and 10. He has also produced a web copy of an order of a Division Bench of this Court in the case of **Narang Distillery Limited vs. The State of Bihar (C.W.J.C. No. 9731 of 2009)** dated 19.05.2010 in support of his contentions.

Learned counsel appearing for the respondent no. 7 i.e., the successful bidder, besides adopting the arguments of learned counsel for the State, submits that the petitioner having been casual in his approach towards filling up the N.I.T., cannot be permitted to take the benefit of his own slackness as Clause 16.3 of the S.B.D. was a clear and mandatory stipulation that the earnest money had to be in the form as specified in Clause 16.1 and any departure from the same was liable to be rejected as non-responsive. Learned counsel has also submitted that the respondent no. 7 has also been unsuited earlier on many

occasions due to the same stipulation.

Having considered the rival contentions, the Court, though agreeing with the contentions of learned counsel for the petitioner that he may have been in a condition so as to satisfy the requirement of the earnest money but the mode and manner in which the same has been submitted by him not confirming as per Clause 16.1 read with Clause 16.3 of the S.B.D. which makes the bid liable to be rejected if it was not accompanied by the bid security as indicated in Sub-Clause 16.1, leaves no scope of doubt that the said condition was one of the essential features. Matters of contract being of a technical nature and the scope of judicial review being limited as propounded by various decisions of the Courts including the Hon'ble Supreme Court, in the present facts and circumstances of the case, the condition of submitting the Indian post office term deposit only of 1 year/2 year/3 year cannot be read to include a term deposit of 5 years. The Court would only like to observe that had there been no clause in the S.B.D. that any departure from such mode would result in rejection of the tender, the matter would have been different but the specific provision of Clause 16.3 of the S.B.D. that any bid not accompanied by an acceptable bid security and not secured as per Clause 16.1 was to be rejected by the employer as non-responsive clearly made it a mandatory condition which had to be strictly adhered to.

In view of the aforesaid, the Court does not find

any illegality in the decision of the respondents and accordingly,
the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

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