

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5502 of 2021

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Kunal Structure India Pvt. Ltd.(KSIPL-MCC(JV)), Gujarat having its Head Office at - Mondeal Heights, B-Wing, 15th Floor, besides Hotel Novoted, S.G. Highway Ahmadabad- Gujarat through its Director Kunal Arvindbhai Domadia, aged about 32 years, male, S/o Arvindbhai Domadia, R/o 802, Panchvati Tower, Bhaktidham Mandir, Rajkot-Gujarat.

... .. Petitioner

Versus

1. Bihar Medical Services and Infrastructure Corporation Ltd. (BMSICL), through its Managing Director.
2. Managing Director, Bihar Medical Services and Infrastructure Corporation Ltd. (BMSICL).

... .. Respondents

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Appearance :

For the Petitioner/s :	Mr. P.K. Shahi, Senior Advocate Mr.Satyam Shivam Sundaram, Advocate
For the Respondent/s	:Mr.Lalit Kishore, Senior Advocate Mr. Vikash Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date : 05-08-2021

Heard Mr. P.K. Shahi, learned Senior counsel for the petitioner and Mr. Lalit Kishore, learned Senior counsel for the Bihar Medical Services and Infrastructure Corporation Ltd. (BMSICAL) through video conference.

2. Learned counsel for the petitioner has filed an undertaking that all defects pointed out by the stamp reporter shall be removed, and compliance with the conditions of the notices of this Court with regard to acceptance of e-filing shall be made,

without delay immediately upon resumption of normal physical functioning of the Court, and in any event within one month thereof.

3. The following reliefs as formulated by the petitioner have been claimed in the writ petition-

“(i) For direction upon the concerned respondents to act upon the decision of the Financial Bid Committee dated 01.12.2020 whereby and whereunder the Committee has decided to sent a proposal to the Board of Directors to allot the tender work i.e., for construction of Government Medical College & Hospital, Jamui to the petitioner being qualified as lowest bidder (L1) in pursuance of Notice inviting Tender being N.I.T. No. BMSICL/Infra/01/2020 dated 13.01.2020.

(ii) For a direction upon the concerned respondents to issue Letter of Intent (LOI), in favour of the petitioner and execute the agreement for construction of tender work i.e., construction of Government Medical College & Hospital, Jamui.

(iii) For grant of any other relief/reliefs to which the petitioner is found entitled to.”

Further, the prayer made in I.A. No. 01 of 2021 “for quashing of the decision taken in the 48th Board meeting dated 14.12.2020 of BMSICL vide Agenda No. 40/05 to cancel the tender for construction of Govt. Medical College and Hospital, Jamui”, has been allowed to form part of the relief in the main writ application in terms of the order dated 10.06.2021 passed by this Court.

4. The short facts, according to the petitioner, are that pursuant to a Notice inviting Tender No. BMSICL/Infra/01/2020 dated 13.01.2020 issued for construction of Government Medical College & Hospital, Jamui, the petitioner participated in the tender process. The technical bid of the petitioner was found to be responsive and technically qualified along with two other bidders. Upon the financial bid being opened on 10.08.2020, the petitioner was declared as the lowest bidder (L1). In due course in its meeting dated 02.12.2020, the Financial Bid Committee decided to send the proposal to the Board of Directors to allot the tender work in favour of the petitioner. However, the work was not awarded, while the petitioner has made financial investments of considerable amount in anticipation of being awarded the work.

5. Mr. P.K. Shahi, learned senior counsel representing the petitioner submits that the respondents ought to have awarded the contract in favour of the petitioner, who was admittedly the lowest bidder (L1). He refers to the counter affidavit filed on behalf of the respondents from which it transpires that the Board of Directors of the respondent-BMSICL in its meeting held on 24.12.2020 had subsequently decided to cancel the tender in question. The reason for such cancellation was not stated in the counter affidavit, but the same are available in the minutes of the meeting vide Agenda No. 40/05. It is submitted that such reasons are arbitrary and perverse and could not have been made a ground for cancellation of the

tender. Moreover, the communication of cancellation of the tender vide Corrigendum Notice No. 09 dated 23.01.2021 (Annexure-4 to I.A. No.01 of 2021) did not communicate any reasons.

6. Learned senior counsel for the petitioner further invites reference to an earlier order dated 17.12.2019 passed in PIL vide CWJC No. 21374 of 2018 and submits that this Court while dismissing the PIL directed the respondent-State as well as the Central Government to forthwith take steps for establishing the hospital at the earliest. Despite considerable time having been elapsed, however, no fresh tender has been issued nor the matter taken forward by the respondents for construction of the hospital.

7. Mr. Lalit Kishore, learned senior counsel appears and relies on the counter affidavit to submit that no legal or vested right of the petitioner has been violated and the petitioner cannot claim for issuance of Letters of Intent (LOI) in his favour. In any event and in the peculiar circumstances of the case, if the petitioner is aggrieved on account of non-communication of reasons for cancellation of such tender, there can no serious objection for reconsideration of the matter.

8. Having heard the parties and on consideration of the materials on record, this Court is of the view that it may not be necessary to go into the detailed merit of the claim of the petitioner. It is not in dispute that the petitioner was the lowest bidder and the Financial Bid Committee in its meeting dated 02.12.2020 forwarded

the proposal to the Board of Directors for allotment of the tender work in favour of the petitioner. Subsequently, the tender has been cancelled, as communicated vide Corrigendum Notice No.09 dated 23.01.2021, but without assigning any reason for such cancellation. The reasons are now sought to be supplied by the respondents in their counter affidavit by enclosing a copy of the minutes of the meeting vide Agenda No. 40/05. It is well settled that when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons mentioned therein and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise.

9. In the present case, no reason was communicated to the petitioner for cancellation of the tender and the same, for the first time, has been brought to light in the counter affidavit.

10. In the above circumstances, the impugned Corrigendum Notice No.09 dated 23.01.2021 cancelling the tender is hereby set aside and the matter is remanded with a direction that the matter be reconsidered by the respondents afresh in accordance with law.

11. The writ petition stands allowed pro tanto. It is made clear that since the present judgment is being passed in the peculiar facts of the present case and without going into the merits of the rival claims of the parties, as such, it shall not be treated as precedent.

12. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the petitioner within the stipulated time provided in para 2 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Vikash Jain, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	06.08.2021
Transmission Date	N/A