

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15837 of 2018

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Mukesh Kumar Son of Arghya Prasad, Resident of Ratan Tola, P.O.- Maner, P.S.- Maner, Distt- Patna. authorized signatory of the Arya Toll Infra a Private Limited Company having its office at 12, Sunita Anand Palace Co-op Society, CTS No. 630, Bal Rajeshwari Road, Vaishali Nagar, Mumbai, Maharashtra.

... .. Petitioner/s

Versus

1. The Union Of India through its Director General Defence Estates, HQ/ Central Command DGDE/Cantt. Board, Danapur DGDE, CC.
2. Director General Defence Estates, HQ/Central Command DGDE//Cantt. Board Danapur DGDE, CC
3. Chief Executive Officer, Danapur Cantonment Board, Danapur, Patna.
4. Technical Evaluation Committee, through its authorized signatory Md. Naseem, Contonment Board, Dana
5. N.K. Gupta, Office Superintendent, Danapur Cantonment Board, Patna.
6. Rajendra Singh H1 bidder 15, Mother Teressa Marg, North S.K. Puri, Patna-8000013.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Chaudhary, Adv. Mr.Dhananjai Kumar Singh, Adv. Mr. Jyoti Ranjan Jha, Adv.
For the Respondent/s	:	Mr.S.D Sanjay Addl. Soc. Gen. Mr. Kumar Priya Ranjan, CGC
For Cantonment Board :	:	Mr. Amarendra Nath Verma

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 06-03-2019

The present writ petition has been filed by the petitioner being the Director of a private Limited Company, namely, Arya Toll Infra Ltd., challenging the legality and validity of decision of the Technical Evaluation Committee dated 28.07.2018 whereby and whereunder the Technical evaluation Committee has rejected the technical bid of the petitioner on account of non-submission of



the following documents, either online or hard copy, as required as per the tender document:-

- (a) Affidavit for constitution of Firm (in case of Firm)
- (b) Submission of Form A by bidders with signatures of Authorized person.
- (c) Terms and Condition Accepted Document
- (d) Certificate duly signed by the Authorized Signatory duly enclosed.

2. The petitioner has further challenged the legality and validity of letter dated 3.8.2018 issued by the Office Superintendent, Danapur Cantonment Board, whereby and whereunder the rejection of the technical bid of the petitioner by the Technical Evaluation Committee has been justified by stating that the hard-copy of the document could also have been submitted in the office of Cantonment Board.

3. The brief facts of the case, according to the petitioner, are that an E-Tender dated 2.7.2018 was notified on the Website of Danapur Cantonment Board, for collection of license fee on entry of Commercial vehicles at the pre-designated entry points in Danapur Cantonment. The petitioner had purchased tender documents from the office of the respondents and after properly going through the same, prepared all required documents and uploaded the same on the stipulated dates on the link available on the Website within stipulated time. On 28.07.2018, it came to the knowledge of the petitioner that the technical bid submitted by the



petitioner has been rejected by the Technical Evaluation Committee and on the same day, financial bid submitted by the private respondent no.6 has been accepted and the Technical Evaluation Committee has declared him as a H1 Bidder.

4. The learned counsel for the petitioner has submitted that the grounds on which the technical bid of the petitioner's company has been rejected, is non-est in the eyes of law inasmuch as since the petitioner is a registered private company and not a firm, the Affidavit for Constitution of Firm (in case of Firm) is not required to be submitted by the petitioner. As far as the submission of Form-A by bidders with signatures of authorized person is concerned, it has been submitted that since neither there was any column/ link on the Website of the Cantonment Board to upload the same nor it was possible to furnish hard-copy of the same, it was not possible for the petitioner to put his digital signature over Form-A. As far as the third ground i.e. "Terms and Condition accepted document is concerned, it has been contended that since the same is available on the hard-copy of the tender form and the present tender was E-Tender, submission of the same was not possible since there was no column/ link on the website for submission of said information. Lastly, regarding the 4th ground i.e. "Certificate duly signed by the Authorized Signatory duly



enclosed” is concerned, it has been submitted that since there was no link/ column, the same could not be uploaded.

5. The learned counsel for the petitioner has submitted that the decision of the Technical Evaluation Committee dated 28.7.2018 is illegal inasmuch the technical bid of the petitioner’s company could not have been rejected on the ground on which the same has been rejected, since there was no column/ link on the website to upload such documents and moreover hard copies of the documents were nowhere permitted to be uploaded, hence the tender of the petitioner’s company is required to be considered afresh by initiating fresh tender process.

