

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.792 of 2018

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M/s Gandhu Chhappar Construction Private Ltd., Titra Tola, Gandhu Chhappar,
P.O.-Titra, P.S. Mairwa, District-Siwan through the Director Jay Narayan
Tiwari, Son of Sri Mukti Nath Tiwary Resident of Titra tola, Gandhu
Chhappar, P.O. Titra, P.S. Mairwa, District- Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Additional Chief Executive Officer-Cum-Secretary, Bihar Rural Road Development Agency, Rural Works Department, Government of Bihar, Patna
4. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Rural Works Department, Government of Bihar, Patna
5. The Chief Engineer-3, Rural Works Department, Government of Bihar, Patna.
6. The Superintending Engineer, Rural Works Department, Work Circle, Siwan-cum-the Chairman of Technical Bid Committee, Rural Works Department, Works Division, Siwan
7. The Executive Engineer-cum-Member Secretary, Rural Works Department, Works Division, Siwan-2
8. The Executive Engineer-cum-Member, Rural Works Department, Works Division, Maharajganj, District-Siwan
9. The Chief Accounts Officer-cum-Member Rural Works Department, Works Division, Siwan-2
10. M/S Kunal Constructions, Village - Babu Hatta, P.O. Udant Rai Ke Bangra, P.S. Barhariya, District-Siwan

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam Mrs. Anita Kumari
For the Respondent/s	:	Mr. Mritunjay Kumar, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 08-02-2019

The present writ petition has been filed for quashing the decision of the Technical Bid Committee dated 12.08.2017 whereby and whereunder the Committee has declared the Respondent No. 10 to have qualified in the technical bid despite his technical bid being defective and fit to be rejected. It has further been prayed to award the contract in question to the



petitioner company since out of the three contractors, while the bid of one of them has been rejected and the bid of the other one is defective, the petitioner is the only surviving contractor whose bid is fit to be accepted.

2. The brief facts of the case according to the petitioner is that pursuant to the notice inviting tender published in the daily Hindi newspaper '*Prabhat Khabar*' on 07.03.2017 for construction of Jataur Rewari to Bangara road, the petitioner and two other contractors had filed their bids, whereafter the meeting of the Technical Bid Committee was held on 12.08.2017 and the decision of the Technical Bid Committee was circulated to all concerned vide memo dated 12.08.2017 and the technical bids of all the three bidders were accepted.

3. It is submitted by the learned counsel for the petitioner that the technical bid of the respondent no. 10 is illegal and arbitrary inasmuch as the tender document of the respondent no. 10 was filed along with an affidavit sworn by one Nitu Devi, the authorized representative of the respondent no. 10, however, all the affidavits filed in support of the technical bid were without welfare stamps, hence, the technical bid of the respondent no. 10 was liable to be rejected. It is further submitted that though, the technical bid of all the three tenderers were accepted by the



Technical Bid Committee, however, the financial bid of only one tenderer i.e. Vijay Pandey was considered by the Financial Bid Committee.

4. Per contra, the learned counsel for the respondents no. 1 to 9, referring to the counter affidavit, has submitted that initially, the N.I.T. for the work in question was floated, however, nobody turned up, hence, the said N.I.T. was cancelled. Thereafter, a fresh N.I.T. was published by the Executive Engineer in the daily Newspaper on 07.03.2017, whereupon three tenderers including the petitioner company had participated and the Technical Bid Committee in its meeting held on 12.08.2017 had declared all the three tenderers to have qualified. Since the tenderer, namely, Vijay Pandey had quoted the lowest rate, his name was recommended for the purposes of opening of financial bid, but in the meeting held on 26.12.2017 under the Chairmanship of the Secretary, Rural Works Department, Government of Bihar, Patna, the tender submitted by the bidder, namely, Vijay Pandey was rejected in light of Clause 4.4 C of the S.B.D. (PMGSY). It is, therefore, submitted that the grievances of the petitioner that after rejection of the financial bid of the contractor, namely, Vijay Pandey, the said tender should have been awarded to the petitioner company, is



misplaced inasmuch as the rate quoted by the petitioner was higher than the rate quoted by the said contractor, namely, Vijay Pandey and the financial bid of the petitioner had already been rejected. On account of rejection of the bid of Vijay Pandey, ultimately, the tender had to be cancelled and fresh process of re-tendering for the aforesaid contract in question was initiated and subsequently, a fresh N.I.T. was issued for the said work. In response whereof, only one tenderer, namely, Kunal Construction applied for the same and he was declared qualified, whereafter the work order dated 17.04.2018 was issued for the purposes of undertaking the contract in question. It is, thus, submitted that the present writ petition has become infructuous.

5. I have heard the learned counsel for the parties and perused the materials on record and I find that the petitioner, in the writ petition, has only prayed for declaring respondent no. 10 to have not qualified in the technical bid, which in view of this Court is a misplaced and misconceived prayer inasmuch as finally, financial bid of the respondent no. 10 had not succeeded. The other prayer of the petitioner company is to direct the respondents to award the contract in its favour since the financial bid of the second bidder i.e. Vijay Panday has been



rejected, is equally not tenable in the eyes of laws.

6. For the reasons mentioned in the preceding paragraphs, as submitted by the respondents in their counter affidavit as also for the reason that the petitioner has not been able to demonstrate from the N.I.T. and the standard bidding documents (not annexed to the writ petition though being the most vital document for the purposes of adjudication of the present case) that the respondents were barred from cancelling the tender without assigning any reason and more so for the reason, as demonstrated by the State-respondent that after cancelling of the tender in question, notice inviting re-tender of the work in question has already been issued and one tender, namely, Kunal Construction has been declared qualified and has been issued work order vide letter dated 17.04.2018, but still the petitioner has neither bothered to assail the award of re-tender to the said Kunal construction nor has joined him as party respondent to the present case, the present writ petition is liable to fail, hence, is dismissed.

7. Before parting with the case, it would be relevant to mention that it is a well settled law that so long as the bid has not been accepted, even the highest bidder acquires no vested right to have the auction concluded in his favour and the person



issuing tender may decide not to enter into any contract and thereby, cancel the tender, as has been held by the Hon'ble Apex Court in the cases reported in *1996 (4) SCC 208 (Laxmikant and Ors vs. Satyawani and Ors.)*, *2007 (1) SCC 477 (Rajasthan Housing Board and Anr. vs. G.S. Investments and Anr.)* and *2013(5) SCC 182 (Uttar Pradesh Avas Evam Vikas Parishad and Ors. vs. Om Prakash Sharma)*.

8. For the reasons mentioned hereinabove, the writ petition is dismissed, however, without any order as to costs.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	01.10.2018
Uploading Date	11.02.2019
Transmission Date	NA

