

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13244 of 2016

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Ompakash Kumar, son of Sri Nityanand Lal, R/O At Mohalla- Barapatthar,
Ward No. 15, P.S. Samastipur (Town), District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.
3. The Joint Secretary to the Government Road Construction Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Bihar Urban Development Authority (BUDA), Bihar, Patna.
5. The Superintending Engineer, Bihar Urban Development Authority (BUDA), Bihar, Patna.
6. The Executive Engineer, District Urban Development Authority (BUDA), Samastipur.
7. The Executive Officer, Municipal Council, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar, Advocate
For the Respondent/s : Mr. RAJIV ROY-GP1

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 06-03-2018

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

*(i) For issuance of writ in the nature of certiorari or
any other appropriate writ for quashing the order
contained in letter no. 875 dated 30.05.2016 issued
under the signature of Superintending Engineer,
Bihar Urban Development Authority (BUDA), Urban
Development and Housing Department,
Government of Bihar, Patna whereby and
whereunder direction has been issued upon the
Executive Engineer, District Urban Development
Authority (BUDA)/Executive Officer, Municipal*



Council, Samastipur in respect of Tender NIT No. 02/2015-16 of Group No. 1 under the work of Municipal Council, Samastipur for construction work of PCC Road and RCC Nala from Magardahi Parisadan to the house of Seema Kumar. That since for the first time tender has been invited and after technical bid only one successful bidder, is left in race, hence complying with Clause (2) of Notification No. 3162(S) dated 09.05.2016 of Road Construction Department, Govt. of Bihar, issued fresh invitation of tender after cancelling the instant tender.

(ii) For issuance of writ in the nature of mandamus or any other appropriate writ commanding the respondents to award the tender bearing NIT No. 02/2015-16 within Samastipur in favour of the petitioner, as after technical bid, the petitioner was the only successful tenderer left in the race, having faced financial round prior to 09.05.2016.

(iii) For holding that the petitioner having been successful after technical bid was the only successful tenderer left in the race, having also faced the financial round prior to 09.05.2016, whereas notification No. 3162(S) dated 09.05.2016 of Road Construction Department, Government of Bihar, cannot be made applicable retrospectively with respect to the tender bearing NIT No. 02/2015-16 published on 20.07.2015.

(iv) For issuance of a writ(s)/order(s)/direction(s) to the respondent authorities to stay the operation of the impugned order dated 30.05.2016 (Annexure-5) till final disposal of the instant writ application.



(v) For issuance of any other appropriate writ or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.

2. Learned counsel for the petitioner makes a short submission to contend that the impugned order cancelling the tender on the ground that the petitioner remained as single tenderer who qualified for the financial bid, is arbitrary and unsustainable. It is pointed out from the impugned order itself that reliance in this behalf has been placed on Notification No. 3162(S) dated 09.05.2016 in respect of the advertisement dated 20.07.2015 vide NIT No. 02/2015-16 and such retrospective application of the notification to the advertisement is impermissible. In similar circumstances, this Court in its order dated 21.07.2016 passed in CWJC No. 8869 of 2016 (M/s R.R. Company vs. the State of Bihar through the Chief Secretary, Government of Bihar, Patna) and analogous cases, has observed as follows :

“Learned counsel for the State is unable to show as to how the subsequent notification in the Bihar Financial Rules by amending Rule131J of the Bihar Financial Rules and even later the Bihar PWD Code, which would actually govern the present cases, would affect the case of the petitioners in relation to tender notices issued much prior to coming into force of these rules. It is a trite principle that a tender process shall be governed by the rules in existence on the date the



notice inviting tenders has been issued. No changes thereafter are possible barring exceptional circumstances and that too with the consent of the tenderers."

3. In this background, this Court directed the financial bid to be opened even in the case of single tenderer as it was also not shown to be a departure from the normal practice being followed in the Department.

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

5. Having heard the parties and on consideration of the materials on record, this Court finds merit in the writ petition. It is not in dispute that the respondents have relied on a notification dated 09.05.2016 which has been issued much later on after the advertisement in question was issued on 20.07.2015. This would have the effect to changing the rules governing the tender process after it had commenced and which is impermissible.

6. The impugned order dated 30.05.2016 (Annexure-5) is accordingly hereby quashed and the respondents are directed to open the financial bid of the petitioner and proceed in accordance with law.

7. I.A. No. 6399 of 2017 has been filed for a direction upon the respondents for reasonable enhancement in the estimated cost of the tender. This Court is not inclined to issue any direction, more so when the petitioner does not appear to have



approached the concerned authority in this regard. Accordingly,
I.A. No. 6399 of 2017 stands dismissed.

8. The writ petition stands disposed of as above.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.03.2018
Transmission Date	NA

