

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5721 of 2020

Abhay Shankar Singh Son of Sri Ramjee Singh, Resident of Mohalla-
Postmortem Road, Shiv Nagar, Ward No. 16, P.S.- Nawadah Town, District-
Nawadah.

... .. Petitioner

Versus

1. The Bihar Urban Infrastructural Development Corporation Ltd. (BUIDCO) through its Managing Director, having its office at Maurya Lok Complex, Patna.
2. The Executive Engineer, BUIDCO, Nawadah.
3. The Executive Officer, Nagar Parishad, Nawadah.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Arun Kumar, Advocate
For the Respondent/s : Mr.Lalit Kishore (Ag)

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 28-05-2020

In view of nationwide Lockdown on account of Covid-19 global pandemic the matter was mentioned seeking permission to file this writ petition and for its listing as an urgent matter for consideration through video conference. Upon due consideration the Hon'ble Chief Justice accepted the motion for urgent listing. The matter has accordingly been placed today for consideration through video conference.

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



are also part of this virtual court proceedings from their homes, all with the aid of audio visual technology.

Heard Mr. Arun Kumar, learned counsel for the petitioner and Mr. Ravindra Priyadarshi, the learned counsel appearing for Bihar Urban Infrastructural Development Corporation Ltd. (in short, BUIDCO) as also Mr. Prashant Snha, learned Counsel appearing for the Nagar Parishad, Nawada.

The writ petition has been placed for consideration along with a report showing many defects. The defects are such which are other than exemption provided currently for filing cases. Even copy of the 'Adhaar Card' in proof of petitioner's identity has not been submitted.

Learned Counsel for the petitioner submits that he will be submitting photo copy of the 'Adhaar Card' of the petitioner to remove defect No. 67 pointed out by the Stamp Reporter.

Matter may be listed along with the other defects for consideration at 2.15 PM today itself.

Let the petitioner's counsel take aforesaid steps in the meanwhile.

Later On

Heard learned Counsel for the petitioner, learned Counsel representing respondent No. 1 (BUIDCO) and the learned Counsel representing the Nagar Parishad, Nawada.



Learned Counsel for the petitioner has transmitted photo copy of the 'Adhar Card' as I/d proof of the petitioner to make good defect No. 67 pointed out in the stamp report. In respect of other defects, he has submitted an undertaking that the same shall be cured as and when he is called upon to do so.

The case of the petitioner, as per averments made in the writ petition, is that an advertisement was brought out by Nagar Parishad, Nawada on 23.3.2020. The same was inviting tender bids for the purpose of cleaning of drains. Altogether six drains were to be cleaned for which six different works have been tabulated in the Tender Notice (Annexure 1). The Tender Notice was extended by a corrigendum dated 11.4.2020 and thereafter by a second corrigendum dated 21.4.2020. The petitioner has applied in response to the tender notice for the six works of cleaning drains.

In the process of evaluation of bids some irregularities were detected when comparative details were forwarded by the Nagar Parishad to the office of the Executive Engineer, BUIDCO under communication dated 3.5.2020. It would be relevant to mention here that in respect of such infrastructural projects of the Government of Bihar, BUIDCO is the Nodal Executing Agency.

The office of the Executive Engineer, BUIDCO under communication dated 11.5.2020 has written to the Nagar Parishad



highlighting the irregularities in the comparative details sent upon evaluation of the tender bids, under communication dated 03.05.2020. Clause 3 (३) of the comparative details is said to have been violated by he Nagar Parishad.

Respondent No. 2 therefore directed that the tender process based on tender notice dated 23.2.2020 bearing No. 08/2019-20 be cancelled and fresh tender be notified for the works in question.

The petitioner has approached this Court with a prayer that the communication of the respondent No. 2 cancelling the earlier tender process, which is dated 11.5.2020, and the consequent action thereto including new Tender Notice (Annexure 5) dated 19.5.2020 be quashed.

It is submitted by learned Counsel for the petitioner that he has submitted his bids as per tender notice and cancellation of the same in such an arbitrary manner without informing him as to what was the violation in Clause 3 (३), cannot be sustained. It is his submission that the petitioner and one Preeti Kumari had only submitted bids which was found fit for allotting work mentioned in the tender notice and as such the tender process could not be cancelled.



