

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6353 of 2020

M/s Palak Infra Pvt. Ltd. through its one of the director Mr. Manish Kumar, aged about 42 years (M), having its registered office at Village/ P.O. Amlori, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Road Construction Department, Government of Bihar, Patna.
2. The Departmental Tender Committee, Headed by the Principal Secretary, Road Construction Department, Bihar, Patna.
3. The Engineer -in- Chief-cum- Additional Secretary, Road Construction Department, Bihar Vishweshwaraiya Bhawan, Bailey Road, Patna.
4. The Chief Engineer, North Sub- Zone, Road Construction Department, Bihar, Patna.
5. The Executive Engineer, Road Construction Department, Road Division, Gopalganj, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Kumari Rashmi, Advocate
		Mr. S.P. Singh No. 1, Advocate
For the Respondent/s	:	Mr. Amit Prakash, GA-13

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-11-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

- i. For quashing the Memo No. 1571(E), Patna dated 19.02.2020, issued by the Departmental Tender Committee, headed by the respondent No.1, wherein technical bid of the petitioner has been disqualified, in connection with NIT no. 05-SBD/2019-2020, RCD, Road Division Gopalganj for winding and strengthening the Munjhi-Barnali Road from Km. 54.418 to Km. 60.218 (Total length 5.99 km) with construction of HL RCC Bridge (2x16m) under state plan head for the year 2019- 2020 by saying that as per report given by the respondent no.3, the petitioner has not uploaded the experience certificate of similar nature of works not less than 10% of the total tender value, hence his technical bid is



disqualified in lack of requirement of FTB –Cl.4.5.(A)(b) of the SBD, which is patently false, as the experience certificate of executing the similar work in 300 M of RCC Pile works was already attached, which is in fact the work of bridge construction, which was more than required in the instant tender/ NIT, however in same road from Km 00.00 to 25 Km an another NIT was issued in which the bidders who have uploaded experience certificates, similar to the petitioner have been qualified by the same departmental tender committee that too on the basis of report of the same respondent no.3, however tactfully they have inserted name of HL bridge only to oust the petitioner though there is no such name finds place in the definition of Article -1 of IRC, where there is only mention about bridges either small, minor or culvert, moreover the petitioner has quoted lowest value of execution of work, but under vested interest just to loot the public fund, the respondents have disqualified technical bid to oust the petitioner so that the bidders who have quoted the highest rate may be given the tender, and the respondents as well as their choice contractor may be undue get extra benefit overlooking the loss of public fund, hence apparently the impugned order suffers malafide, arbitrary and wholly discriminatory, for which there is no room under rule of law as the constitution provides equal opportunity to all its citizen, hence the impugned order may be quashed.

- ii. For holding the impugned order to be illegal as the similar certificate submitted by the other rival bidders has been accepted, but in the similar circumstance when the petitioner submitted/ uploaded the same, which was been duly verified by them and found to be true, even then they disqualified the technical bid of the petitioner overlooking that there is only 2 Bridges of 16 M in the tender in question, whereas the petitioner has executed 300 M as being sub-contractor, but they treated him as merely labor contractor, although many works are being executed by the petitioner firm in the same RCD, and still executing so many works of more value than the present work, thus disqualifying the technical bid saying that he has not submitted the experience certificate of HL bridge is unacceptable as being illegal and erroneous, and the impugned order dated 19.02.2020 suffers from arbitrariness and hostile discrimination and may be quashed, as every citizen of India has right to equality as enshrined in Art. 14, 16 and 19 of the constitution of India, hence the impugned order may be quashed.



- iii. For declaring the impugned order dated 19.02.2020 is bad as merely saying that experience certificate of HL bridge is not attached by the petitioner is bad in law, because as per FTB –C1.4.5.(A)(b) of the SBD the bidders had only to submit the work experience of similar works not less than 10% of total value of work, and there is no HL bridge finds place in the definition of bridge as per General Aspect of Article-1 of IRC which defines Bridge as “ bridge is the structure having a total length above 6 M between the inner faces of the dirt walls for carrying traffic or other moving loads over a depression or obstruction such as channel, road or railways and says that Minor bridge is bridge having a total length of up to 60 m, small bridge having overall length of bridge between inner faces of dirt wall up to 30m where individual span is not more than 10m, and culvert is a cross –drainage structure having a total length of 6 m.” thus making provision for HL bridge is clearly seems to be influenced with providing undue favor under ulterior motives just to accommodate the contractor of their choice, which is illegal, as if the petitioner may be ousted from tender it will cause a huge loss of public exchequer also over which the Hon’ble court may be remain silent spectator, hence after quashing the impugned order, the Respondents may be directed to qualify the technical bid of the petitioner and open the financial bid, and if the petitioner may be found lowest tenderer, then the tender may be allotted to him, which may be in the interest of state exchequer also.
- iv. For declaring the impugned order to be based on erroneous considerations under vested interests as despite having all the requisite criteria for the work in question they have disqualified the technical bid of the petitioner, even his work experience is much more than one of bidder held to be qualified in technical bid, thus apparently the impugned order dated 19.02.2020 suffer from arbitrariness and hostile discrimination, which may be quashed as being contrary to the mandates of article 14, 16 and 19 of constitution of India.
- v. For further restraining the respondents from issuance of work order till disposal of this case as the balance of convenience lies in favour of petitioner and for granting any other relieves for which the petitioner may be found entitled in the eye of law.



Learned counsel for the petitioner seeks permission
to withdraw the present petition.

Permission granted.

The instant petition stands dismissed as withdrawn.

Interlocutory Application(s), if any, shall stand
disposed of.

(Sanjay Karol, CJ)

(P. B. Bajanthri, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	03.11.2021
Transmission Date	