6. Per contra, the learned Additional Solicitor General appearing for the respondents no. 3 to 5 i.e. Danapur Cantonment Board, Patna (hereinafter referred to as “the Board”) has submitted that the present writ petition is a belated attempt on behalf of the petitioner’s company inasmuch as though, it has been stated that the petitioner’s company did not upload the enclosures in between the period 2.7.2018 to 24.7.2018 and also did not take any steps to agitate its grievances after the technical bid was rejected for want of enclosures on 26.7.2018, the petitioner’s company has belatedly approached this Court only after the financial bid was opened on 28.7.2018 and the bid of the respondent no.6 was found to be



highest It is stated that the respondent no.6 has already been allotted the work and he has started the work. It has been further submitted by the learned Senior counsel that the contention of the petitioner's company that in absence of any link for uploading the enclosures with the bid, which led to the rejection of its technical bid, is not correct inasmuch as there were as many as ten spaces made available on the website for uploading of the requisite papers and ample time from 2.7.2018 to 24.7.2018 was allowed by the respondent Board for uploading the requisite enclosures and, in fact, other bidders had successfully uploaded the requisite documents, however, even though the petitioner's company was unable to upload the requisite enclosures for a long period of 23 days, it thought it proper to sit tight and not to seek any clarification from the respondent Board which clearly shows that the petitioner was not serious.

7. The learned Senior counsel has also raised the question of maintainability of the present writ petition on the ground that the present writ petition has been filed by an individual claiming to be the authorized signatory of the company, namely, Arya Toll Infra Private Ltd., however, no resolution of the Board of Directors of the Company has been placed on record showing that the present petitioner has been authorized to file the



present writ petition, nonetheless, it is submitted that the writ petition was required to be filed by the company itself. The learned Senior counsel for the respondent Board has further submitted that the entire process of the tender was not only legal, but also quite transparent and a bare perusal of “Note (ii)” of the tender notice, would show that in addition to uploading the necessary documents on the e-procurement portal of the Government of India, the bidders were also asked to submit the hard copy thereof, if required, in the office of the Cantonment Board by 24.07.2018 upto 5:00 P.M., however, the petitioner’s company neither chose to upload the necessary documents nor it bothered to submit hard copy of the same nor it inquired or complained to the office of the e-procurement Managers or the office of the Board in between 2.7.2018 to 24.7.2018 regarding it not being able to upload the necessary documents, which only indicates the slack attitude of the petitioner’s company, hence, in absence of the requisite documents having been uploaded, the technical bid of the petitioner’s company was rightly rejected on 26.7.2018. Lastly, it is submitted that the transparency and genuineness of the actions of the respondent Board would be apparent from the fact that though the bid of the petitioner’s Company was out rightly fit to be rejected on account of non- receipt of the earnest money deposit of Rs.



2,20,000/- in time in the Bank account of the Cantonment board, which had reached only on 25.7.2018, the technical bid of the petitioner's company was still entertained and opened on the basis of the uploaded EMD by the petitioner's company.

8. I have heard the learned counsel appearing for the parties and gone through the records of the case and I find from the notice inviting tender published by the respondent Board dated 2.7.2018, annexed to the counter affidavit filed by the Board, that "Note-II" of the notice clearly specifies that in addition to uploading the necessary documents on the e-procurement portal of the Government of India, the bidders should also submit hard copy thereof, if required, in the office of the Cantonment Board by 24.7.2018 upto 5 P.M., hence, if the petitioner's company had any difficulty in uploading the requisite documents to the bid in question, it would have submitted the hard copy thereof, but the petitioner's company admittedly did not bother to do so and, in fact, in the rejoinder affidavit filed by the petitioner's company as well, no explanation/rebuttal to Note – II has been given, hence, it is apparent that the petitioner's company had admittedly committed a mistake/error by not uploading the necessary documents, hence, this Court finds that the technical bid of the petitioner's company was rightly rejected. Moreover, this Court



does not find that the respondent Board has acted with any malice against the petitioner herein inasmuch as the entire process of the tender has been not only clean but also transparent and legal and the respondent Board had opened the bids on 26.7.2018 itself wherein the technical bid of four bidders including that of the petitioner's company was rejected on account of deficiencies and subsequently the financial bids of the two remaining bidders were opened on 28.7.2018, whereupon the highest bid of the respondent no. 6 was selected since it had offered Rs.1,11,51,000.00. This Court thus finds that the petitioner's company has created a false bogey, after it has been found to have defaulted in supplying/ uploading necessary documents, required to be submitted along with the bid, on account of its laches/negligence, hence, no relief can be granted to the petitioner. Accordingly, the writ petition stands dismissed, however without any order as to cost.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	24.09.2018
Uploading Date	07-03-2019
Transmission Date	

