

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4062 of 2018

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Lok Priya Seva Sansthan through its Chairman Smt. Vidya Jha @ Vidya Devi,
D/o Late Maheshwar Jha, Permanent resident of Village- Laxmipur, Bakhari,
P.O.- Fatehpur, Phulwaria District- Vaishali, presently resident of North
Mandiri, P.O. G.P.O., P.S.- Kotwali, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Urban Development Government of Bihar, Patna.
2. The District Magistrate, Motihari.
3. The Executive Officer, Nagar Parishad, Motihari.
4. The Secretary, Anand Lok Foundation, Chamarhara, P.O. Mahnar, District Vaishali.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Shashi Bhushan Kumar, Advocate
For the State	:	Mr. S.P.Singh, GA3
For Motihari Nagar Parishad	:	Mr. Raghwanand, Advocate
For Res. No.4	:	Mr. Sanjay Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 07-12-2018

Heard both sides.

2. The petitioner has filed this writ petition for a direction to the respondent no.3, the Executive Officer, Nagar Parishad, Motihari not to give effect to the verbal decision by which the petitioner was informed that her bid had been declared to be disqualified on the ground that her Demand Draft was issued in the name of Executive Officer, Nagar Parishad, Motihari instead of Karyapalak Padadhikari, Nagar Parishad, Motihari. The petitioner further seeks relief for a direction to the respondent no.3 to allot the work of sanitation to run lavatories situated in the town



of Motihari in the name of the petitioner who is the highest bidder and by filing I.A. No.1824 of 2018 seeks relief for a direction to the respondents not to allot the work to any person having lowest bidder in pursuance of Advertisement No. PR.12640 (NINI) 2017-18 dated 22.01.2018 and if the work was allotted to any person having lowest bidder be cancelled.

3. The relevant facts, which are relevant, for disposal of this case can be summarized as follows:

The petitioner is a registered institution having Registration No.448/1983-84 in the name of Lok Priya Seva Sansthan earlier known as Madhubani District Sulabh Sauchalya Sansthan. Respondent no.3, the Executive Officer, Nagar Parishad, Motihari published a tender notice (Annexure-1) on 22.01.2018 under Advertisement No. PR.12640 (NINI) 2017-18 in Hindustan Newspaper for maintaining seven public Sauchalaya situated at Meena Bazar, Balua Chowk, Court Campus, Station Chowk, Chhatauni Bus Stand, Hospital Road, Town Police Station under Nagar Parishad, Motihari. The terms and conditions of the advertisement and the work was enumerated in the advertisement. In response to the advertisement, the petitioner submitted its tender along with requisite documents such as Affidavit, Registration Certificate, PAN Card, Income Tax Return for last three years,



Registration of GST, Audit Report of last three years and a Demand Draft of Rs.1,00,000/- in the name of Executive Officer, Nagar Council, Motihari. The tender was opened as per the terms of the advertisement on 01.02.2018 at 3.00 P.M. in presence of the authorized representatives of all tenderers but the result was not announced and the same was deferred to another date after obtaining signature of the tenderers on incomplete paper. Again on 05.02.2018, the bidders were called upon but no further process for acceptance and rejection of tender was taken and the meeting was adjourned to 20.02.2018. The successful bidder was disclosed and petitioner was orally informed that his tender was rejected on the ground that the Demand Draft was not submitted in the name of Karyapalak Padadhikari, Nagar Parishad, Motihari although the petitioner offered Rs.15,00,001/- for upkeepment and maintenance of seven Sulabh Sauchalaya situated at different places in the town of Motihari. The Anand Lok Foundation was declared successful bidder although it had offered only a sum of Rs.7,51,000/-. Respondent No.1, the Principal Secretary, Department of Urban Development, Government of Bihar, Patna filed counter and in sum and substance stated that the Executive Officer, Nagar Parishad is the authorized and competent authority to file counter affidavit and he was directed to file counter affidavit. Respondent



No.3 filed counter affidavit and stated the facts that the decision of Nagar Parishad for accepting the tender of Anand Lok Foundation and rejecting the tender of the petitioner and others was taken by the Empowered Standing Committee constituted under Section 21 of the Bihar Municipal Act. The petitioner was held disqualified on the ground of submitting Demand Draft prepared in favour of incorrect name, the Executive Officer, Nagar Council, Motihari. According to the terms and conditions of notice inviting tender, the tenderers had to file besides other documents a Bank Draft of Rs.1,00,000/- in favour of Karyapalak Padadhikari/Executive Officer, Nagar Parishad, Motihari. Since the bank account of the concerned institution runs in the name of Executive Officer, Nagar Parishad, Motihari and considering the very technical aspect, the tender of the petitioner was rejected. The Public Works Department specially provides the process of tender from the notice inviting tender till the acceptance of the tender in accordance with law. The Urban Development Department, Government of Bihar, vide Notification/Memo No.2650 dated 30.08.2001 has declared the erstwhile Motihari Municipality as Nagar Parishad, Motihari and, therefore, the bank account is also running in the name of Nagar Parishad, Motihari. The name of institution or post/person must not be translated into English



