

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5712 of 2020

M/S Kolesahwari Infracon Private Limited, a Company registered under the provisions of Companies act and having its registered office at 310, 3rd Floor F 10 11 and 12, Triveni Complex, Jawahar Park, Laxmi Nagar New Delhi-110092 represented through its Director, namely, Shri Arun Kumar Singh, Male aged about years, S/o Late Bachu Pd. Singh, Resident of Vill Nagar (H.N. 01), P.O. and P.S. Hunterganj, Dist Chatra, Jharkhand 825403.

... .. Petitioner

Versus

1. The State of Bihar represented through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Superintendent Engineer, Rural Works Department, Work Circle, Gaya, Bihar.
3. The Executive Engineer, Rural Works Department, Work Division, Imamganj, Gaya, Bihar.
4. The Executive Engineer, Rural Works Department, Work Division, Sherghati, Gaya, Bihar.
5. The Divisional Accounts Officer, Rural Works Department, Work Division, Sherghati, Gaya, Bihar.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Advocate
For the Respondent/s : Mr. Kumar Alok, S.C.-7

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

7 22-06-2020 A notice inviting tender (NIT) was issued on 12.01.2020, inviting tenders with respect to several works under Pradhan Mantri Gram Sadak Yojana-II Rural Road Project-II, including construction of T05-T04 Gaya Sherghati Road to Bhararipul, under Executive Engineer, Rural Works Division, Gaya, which is subject matter of dispute in the present writ application.

2. In response to the NIT, the petitioner claims that it



had submitted tender documents along with bid security deposit of 10.87 lakh, firstly, electronically on 02.02.2020, and subsequently, all the documents and demand draft of Rs.10.87 lakh were deposited in physical form in Sherghati Division on 04.02.2020, which were duly received by the authority concerned.

3. The fact that the petitioner had submitted physical documents, which was one of the requirements in the NIT, is being disputed. The petitioner's technical bid for the said work has been rejected on the ground of non-submission of original physical form of the tender documents and bid security. A communication in this respect has been made to the petitioner vide Memo No.468 dated 11.02.2020.

4. The petitioner is seeking quashing of the said communication dated 11.02.2020 as, according to the petitioner, rejection of the technical bid is on nonest grounds.

5. The petitioner, which is a private limited company, has also sought for a direction to the respondents to allow it to participate in the tender, from the stage of rejection and declare bad the entire consequential action taken by the respondents based on the said rejection. It is noteworthy that the said work has indisputably been re-tendered. The petitioner seeks quashing



of invitation of bids through said re-tender No.RWD/PMGYS-II/RPR-II HQFT-20-21/03.

6. A counter affidavit has been filed on behalf of the State of Bihar, to which a rejoinder has been filed on behalf of the petitioner, which are there on record. It has been averred in the counter affidavit that there were altogether seven tenders submitted by seven tenderers including the petitioner *online*, but five tenderers, including the petitioner, failed to submit certain documents, including bid security, original affidavit etc, as contemplated in the NIT, till 15.00 hours of the last date fixed for submission of such documents. Clause 6 of the NIT made it mandatory for submission of the original documents upto 04.02.2020 till 15.00 hours either by registered post or by hand, else the bids would be declared non-responsive. Clause 6 of the NIT has been quoted in the counter affidavit, which is being reproduced hereinbelow : -

“6. Submission of Original Documents:

The bidders are required to submit (a) original demand draft towards the cost of bid document and (b) original bid security in approved form and (c) original affidavit regarding correctness of information furnished with bid document as per provisions of Clause 4.4 B(a)(ii) of ITB to the Secretary BRRDA, 3rd Floor, Bhumi Vikas Bank, Budh Marg, Patna/Executive Engineer, RWD of the concern works division up to 04.02.2020 till 15.00



hours either by registered post or by hand, failing which the bids will be declared non-responsive.”

