

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.489 of 2018

In

Civil Writ Jurisdiction Case No.15623 of 2017

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1. The Bihar State Building Construction Corporation Limited, Having its Office at Hospital Road, Shastri Nagar, Patna 800023 (Bihar) through its Managing Director.
 2. The Development Commissioner-cum-Chairman, Bihar State Building Construction Corporation Limited, Bihar, Patna.
 3. The Managing Director, Bihar State Building Construction Corporation Having its Office at Hospital Road, Shastri Nagar, Patna-800023 (Bihar).
 4. The Chief General Manager, Building Construction Corporation Limited, Having its Office at Hospital Road, Shastri Nagar, Patna-800023 (Bihar).State Building Construction Corporation Ltd., Patna.

... .. Respondents- Appellant/s

Versus

1. Adya Raj Developer Private Limited, 202, Vishnu Place, East Boring Canal Road, Patna-800001 through its Director Jitendra KUMAR Roy, Son of Sri Ram Sagar Prasad.

..... Petitioner/Respondent

2. The State of Bihar, through the Principal Secretary, Building Construction Department, Bihar, Patna.

... .. Respondent/ Appellant 2nd Set.

Appearance :

For the Appellant/s : Mr. Tej Bahadur Singh, Senior Advocate
Mr. Brisketu Sharan Pandey, Advocate

For the Respondent No.1: Mr. Raju Giri, Advocate
Mr. Santosh Kumar Mishra, Advocate

For the Respondent No.2: Mr. Raj Ballabh Prasad Yadav - AAG-11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-09-2018

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge dated 06.03.2018 in Civil Writ Jurisdiction Case No.15623 of 2017



by which the learned Single Judge has allowed the said petition and quashed and set aside the communication/letter no.3064 dated 06.10.2017 (Annexure-6 to the petition) issued by the Chief General Manager, Building Construction Corporation Limited, appellant herein, and has directed the original respondents to proceed in the matter in accordance with law, original respondent no.4- Bihar State Building Construction Corporation Limited has preferred the present Letters Patent Appeal.

2. The facts leading to the present Letters Patent Appeal are as under:-

2.1. That the tender was invited by the original respondent-appellant herein- Bihar State Building Construction Corporation Limited, Patna (hereinafter referred to as 'the Corporation') on 10th July, 2017 being NIT No.19/17-18 for reconstruction of Anjuman Islamia Hall at Patna for an estimated cost of Rs.38,95,78,357/-. It appears that the said tender notice came to be cancelled and a re-tender was issued on 20th July, 2017 for the said work which was to be completed within 18 months on the said estimated cost. Pursuant to the said re-tender notice, the petitioner along with one another tenderer, M/s B. Rai Construction Company participated. However, the said tenderer M/s B. Rai Construction Company was disqualified at the stage of



technical bid. Therefore, the original petitioner alone remained in the price bid. After scrutiny by the Tender Committee of the Corporation in its meeting dated 19.09.2017, the Technical Bid Appraisal Committee declared the original petitioner to be successful bidder in respect of its bid of 0.78% below the BOQ rate. However, the letters of acceptance was not issued in favour of the original petitioner. In stead, the Chief General Manager of the Corporation issued the impugned letter no. 3064 dated 06.10.2017 (impugned before the learned Single Judge) by which the original petitioner was asked whether he would be willing to do the work at 10% below the estimated rate. It appears that the said communication was issued in the light of the Finance Department's Letter No.7806 dated 30th September, 2016 and the decision taken subsequently in the 37th Board Meeting of the Corporation held on 25.08.2017.

3. Feeling aggrieved and dis-satisfied with the communication/letter dated 06.10.2017 issued by the Corporation by which the petitioner was asked whether he would be willing to do the work at 10% below the estimated rate, the original petitioner-tenderer preferred the present CWJC No.15623 of 2017.



3.1. That, by the impugned judgment and order, the learned Single Judge has allowed the writ petition and quashed and set aside the communication/letter no.3064 dated 06.10.2017 issued by the Chief General Manager of the Corporation and has directed the Corporation to proceed further in accordance with law on the ground that the decision taken subsequently in the 37th meeting of the Corporation held on 25.08.2017 could not have been applied in respect to the tender in question retrospectively and, more particularly, when such condition was not there in the NIT.

3.2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge, the Corporation has preferred the present Letters Patent Appeal under Clause 10 of the Letters Patent.

4. We have heard learned counsel appearing on behalf of the respective parties at length, more particularly, Sri Tej Bahadur Singh, learned Senior Counsel appearing for the appellant-Corporation. We have considered the impugned judgment and order passed by the learned Single Judge in detail.

4.1. At the outset, it is required to be noted and does not seem to be in dispute that the letter no.3064 dated 06.10.2017 issued by the Chief General Manager of the Corporation was based



on the decision taken in the 37th Board Meeting of the respondent Corporation held on 25.08.2017. It is not in dispute that when re-tender was issued on 20th July, 2017, no such decision of the Corporation was there. It is also not in dispute that there was no condition in the tender document that the successful bidder has to submit their acceptance to do the work at the minimum possible rate, namely, 10% below the estimated rate. Therefore, as rightly observed by the learned Single Judge, no new condition could have been issued/introduced unilaterally. It would have been different thing if considering the fact that only one tenderer remained, the Corporation would have gone for fresh tender/re-tender. However, they could not have called upon the original petitioner to accept the work at 10% below the estimated rate, the condition which was not there at the time when the tender was invited.

4.2. In view of the aforesaid facts and circumstances of the case, it cannot be said that the learned Single Judge has committed any error in allowing the original writ petition and quashing and setting aside the letter no.3064 dated 06.10.2017 issued by the Chief General Manager of the Corporation, which calls for interference of this Court in exercise of intra court appellate jurisdiction.



5. In view of the above and for the reasons stated above, present Appeal fails and the same deserves to be dismissed and is, accordingly, dismissed. Notice is discharged.

5.1. Ad-interim relief, if any, granted earlier stands vacated forthwith.

5.2. In view of the disposal of the Letters Patent Appeal, Interlocutory Application, if any, stands disposed of.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.09.2018
Transmission Date	