unless there is such gazette notification by the competent authority, therefore, instead of submitting the Bank Draft/Demand Draft in the name of Executive Officer, Nagar Parishad, Motihari, the petitioner submitted Bank Draft in the name of Executive Officer, Town Council, Motihari and, therefore, the tender of the petitioner was rejected and the Empowered Standing Committee found that only tender of Anand Lok Foundation, who offered Rs.7,51,000/-, was in order and accordingly tender was accepted.

4. The Respondent No.4, Anand Lok Foundation also filed counter affidavit and made in sum and substance the same statements that the tenders of the persons/institutions who submitted tenders not in accordance with the terms and conditions of the notice inviting tender was rejected.

5. On the basis of the pleadings of the parties, the one and only question arises for consideration is that whether the Executive Officer or the Empowered Standing Committee of Nagar Parishad, Motihari is justified in accordance with law to reject the tenders of such tenderers/bidders who offered bid much higher than the person whose bid was accepted on a minor discrepancy that the Demand Draft/Bank Draft Karyapalak Padadhikari, Nagar Parishad, Motihari Executive Officer, Nagar



Council, Motihari was submitted and thereby justified to cause immense revenue loss to the local bodies.

6. Learned counsel for the petitioner submits that in terms of the notice inviting tender in a sealed envelope by 01.02.2018 at 2.00 P.M., the sealed cover was to be opened on the same day at 3.00 P.M. in presence of the companies, agency, institution and their representatives. If representative of any institution is not present on the date of opening of tender, their tender shall not be considered but the concerned authority although opened the sealed envelop on 01.02.2018 but did not process the same and obtained the signature of the tenderers on incomplete paper. The Executive Officer again called the representative of the institution on 05.02.2018 but even on that day no decision was taken accepting or rejecting the tenders and the authority kept the records with them and only on 22.02.2018, the Executive Officer, Nagar Parishad, Motihari declared the successful bidder and informed the petitioner that his tender was not filled in proper form. The Bank Draft submitted by the petitioner was prepared in the name of Executive Officer, Nagar Council, Motihari. It is submitted that it was only a minor mistake. The petitioner had offered double the amount than the tenderers whose tender was accepted. The Executive Officer was to retire on



28.02.2018 and he hurriedly accepted the tender of Anand Lok Foundation, respondent no.4 who offered only Rs.7,51,000/- for maintenance of seven Sulabh Sauchalaya and thus, the Executive Officer caused immense revenue loss to Nagar Parishad. The respondent no.3 accepted the bid who offered less amount only to accommodate his own man, respondent no.4. There was a minor discrepancy and it can be rectified in no time but the authority should have accepted the petitioner who offered Rs.15,00,001/- for maintaining seven Sulabh Sauchalaya. It is submitted that in many cases such as CWJC No.7885 of 2016, CWJC No.174 of 2018, this Court has held that if minor defect crept in any technical bid/tender such bid/tender cannot be cancelled on hyper technical ground.

7. Learned counsel for the petitioner further submits that when the matter of causing immense financial loss to Nagar Parishad, Motihari came to the knowledge of the Department of Urban Development, the Joint Director-cum-Deputy Director directed the District Magistrate vide his letter as contained in Letter No.179, dated 25.04.2018 referring to the writ petition of the petitioner being CWJC No.4062 of 2018 to hold an inquiry and submit the report with details of facts. In pursuance of the order, the Collector entrusted the Deputy Development Commissioner,



East Champaran, Motihari his Letter No.58, dated 31.05.2018 submitted report to the Collector, East Champaran, Motihari who in turn forwarded the same to the Urban Development Department. The Deputy Development Commissioner in his report very categorically found that many tenderers have offered Rs.15,00,000/-, Rs.18,00,000/- or more for maintenance of seven Sulabh Sauchalaya but the Executive Officer, Nagar Parishad, Motihari accepted the bid of such bidder who offered only Rs.7,51,000/-, therefore, the department may, if so feels, direct the Executive Officer for re-issuance of the tender and on such report, the Additional Secretary-cum-Deputy Director wrote a letter bearing Letter No.698, dated 01.08.2018 to re-issue the tender and allot the work to such persons who offered more and more money for maintenance of Sulabh Sauchalaya situated in the town of Motihari and also disclosed that by accepting the tender of respondent no.4, the Executive Officer caused loss of Rs.8,75,000/- to the Nagar Parishad, Motihari but Nagar Parishad, Motihari did not take any action and, therefore, the order allotting the work to respondent no.4 is liable to be quashed and the authority be directed to allot the work to the petitioner to maintain Sulabh Sauchalaya for the remaining period of the financial year on depositing the proportionate bid amount.



