

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5710 of 2020

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Chanda Singh, Wife of Vijay Kumar Singh, Resident of B- 144, Ekta Satya Shanti Apartment, Sector- 13, Rohini Sector- 7, North West Delhi at present Resident of B- 98, Police Colony, P.S. Anisabad, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chef Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Siwan Division, Siwan.
5. The Executive Engineer, Rural Works Department, Hathua Division, Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocae Mr.Ravindra Kumar, Advocate
For the State	:	Mr.Kumar Alok (SC-7)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

6 19-06-2020 1. Heard Mr. P.K.Shahi, learned senior counsel appearing on behalf of the petitioner assisted by Mr. Ravindra Kumar and Mr. Kumar Alok, SC-7 on behalf of the State.

2. The petitioner has challenged the decision of the respondent dated 15.2.2020 rejecting the technical bid of the petitioner with regard to pakage No. BR 13 PTR-04/MRLOI-Rampur North to Dularpur under PMGSY.

3. The technical bid of the petitioner was rejected on the ground that the petitioner was not qualified in terms of Clause 4.4A of the of the Instructions to Bidders (ITB). This



Court after hearing the petitioner had directed the respondents to maintain status quo vide order dated 27.5.2020.

4. A counter affidavit has been filed on behalf of the State to justify Annexure-1. Mr. Kumar Alok, learned counsel for the State, with reference to Clause 4.4A of the ITB would submit that the petitioner is not qualified for the technical bid as the requirement is that in any financial year the financial turn over should be equivalent to the bid amount i.e. in the present case Rs. 382.17 lacs. He submits that the question of fulfillment of other conditions under Clause 4.4A would only arise provided the petitioner qualifies the test of financial turn over in any financial year in the last five years equivalent to 382.17 lacs.

5. Mr. P.K.Shahi, learned senior counsel appearing on behalf of the petitioner has drawn the attention of the Court to sub-clause (b) of Clause 4.4A of the ITB. The conjoint reading of the clause 4.4A (a) and (b) makes it crystal clear that the petitioner had qualified for technical bid and rejection of the tender of the petitioner treating the petitioner not qualified on the ground that the petitioner's turn over in any of the five years is less than 382.17 lacs.

6. After going through the scheme of the bid



document and reading clause 4.4A, the Court is of the view that the construction adopted by the respondent to render the bid of the petitioner as not qualified, is misconceived as in such situation the scheme of clause 4.4A (a)(b) creates anomalous situation. If the petitioner is not qualified under Clause 4.4A(a) yet on the strength as sub contractor would qualify only on satisfaction of requirement as to half of the estimated cost of construction. In such situation, it cannot be accepted as reasonable construction of Clause 4.4A. Accordingly, the Court declares the action of the respondent rejecting the technical bid of the petitioner as arbitrary exercise of power and the decision dated 15.2.2020 is accordingly quashed.

7. So far as objection raised in para-10 of the counter affidavit that the petitioner has used Annexure-4 which is a forged document is concerned, the Court finds that the aforesaid submission of the respondent is misconceived as Annexure-4 may not be authentic document but that cannot be regarded as forged document. Therefore, the submission of the State is rejected.

8. Accordingly, the respondents are directed to accept the technical bid of the petitioner as qualified in terms of the bidding document. Necessary further formality for finalization



of Financial bid must be completed by the respondents, considering the nature of work involved, at the earliest preferably within a period of 60 days from the date of receipt/production of a copy of this order.

9. With the aforesaid observations and directions, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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