

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23605 of 2019

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Ranjeet Kumar Ranjan Son of Sri Chandrabhushan Yadav, Resident of Khutia Ward No. 18, P.S. Mansi, District- Khagaria, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer in Chief, Rural Works Department, Bihar, Patna.
3. The Chief Engineer-2, Rural Works Department, Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Works Circle, Saharsa.
5. The Executive Engineer, Rural Works Department, Work Division, Gogri, District- Saharsa, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhat Ranjan
For the Respondent/s : Ms. Archana Meenakshee (Gp6)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 19-12-2019 Heard Mr. Prabhat Ranjan, learned counsel for the petitioner and Ms. Archana Meenakshee for the State.

The petitioner, a successful bidder at the technical stage, has challenged the order dated 20.11.2019, issued under the signature of the Enquiry Committee of which the Engineer in Chief, Rural Works Department, Patna is the Chairman, whereby the technical bid has been directed to be re-evaluated and



an explanation has been asked for holding the bid of the petitioner and one Chandan Kumar to be responsive to the Notice Inviting Tender.

It appears that against the NIT for a work in Gogari Division, namely, for construction of road for a particular distance, four tenderers including the petitioner furnished their papers. In the technical bid, two were declared to be unsuccessful, whereas the petitioner and one Chandan Kumar were found to be successful. Their financial bid also was opened. However, on a complaint lodged by one of the tenderers, an enquiry was conducted by a committee comprising Engineer in Chief also which found that the petitioner and Chandan Kumar both were wrongly declared to be successful in the technical bid. The reason for upturning the decision of holding the petitioner's bid to be responsive to the NIT was that as against the earnest money, the petitioner had furnished NSC which was of an older antiquity to the NIT. The other ground for



holding the bid of the petitioner to be unresponsive was that the affidavit with respect to the availability of minimum key equipment for the concerned work was also prior to the date of issuance of notice. Thus, the technical bid of all the four tenderers were found to be unresponsive and a decision was taken by the Committee to send the technical bid for re-evaluation.

Mr. Prabhat Ranjan, learned counsel for the petitioner has challenged the aforesaid order on several grounds, but primarily on the issue that once the financial bid was opened, the rates offered by the petitioner became public. No purpose would then be served in re-evaluating the technical bid.

The other ground of challenge is that there is no requirement for furnishing of the earnest money / NSC which is contemporaneous or later than the date of issuance of NIT as per its terms. Even with respect to the affidavit regarding key equipments, if there was any flaw in the same, it could have corrected / rectified by



the petitioner. Before cancelling the technical bid of the petitioner, he was required to be noticed.

Thus, the reasons for which the bid of the petitioner was held to be non-responsive and that also after the opening of the financial bid was not a decision which could be countenanced under any circumstance. It is for this reason that the present writ petition has been filed seeking a direction to the respondents to accept the bid of the petitioner and assign the work to him.

As opposed to the aforesaid contentions, it has been urged on behalf of the State that an enquiry was conducted by the Engineer-in-Chief, who constituted a Committee of which he also was a part, which found that the bid of the petitioner was not responsive for the two reasons, which have been recounted above.

In that view of the matter, even if the financial bid was opened, the two tenderers, who were in the fray, could not have altered their financial offers.

Learned counsel for the petitioner however



submits that the aforesaid issues do not find any echo in the counter affidavit and therefore, if such grounds are being relied upon for dismissing the case of the petitioner, the petitioner ought to have given a chance to rejoin.

The aforesaid request of the petitioner is absolutely unfounded. A decision is made on the pleadings and on the assessment of the Court of the facts of the case. It is not always necessary for the opportunity to a petitioner to rejoin if there is no dispute with respect to any factual aspect of the case.

The grounds urged with respect to the jurisdiction of the Engineer in Chief to hold an enquiry after constituting a committee has also been raised and considered and has not been found to be sustainable by this Court.

Since along with the petitioner the technical bid of the other successful tenderer was rejected, the decision cannot be said to be *mala fide*.



True it is that after the opening of financial bid, such an action was avoidable but once a complaint was lodged with respect to correctness of the assessment of the technical bid of the petitioner and another and a committee was constituted for the purpose, remained no other option but to re-evaluate the financial bid, apart from abandoning the NIT altogether and floating a fresh tender.

There being no mala fides in the action and the petitioner not having been singled out for any particular reason, the anxiety of the petitioner that the entire process was aimed at ousting him is not correct. The injury suffered by the petitioner therefore is not in the nature of a breach of his right to be selected as a concessionaire.

The law with respect to commercial tenders is too well settled today to be recounted.

The Supreme Court in *Michigan Rubber (India) Limited Versus State of Karnataka & Ors.*



[(2012)8SCC216], after taking into account the current trend of decisions in *Tata Cellular Versus Union of India* *[1994 6 SCC 651]*; *Union of India Versus International Trading Company* *[(2003) 5 SCC 437]*; *Tejas Construction & Infrastructure (P) Ltd. Versus Municipal Council, Sendhwa* *[(2012) 6 SCC 464]* and other cases formulated certain principles, which are being listed for ready reference and for completeness.

"23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have



any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on



business with the Government.”

What can be gathered from the pleading of the parties is that none of the tenderers were allowed to remain in the fray.

There is some force in the submission of the learned counsel for the petitioner that after the technical bid of the petitioner and for that matter of the other tenderer was found to be responsive, no purpose would have served in re-evaluating the tenders at the technical bid stage.

For all practical purposes, therefore, the notice inviting tender in the present instance has to be abandoned and the same is provided for.

It would however be open for the respondents to float a fresh NIT and evaluate the papers of the tenderers in a two bid system. It would also be open for the petitioner to participate in the same, should he so desire.

With the aforesaid observation / direction, this



petition stands disposed off.

(Ashutosh Kumar, J)

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