

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6070 of 2018

=====

M/s Radhika Construction Co. A Partnership Firm, Registered office at - Chhauradano, P.S.- Chauradano, District East Champaran, Motihari through its Partner Robin Prasad, Son of Late Mngal Prasad, resident of Village- Ekdari Chhauradano, P.S- Chhauradano, 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, Government of Bihar, Patna.
3. The Chief Engineer, Rural Works Department, Government of Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Work Circle, Motihari.
5. The Executive Engineer, Rural Works Department, Work Circle, Motihari Work Division Pakridayal.
6. The Executive Engineer, Rural Works Department, Work Division, Dhaka.
7. The Divisional Account Officer, Rural Works Department, Work Division Dhaka.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Ranjeet Kumar, Advocate.

For the Respondents : Mr. Kumar Alok, SC-7

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 12-04-2018

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

2. The present writ petition has been filed for the following reliefs -

(i) For setting aside the decision of the technical bid committee contained in Memo No. 346 dated 21.03.2018, whereby the petitioner has been disqualified technically in PMGSY package No. BR-11R-12A, Tender I.D.-2018 ECBIH-59907 in relation of NIT No.



RWD/PMGSY/HQ/ET/09/2017-18, in terms of Clause 4.1.1 of the SBD.

(ii) The petitioner further prays that after setting aside the Memo No. 346 dated 21.03.2018 the petitioner may be declared eligible as against the aforementioned package no. BR-11R-12A, Tender ID-2018 ECBIH-59907 and further the financial tender be opened with another successful bidder.

(iii) For any other relief for which the petitioner may be deemed entitled to."

3. Learned counsel for the petitioner makes a short submission to the effect that the impugned order in so far as concerns the petitioner dated 21.03.2018 (Annexure-7) rejecting the technical bid of the petitioner is wholly arbitrary and illegal as being in violation of principles of natural justice. It is submitted that no opportunity whatsoever of being heard was granted prior to such rejection despite specific circular of the Road Construction Department dated 17.11.2006 as contained in Annexure-5 requiring opportunity to be provided prior to rejection of technical bid of a tenderer. It is pointed out that the date of opening of the bids was fixed at 3:30 P.M. on 10.03.2018 as stated in the NIT (Annexure-1) whereas a perusal of the impugned order (Annexure-7) itself discloses that the technical bids were opened subsequently on 21.03.2018 and hence the petitioner was denied of being present or being provided an opportunity of hearing.

4. Learned counsel for the respondents appears and has been heard.



5. Having heard the parties and on a consideration of the materials on record, this Court finds merit in the writ petition. It is *ex facie* apparent that the date of opening of Online tenders had been fixed on 10.03.2018 as per the NIT itself on which date the petitioner had the auction to be present and be heard if its bid had to be rejected. Instead of the tender being opened on the stipulated date however, the same was opened subsequently on 21.03.2018 and there is nothing on record to show that any intimation in this regard was given to the petitioner. The petitioner was therefore precluded from being present at the time of opening of the technical bid on 21.03.2018 or being heard in the matter of rejection of its bid, contrary to the circular dated 17.11.2006 referred to above.

6. In the above view of the matter, the impugned order dated 21.03.2018 in so far as concerns the petitioner at serial no. 1 of the said order is hereby quashed and the matter remanded to the Tender Committee for taking a fresh decision in respect of the petitioner's technical bid after grant of reasonable opportunity of hearing in the matter in accordance with law.

7. It is made clear that this court has not expressed any opinion on the merits of the claim of the petitioner. It is also made clear in case the submission of the petitioner that it was not intimated with regard to the date of actual opening of the tender is found to be incorrect, the respondents shall be at liberty to approach this Court for



recall of this judgment.

8. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.04.2018
Transmission Date	N.A.

