

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18294 of 2017

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M/s Vinay Construction, through its working Partner Mr. Ram Naresh Singh Yadav Son of Sri Ram Lakhan Yadav Mohalla- Bhaluiya Tan, P.O. Giriak Puraini, P.S. Muffasil, District Nawada, At Present Resident at Mohalla- Ram Nagar, Near Sankat Mochan, P.O. Gonawan, Nawada - 805110

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Vikas Bhawan, Baley Road, Patna-15
2. The Chief Engineer, Bihar Urban Development Agency, Urban Development and Housing Department, Vikas Bhawan, Baley Road, Patna-15
3. The Superintendent Engineer, Bihar Urban Development Agency, Urban Development And Housing Department, Vikas Bhawan, Baley Road, Patna-15
4. Gaya Nagar Nigam, through its Municipal commissioner, Gaya.
5. The Municipal Commissioner, Gaya Nagar Nigam, Gaya.
6. The Executive Engineer, District Urban Development Agency, Cum-Nagar Nigam, Gaya.
7. Mr. Viaks Kumar Singh, 7HF 9/31, B.H. Colony, Kankarbagh, Patna.
8. M/s Sagar Construction, Lodipur, P.O. Bargaon, P.S. Koch, Dist. Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manish Sahay, Adv Mr. Anil Kumar Sinha, Adv
For the Respondent/s	:	Mr. S.P.SINGH -GA3 Mr. Indeshwari Pd. Mandal, AC to GA3
For the Resp. no. 8	:	Mr. Anil Kumar Sinha, Adv

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-05-2018

The present writ petition has been filed for the following reliefs –

- (i) *For quashing the letter nos. 1437 and 1438 dated 28.11.2017, issued by the Chief Engineer, (respondent no. 2), as contained in Annexure-P-5 series, whereby and whereunder the said Authority has cancelled the said tenders of the petitioner and directed to invite re-tenders for the same works.*



- (ii) *For commanding and directing the concerned respondents to proceed with the tenders in question and decide the same in accordance with law.*
- (iii) *For declaring that the actions of the respondents are arbitrariness, colourable exercise of powers, mala fide and contrary to provisions of NIT in question.*
- (iv) *For passing such an order or orders under which the petitioner is entitled under the law in the facts and circumstances of this case.*

2. Learned counsel for the petitioner submits that the entire tender process has been cancelled merely because the financial bids of two of the tenderers in each of Group I and Group II who were technically ineligible were opened. It is stated that the petitioner was L1 in Group II whereas the rates quoted by all the four successful tenderers was equal in Group I and the matter was to be settled through lottery. The entire tender process however, came to be cancelled by the impugned letters both dated 28.11.2017 (Annexure-P/5 series) by the Chief Engineer, Bihar Urban Development Agency, Urban Development and Housing Department, (respondent no. 2), which is arbitrary.

3 Learned counsel for the respondents have resisted the writ petition, submitting that when the irregularity was detected and it was found that opening of the financial bid was not in accordance with the terms of NIT, the tender process was cancelled and fresh tender issued in which the respondent no. 8 participated and was



declared L-1.

4. Having heard the parties and on consideration of the materials on record, it is no doubt clear that the financial bids of the two tenderers in each of the two groups who were technically ineligible was also opened. However, the successful bidder was required to be declared through lottery in respect of Group No. I out of the four successful bidders which did not include the technically ineligible tenderers. In Group No. II the petitioner was declared L-1 and not one of the ineligible tenders. As far as the petitioner is concerned, therefore, cancellation of the tender has resulted in prejudice to him for the wrongful action of the concerned authority in opening the ineligible tenders. Other than the petitioner, no prejudice has been caused to any other person. The petitioner cannot be penalized for no fault on his part. The irregularity in opening the financial bids of the ineligible tenderers, in the present situation, is of little consequence. The right of the respondent no. 8 who has been declared L-1 in the second tender would be subject to the result of the decision with regard to the first tender, more so, when the second tender is said to have been finalized during the pendency of the present writ petition.

5. In the above view of the matter, the impugned letters dated 28.11.2017 (Annexure-P/5 series) are hereby quashed and the writ petition stands allowed. The respondents are directed to proceed



with the lottery with respect to Group No. I among the four successful tenderers who are admittedly all technically eligible and have equally quoted in the financial bids. The petitioner has already been declared L-1 with regard to Group II. The respondents shall proceed in this regard in accordance with law.

6. In the light of the above, I.A. No. 2863 of 2018 also stands disposed of.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.05.2018
Transmission Date	NA