7. It is the case of the State of Bihar that the Tender Evaluation Committee, after considering the documents, qualified only two tenderers and disqualified five others including this petitioner in the meeting held on 11.02.2020. It is also pleaded that the decision of the Tender Evaluation Committee dated 11.02.2020 was uploaded on e-proc (e-procurement portal <http://pmgsytendersbih.gov.in>). Reference has been made to Clause 22.6 of the MBD in the counter affidavit to take a plea that there was provision for submission of objection within five days from the date of communication of decision of the Tender Evaluation Committee. The petitioner, however, did not submit his objection within five working days as stipulated in Clause 22.6 of the MBD. In that background, final bid of two successful bidders were opened when it was noticed that both the bidders had submitted the same rate. Finding collusive behaviour of the two successful bidders, it was decided on 08.05.2020 to cancel the entire tender process, whereafter fresh NIT has been issued. Only after cancellation of the tender on 08.05.2020, for the first time, the petitioner, through its Director, sent an objection on 13.05.2020. On the point of rejection of the petitioner's technical bid, there is



statement made in paragraph 5(j) of the counter affidavit that uploading of decision of the Tender Evaluation Committee was communicated automatically on respective mobile number of the petitioner and all other tenderers.

8. The petitioner's objection, raised on 13.05.2020, has been rejected by a communication dated 26.05.2020 on the ground that the same was not raised within the stipulated time.

9. Dealing specifically with the statement of the petitioner in the writ petition that bid security, original demand draft, original affidavit etc. were submitted on 04.02.2020 in compliance of Clause 6 of the NIT, it has been stated in the counter affidavit that at 4:30 PM on 04.02.2020, the petitioner managed one petty staff in the office, who was working as a Chainman, and handed over acknowledgment without having any hard copy of the original bid documents and obtained his initials after making him understand that the same was a letter for the office. It has also been averred in the counter affidavit that the Chainman handed over the said letter to the Cashier to put his endorsement to this effect. The Chainman was not authorized to receive or collect any such physical form or documents relating to tender. It has been pleaded in the counter affidavit that this is why the petitioner has not brought on record



receiving of submission of physical form of original tender documents.

10. In the rejoinder affidavit filed on behalf of the petitioner, it has been stated that in respect of similar other bids out of the same NIT, the petitioner had deposited hard copies of the entire bid documents in the same manner and the same person had given acknowledgment in token of receipt, which were duly processed resulting into allotment of contract in its favour for other works. This fact having not been controverted, the contrary averments, made in the counter affidavit, are not tenable. It has been denied that the petitioner or its authorized signatory ever received any message through mobile and any communication was earlier made in respect of the decision of the Tender Evaluation Committee rejecting the petitioner's technical bid.

11. It is noteworthy that the respondents have brought on record tender summary report of the tender, in question, which is computer generated, on the basis of which it is their case that decision of Tender Evaluation Committee, rejecting petitioner's technical bid, was uploaded on 18.02.2020. Another document, by way of Annexure-H, has been brought on record with the counter affidavit, which bears noting to the effect that



the petitioner had pressurized to receive the bid documents at 4:30 PM on 04.02.2020, when time for submission of physical documents was already over. It is the petitioners case that the said noting is an act of interpolation.

12. It is evident from what has been noted hereinabove that on the one hand, it is the stand of the respondents that the petitioner did not submit the documents in physical form within the time prescribed on 04.02.2020, which fact the petitioner is disputing. It is the case of the respondents that the decision of the Tender Evaluation Committee to reject the technical bid of the petitioner and five other tenderers was uploaded on the concerned *e*-procurement portal. Though there is no specific denial of this fact, it is the case of the petitioner that he did not have any knowledge about rejection of his technical bid. It is the case of the State of Bihar that rejection was communicated on the mobile phones of the tenderers, which the petitioner is denying with an assertion that no such message was ever received by it's authorized signatory or any other representative.

13. The petitioner and the State of Bihar are contesting the facts pleaded in their respective pleadings. This is not a case where this Court, exercising power of judicial review,



under Article 226 of the Constitution of India, is required to enter into adjudication of the nature of disputed questions of facts, noted above. The work, in question, has been re-tendered. The petitioner has an opportunity to participate in re-tender, which he might have done.

14. In the facts and circumstances, no interference by this Court is needed.

15. This application is dismissed.

(Chakradhari Sharan Singh, J)

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