Learned Counsel representing the Nagar Parishad, on instruction, has made his submissions. He has stated that Clause 3 (क) in the original tender document was a clause requiring the tenderers to either possess the equipment/machinery for cleaning of drains or to submit proof showing that such machinery/equipment was available with the tenderers on lease. Since Clause 3 (क) could not be uploaded in the tender documents, such requirement was missing in the bids submitted by all the tenderers, including the petitioner. Such a requirement was in public interest and required to be complied by all the tenderers as the same was in the interest of proper execution of the work of cleaning of drains for which the tender had been advertised.

In para 13 and 14 of the writ petition the petitioner has stated that since Clause 3 (क) had not been disclosed in the tender or supplied, question of violation of the same by the petitioner does not arise.

Learned Counsel for the petitioner also submits that the petitioner would comply the requirement if such an opportunity is given today. The petitioner is willing to submit proof by way of lease showing that he will comply with Clause 3 (क) of the tender document and in the circumstances there was no justification for issuance of fresh tender notice.



Upon consideration of the submissions of the rival parties this Court would observe that Clause 3 (३) of the tender document as per submission of the Counsel for the parties is an essential pre-requisite for a tenderer to apply for the work of cleaning of drains. Such a requirement is in public interest and the same is required from all the tenderers. It is nobody's case that the same has been raised only to oust the petitioner from the tender process.

The petitioner has not placed on record any document to show that he was ever declared successful in the tender process. The tender process obviously had not attained finality. No right had accrued in favour of the petitioner. The comparative details had just been forwarded to the BUIDCO (Nodal Executing Agency). It is at this stage that this vital shortcoming in the tender uploaded by the Nagar Parishad was discovered.

Respondent No. 2 has discovered/realised that in the tender document which was uploaded Clause 3 (३) was missing. The same was an important requirement for possessing machinery/equipment for execution of the work of cleaning drains either owned; or on lease. Requirement in Clause 3 (३) was therefore neither advertised nor responded to by the tenderers.



In the circumstances, when the decision making process had not attained finality and there was no acceptance of the bid submitted by the petitioner, the petitioner cannot claim that any notice was required to be issued to him. In this connection this Court would refer to the decision of the Apex Court in the case of ***State of Uttar Pradesh & anr. vs. Al Faheem Meetex Private Limited & another*** reported in ***(2016) 4 SCC 716***.

The Court would further observe that Clause 3(ड) of the tender document requiring the tenderers to disclose whether they owned machinery/equipment for cleaning of drains or possess such machinery on lease was a vital requirement, having regard to the nature of work which was to be performed, being the cleaning of drains. Public interest therefore also demands that such details be submitted by the tenderers, for proper execution of the work of cleaning drains. Since such a vital clause was missing, respondent No. 2 has rightly directed the Nagar Parishad to cancel the tender process and initiate process afresh. The cancellation of the tender process therefore was in larger public interest and to ensure proper execution of the work. All tenderers were uniformly affected by cancellation. They, including the petitioner, however immediately had the opportunity of applying in response to the fresh tender process initiated in the tender notice dated 19.05.2020



(Annexure 5). Such action of the respondent authorities, cannot be said to be unfair or unjust.

The petitioner at best had the right to be considered in the tender process without any discrimination. There is also no specific mala fide alleged against any officials nor is it a case where the action of cancelling the tender has been taken to benefit any particular individual. Vague allegation of malafide has been stated in the writ petition without any details. The allegations, in the facts and circumstances noted above, are clearly non-est and unsustainable.

In the circumstances, the cancellation of the tender process arising out of Tender Notice No. 08/2019-20 requires no interference. The same is in public interest and with the object of ensuring that the tender process is not finalised with the defect or non consideration of requirement under Clause 3 (क). Such an action is in public interest and the Court is not inclined to interfere with the process initiated subsequently since the same provided opportunity to all including the petitioner.

The writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

SNkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29.05.2020
Transmission Date	N/A