8. Learned counsel for the Nagar Parishad, Motihari and respondent no.4 submitted that the tender of respondent no.4 was rightly accepted as only the tender papers of respondent no.4 was found in order and the papers of other bidders although they offered more amount than the respondent no.4 but their bid papers were not in accordance with the notice inviting tender and, therefore, the order allotting the work to the respondent no.4 is in accordance with law and not liable to be interfered. It is submitted that the notice inviting tender specifically prescribed that the Demand Draft/Bank Draft should be prepared in the name of Karyapalak Padadhikari, Nagar Parishad, Motihari because the account of Nagar Parishad, Motihari is standing in the name of Karyapalak Padadhikari, Nagar Parishad, Motihari, therefore, no Cheque or Draft can be accepted in any other name or translated in English version of the name of Karyapalak Padadhikari, Nagar Parishad, Motihari.

9. Having considered the submissions of the parties, I find that notice inviting tender (Annexure-1) prescribes the terms and conditions and the documents appended to the bid papers by 2.00 P.M. on 01.02.2018. The notice also stipulates that the bid papers shall be opened on 01.02.2018. Besides other condition and the document to be attached with the bid papers, the notice inviting



tender prescribes the condition that the bidder shall deposit Draft of reserve Jama of Rs.1,00,000/- in the name of Karyapalak Padadhikari, Nagar Parishad, Motihari and payable at Motihari. The petitioner submitted all the papers including the Draft of Rs.1,00,000/- but the petitioner submitted the Draft of Rs.1,00,000/- prepared in the name of Executive Officer, Nagar Council, Motihari. On plain reading of the Draft, it appears that the petitioner got the Draft prepared after translating the name of Karyapalak Padadhikari, Nagar Parishad, Motihari in English. It is a minor mistake on the part of the petitioner although the petitioner deposited the amount in the Bank at the time of preparation of the Bank Draft in the name of Nagar Parishad, Motihari. Annexure-1 shows that the bid documents of the bidders/tenderers were to be opened on 3.00 P.M. on 01.02.2018 itself. Sealed envelope were opened but the authority did not either accept or reject the application of any party on 01.02.2018. The next meeting was held on 05.02.2018 but even on that day no decision accepting the tender of any person was passed and the matter was deferred to 22.02.2018 and entire bid papers already opened were kept in the office of the Executive Officer. On 22.02.2018, the bid of Anand Lok Foundation, respondent no.4, was accepted and the petitioner was informed that he did not



submit Bank Draft in the name of Karyapalak Padadhikari, Nagar Parishad, Motihari. On the fact of it, it appears that the Executive Officer or the Empowered Standing Committee had taken hyper technical view in rejecting the bid of the petitioner who offered two times the money offered by respondent no.4 completely shutting their eyes causing immense loss to the Nagar Parishad, Motihari. Admittedly the bid was opened on 01.02.2018 but the authority deferred the process of acceptance of the bids till 22.02.2018. During this period, the Executive Officer should have taken a bit liberal view in order to get the Draft rectified of such persons who had offered higher amount for maintenance of Sulabh Sauchalaya situated in the town of Motihari if the Executive Officer had acted in good belief and for the purpose of collecting more revenue for Nagar Parishad, Motihari. It also appears from perusal of Letter No.698 dated 01.08.2018 sent by the Additional Secretary, Urban Development Department, Government of Bihar to the Karyapalak Padadhikari, Nagar Parishad, Motihari to hold an inquiry and ascertain the reasons for accepting lower bid causing financial loss to Nagar Parishad, Motihari and after receiving the inquiry report from Deputy Development Commissioner, Motihari, the Additional Secretary, Urban Development Department, Government of Bihar sent letter to the



Executive Officer, Nagar Parishad, Motihari to issue re-tender and offer the work to the persons who offered more amount for maintenance of Sulabh Sauchalaya but the Executive Officer, Nagar Parishad, Motihari sat over the matter without visualizing the heavy financial loss caused on account of irresponsible actions of Executive Officer, Nagar Parishad, Motihari causing immense financial loss to Nagar Parishad, Motihari, therefore, the order for acceptance of bid of respondent no.4, who had offered only Rs.7,51,000/- for maintenance of seven Sulabh Sauchalaya, is illegal. Accordingly, the Executive Officer, Nagar Parishad, Motihari is directed to cancel the work order allotting to respondent no.4 and grant work to the petitioner allowing him to deposit the proportionate amount for maintenance of Sulabh Sauchalaya for remaining financial year.

10. In the result, the writ petition is allowed with the aforesaid direction.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.12.2018
Transmission Date	NA

