

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2190 of 2019

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M/s Surendra Prasad and Co. through its Partner Anup Kumar aged about 53 yearsm Male, S/o Late Surendra Prasad Resident of Village/Mohalla-Anandpura, PO- Kadirganj, P.S.- Nawada, District- Nawada.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Government of Bihar, Patna
2. The Principal Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Government of Bihar, Patna
3. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna
4. The Chief Engineer, South Bihar (Mechanical) Road Construction Department, Government of Bihar, Patna
5. Ramjee Singh Construction Pvt. Kachahri Road, Bhaisasur, P.O. and P.S.- Bihar Sharif, District- Nalanda.

.. ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Alok Ranjanm Advocate
For the Respondent/s	:	Mr.Raj Ballabh Pd. Yadav (AAG11)
For the Resp. No. 5	:	Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 27-03-2019

This writ application has been preferred challenging the decision of the departmental tender committee as contained in Memo No. 992(C) dated 31.01.2019 of the Road Construction Department, by which the financial bid of the petitioner has been declared as Non Responsive and the bid of respondent no. 5 has been accepted for the work namely Long Term Output & Performance Based Road Assets Maintenance



work for roads under Package No. 49A/OPRMC-2/Nawada.

Initially the contention of learned counsel for the petitioner was that the petitioner has been disqualified and declared Non Responsive by taking a very hyper technical ground that the petitioner had quoted less rate than lower limit in ordinary maintenance work (OM) as fixed by the department.

It was contended on behalf of the petitioner that the overall rate quoted by the petitioner is 2.54% below the estimated cost of the work i.e. Rs. 743061684.79 against the estimated cost of the work of Rs. 762366536.00 but the Departmental Tender Committee has decided to allot the work to respondent no. 5 on 3.06% above the estimated cost i.e. at Rs. 78,56,98,504.57, total difference amount is Rs. 4,26,36,819.78 which according to the petitioner is a burden on the public exchequer.

The respondents appeared and filed a counter affidavit. In paragraphs 18 & 19 of the counter affidavit following statements have been made:

“18. That from conjoint reading of Clause 27.5 of Instruction to Bidders and heading “E” of Bid Date Sheet it will transpired that the bid of each of components, i.e. Initial Rectification, Periodic Maintenance, Minor Improvement and Ordinary Maintenance work shall not be lower than the threshold and lower limit of threshold has been



fixed as 10% of estimated cost of each activity/price schedule.

19. That from conjoint reading of Clause 27.5 of Instruction to Bidders and heading "E" of Bid Date Sheet it further transpires that accumulation of all four components are not provided in the MBD rather individual quotation of rates of all four components, i.e. Initial Rectification, Periodic Maintenance, Minor Improvement and ordinary Maintenance work is required to be made by the bidders, hence the plea of the petitioner that overall bid amount, quoted as 2.54%, is below of estimated cost completely goes against the Clause 27.5 of MBD and if the said contention of petitioner is accepted it will go against the terms of MBD and will amount to dilute the terms of MBD."

In the subsequent hearing finding the difficulties in responding to this stand of the respondents, learned counsel for the petitioner contended that in any case by awarding the work to respondent no. 5, the respondents will be wasting a sum of Rs. 4,26,36,819.78 which would be against the public interest. At this stage, respondent no. 5 has come out with a supplementary affidavit stating as follows in paragraph-3 thereof:

"3. That the answering respondents is willing to forgo amount of Rs. 4,26,36,819.78 in the interest of work. The answering respondent is ready to execute the work at the amount which is 2.54%



below the estimated cost. Therefore, the answering respondent is willing and prepared to work at Rs. 743061684.79 instead of Rs. 785698504.57.”

In the aforesaid manner respondent no. 5 has now met the argument of learned counsel for the petitioner.

In the given facts and circumstances, this court finds that now even the second ground is not available to the petitioner so as to call upon this court to exercise its discretionary jurisdiction under Article 226 of the Constitution of India. No arbitrariness could be noticed in the decision making process of the respondents. The respondent no. 5 has already agreed to execute the work by foregoing a sum of Rs. 4,26,36,819.78 which the official respondents shall take note of while signing agreement and making payment to respondent no. 5.

At this stage, learned counsel for the petitioner submits that respondents may be directed to return the earnest money deposit of the petitioner. The court has been informed that the earnest money deposit of the petitioner has not been forfeited and is liable to be returned. In these circumstances the petitioner will be at liberty to request the respondents to return his earnest money deposit which will be returned by the



respondents within a period of 30 days from the date of such request.

This writ application is disposed of in terms stated hereinabove.

The respondents shall be at liberty to proceed ahead with the work.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.03.2019
Transmission Date	

