

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1816 of 2016

In
Civil Writ Jurisdiction Case No.14243 of 2011

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1. The State of Bihar.
 2. The Superintending Engineer, (Mechanical) National Highway Road, Mechanical Circle, Patna.
 3. The Executive Engineer (Mechanical), N.H. Mechanical Division, Muzaffarpur.

... .. Appellant/s

Versus

Md. Azaz Son of Md. Sulaiman Village - Sadatpur, P.O. - Kolhua Paigambarpur, P.S. - Kanti, District - Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate, AAG 4 Mr Sanjay Prasad, AC to AAG 4
For the Respondent/s	:	Mr. Raghib Ahsan, Sr. Advocate Mr Saba Ashfaque Mr Wasi Akhtar Mr Md. Shahab Khalil

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 07-02-2018

Heard learned Additional Advocate General No.4 representing the State of Bihar and the learned senior counsel for the private respondent.

2. Vide order dated 06.05.2016, the learned Single Judge allowed the writ application and quashed the letter dated 27.07.2011 issued by the Superintending Engineer (Mechanical), Mechanical Circle, National Highway, Patna by virtue of which tender No.1/10-11 stood cancelled, and a direction was also issued to the Executive Engineer (Mechanical) to initiate process for re-tender after deleting condition No.1 of the tender.



3. The primary reason why the learned Single Judge seems to have quashed the letter or communication dated 27.07.2011 is that there was supposed to be a committee of which the Superintending Engineer was the Chairman. As the decision to cancel the tender was taken by the Superintending Engineer alone and not by the committee, the decision was held to be bad.

4. The Court has gone through the notice inviting tender, which is Annexure- 5. Reading of the said notice does not indicate that the Superintending Engineer was not empowered to take a decision especially when the tender was not yet finalized and was under the process of evaluation when the infirmities emerged.

5. We seem to be in agreement with the submission of the learned Additional Advocate General that the constitution of the committee in terms of Annexure- 2 was for a limited purpose for making evaluation and recommendation with regard to valuation of the condemned items, which they were required to do after due inspection.

6. That committee cannot be treated as the tender committee as such but was created with the object of assisting the Superintending Engineer under whose signature the notice inviting tender was called for.

7. The other aspect which went behind the cancellation of the tender seems to be that only two bidders turned up. One was disqualified and the lone bid offer of the writ petitioner was just about the minimum bidding price, which was fixed. Obviously, since the



appellant authorities did not get proper competitive bidding by one and all since others were restricted from participation because of Clause 1, which was incorporated in the notice inviting tender, a decision was taken to issue a fresh notice inviting tender for better competition.

8. The reasons were valid and the power of cancellation was vested in the Superintending Engineer. It was a conscious decision taken and it does not smack of any arbitrariness. In view of the same, the impugned order dated 06.05.2016 passed by the learned Single Judge stands set aside.

The Letters Patent Appeal is allowed.

(Ajay Kumar Tripathi, J)

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(Nilu Agrawal, J)

AFR/NAFR	NAFR
CAV DATE	NA
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