

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 4740 of 2020

Subhash Kumar Shahi son of Shri Shardanand Shahi, resident of Village and P.O.- Devpura, P.S.- Rasulpur, District- Chhapra (Saran)

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Government of Bihar, Patna
2. The Secretary, Rural Works Department, Government of Bihar, Patna
3. The Engineer-in-Chief Rural Works Department, Government of Bihar, Patna
4. The Chief Engineer-2 Rural Works Department, Government of Bihar, Patna
5. The Executive Engineer, Rural Works Department, Works Division, Maharajganj, Siwan
6. The Superintendent Engineer, Rural Works Department, Works Circle, Siwan
7. The Special Work Officer, Rural Works Department, Government of Bihar, Patna
8. The Technical Bid Committee, represented through the Engineer in Chief, Rural Works Department, Government of Bihar, Patna for NIT No. MR-3054-07/2018-19

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr Ashish Giri, Advocate
For the Respondent/s : Mr Ajay, GA V

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 06-07-2020

As of now, the Courts have not resumed normal physical hearing. The matter has been listed today for consideration through Video Conferencing.

2 Learned counsels are appearing and making submissions from their residence. The Court Master and Secretary



are also part of this virtual Court proceedings with the aid of audio visual technology.

3 Heard learned counsel for the petitioner and the learned counsel for the respondents.

4 The respondent-State Government, through its Rural Works Department, from the office of the Engineer-in-Chief, has issued Notice Inviting Tender (for brevity, *NIT*) No MR-3054-07/2018-19 dated 14.02.2019 to undertake initial rectification works including surface renewal and ordinary maintenance for a period of 5 years after completion of initial rectification works including surface renewal works on selected roads.

5 The writ petition has been filed seeking quashing of decisions of the Technical Bid Committee dated 20.02.2020 and the earlier decision dated 21.08.2019, leading to rejection of the petitioner's bid.

6 Shorn of unnecessary details, the issue that arises for consideration is whether the submission of original instrument of Earnest Money Deposit (for brevity, *EMD*), cost of Bill of Quantity (for brevity, *BoQ*) and affidavit in terms of Clause 7 of the NIT, which was submitted after the last date and time fixed, was liable for rejection or not?



7 From the pleadings on record, it appears that the State Authorities have found that the said documents were submitted by the petitioner belatedly after 15:00 Hours on 26.03.2019, i.e., the last date and time specified for submission of documents as per Clause 7 of the NIT (Annexure 1). The Accounts Clerk and Divisional Accountant reported to the Authorities that on 31.07.2019, the petitioner pressurized them to give an ante dated receiving for 26.07.2019. Information regarding this was submitted to the Executive Engineer, Works Division, Maharajganj on 31.07.2019 itself. These allegations are factually denied and disputed by the petitioner.

8 Disputed issues of facts, therefore, are required to be adjudicated. It is under these circumstances that this Court has put a query to Mr Ashish Giri, learned counsel for the petitioner that whether such disputed issues of facts could be raised in a writ proceedings or the same is required to be decided by the appropriate forum in appropriate civil proceedings.

9 Mr Ashish Giri, in response, has submitted that no consequence has been prescribed for non-submission of documents by 15:00 Hours on 26.03.2019, or for submission of the same after 15:00 Hours on 26.03.2019. Even if the documents were submitted after 15:00 hours on 26.03.2019, the petitioner's



bid could not have been rejected as it was submitted prior to consideration of the bids by the Authorities. He submits that last date and time was merely directory and not mandatory.

10 This Court would observe that if the last date and time for submission of original instrument of EMD, cost of BoQ and affidavit which were essential to ascertain correctness of the information provided in the bid documents, were to be read and interpreted as being open ended, the same would result in arbitrariness. Once the last date and time for submission is provided in the NIT, all prospective tenderers, and tenderers were duly notified and conscious that they were uniformly required to adhere to the same. If the Authorities were to overlook the last date and time provided in the NIT, the same would only lead to uncertainty in the process. It is only in public interest and equitable to read Clause 7 of the NIT prescribing last date and time as being fixed and uniform for all prospective or actual tenderers, rather than leaving it to the discretion of the authorities to accept tender related documents after the last date for submission specified in the NIT, even if the actual consideration of tender bids is later. If the last date for submission of documents specified in the NIT was not to be treated as fixed and it was left to the discretion of the Authority to accept bids/documents even after the



last date, the same would lead to unbridled discretion in the hands of the Authorities to prolong consideration to benefit anyone. Last date for accepting documents in support of the tender, therefore, has a purpose, i e, to ensure non-arbitrariness and procedural fairness and obliterate chance of favouritism and nepotism, and the last date is in furtherance of Article 14 of the Constitution of India.

11 No case is made out for invoking jurisdiction of this Court under Article 226 of the Constitution of India to issue any direction for facilitating consideration of petitioner’s bid submitted after the last date fixed in the NIT.

12 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.08.2020
Transmission Date	NA

