

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9791 of 2021

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M/s Shankar Agarwal, a Proprietorship firm having its office at Namchi Bazar, P.O. and P.S. namchi, District South Sikkim (Sikkim)- 737126, through its Power of Attorney Holder Dipak Kumar Rungta, aged about 42 years, Male, Son of Sri Arun Kumar Rungta, Resident of 4th Floor, Block - B, Jasodha Residency, Haricharan Sarani, Ward No. 40, P.O. and P.S. Siliguri, District Darjeeling (West Bengal)- 734006.

... .. Petitioner/s

Versus

1. The State of Bihar, Department of Road Construction Visheshwaria Bhavan, Bihar, Patna- 800001 through The Additional Chief Secretary.
2. The Additional Chief Secretary, Department of Road Construction, Government of Bihar, Visheshwaria Bhavan, Bihar, Patna- 800001.
3. The Engineer-in-Chief - Cum - Additional Commissioner- cum- Special Secretary, Department of Road Construction, Government of Bihar, Visheshwaria Bhavan, Bihar, Patna- 800001.
4. The Chief Engineer, North Bihar Wing, Department of Road Construction, Government of Bihar, Patna - 800001.
5. The Executive Engineer, Department of Road Construction, Road Division, Sitamarhi- 843301.
6. The Special Officer - cum - Financial Advisor, Road Construction Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Alok Kumar Agrawal, Advocate
For the Respondent/s	:	Mr. Uday Shankar Sharan Singh (GP-19)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 18-05-2021 Heard Mr. P. K. Shahi, learned senior counsel appearing on behalf of the petitioner, assisted by Mr. Alok Kumar Agrawal, Advocate and Mr. Uday Shankar Sharan Singh, learned counsel for the State.

2. This case was listed on 17.05.2021 before another Bench. However, on recusal, the present case has been



listed today before this Court.

3. It appears that the petitioner has approached the Apex Court in WP (Civil) No. 483 of 2021 and on 28.04.2021, the writ petition was dismissed. However, the Hon'ble Supreme Court observed that the High Court may dispose of the writ application at the earliest.

4. It appears from order dated 28.04.2021 that an impression was created before the Hon'ble Supreme Court that 3rd re-tender was floated, which was still at inconclusive stage, whereas from the pleading of the petitioner itself, it is evident that the decision to cancel 3rd tender was taken by the respondents on 25.02.2021 (Annexure-10) and much before the passing of the order of Hon'ble Supreme Court dated 28.04.2021, the respondents have decided to invite fresh tender on 26.02.2021 vide Annexure-12 with revised BOQ, as the earlier BOQ was of 2018-19 was for a cost of Rs.116 crores and odd, which was revised in 2021 as Rs. 121 crores and odd and further it was modified by way of corrigendum.

5. The instant writ application was filed by the petitioner through the Power of Attorney Holder, but unfortunately neither the Power of Attorney was enclosed with the writ application nor any statement has been made in the



entire writ application that the present writ application has been filed by the Power of Attorney Holder, as per the terms and conditions of the Power of Attorney. There is no detail that when the Power of Attorney was executed in favour of Dipak Kumar Rungta and what was the authority available to the Power of Attorney Holder. The petitioner in the present writ application has claimed that the petitioner is a Proprietor firm and in the 3rd re-tender he submitted his tender against the Bill of Quantity of Rs. 116.99 crores and odd.

6. From the materials available on record, it appears that evaluation was done by the Technical Bid Evaluation Committee and the petitioner's Technical Bid was found to be in order. After due deliberation, the petitioner was asked to participate in the rate negotiation. It appears from the document enclosed with the writ application itself that the petitioner has quoted 16.77% higher than the BOQ rate vide Annexue-8. The petitioner declined to reduce the rate quoted by him. However, the petitioner agreed to reduce the 16.77% to 9.95% vide letter dated 18.10.2020 (Annexure-9). The matter was considered by the Department and the Department on consideration of entire materials on record found that the rate quoted by the petitioner is higher and as such decided to invite



fresh tender with revised BOQ.

7. Mr. Shahi, learned senior counsel for the petitioner submits that it was a case of re-tender and, therefore, if the petitioner's rate was responsive it was obligatory on the part of the respondents to accept the tender submitted by the petitioner. He has referred to Annexure-11 Series to contend that in a similar facts situation the other tender(s) where the tenderers have quoted higher rate than the BOQ was accepted by the respondents whereas in the case of petitioner, the respondents have declined to accept the rate quoted by the petitioner after negotiation i.e. 9.95% higher than the BOQ.

8. It is to be noted here that in the 1st and 2nd tender not a single tenderer was found eligible and, therefore, in the 3rd tender simply because the petitioner was the solitary tenderer, he cannot claim as matter of right that he should have been allotted work on the rate quoted by him. The matter would have been different, if the petitioner has quoted or agreed after negotiation to carry construction at BOQ rate, but the petitioner was insisting on 9.95% higher than the BOQ rate on the plea that BOQ was fixed in 2018-19, whereas many factors have influenced escalation of price. Since the respondents have looked into the entire materials on record and also various other



factors including the market factor when they prepared fresh BOQ and decided to float fresh tender. The Court in the peculiar facts and circumstances of the case does not find any infirmity in the decision making process and, therefore, the Court does not a fit case for any indulgence for manifold reasons as indicated hereinabove.

9. As a last limb of argument, Mr. Shahi, learned senior counsel for the petitioner submits that the respondents have invited tender, the petitioner is prepared to participate in the fresh tender provided that reasonable opportunity to participate in the tender is allowed by the respondents. He submits that there is lockdown in the State and during lockdown, which is continuing up to 25.05.2021, the respondents are insisting that the petitioner should come and complete all the formalities physically.

10. Mr. Uday Shankar Sharan Singh, learned counsel for the State submits that State is prepared to accommodate the petitioner in completing the formalities in submitting tender and on instruction he submits that time up to 29.05.2021 is available to the petitioner so that he may complete all the formalities in relation to submission of fresh tender.

11. On the assurance given by the learned counsel



for the State, the writ application is disposed of with liberty to the petitioner to participate in the fresh tender, which shall be considered by the respondents on its own merit. However, the respondents are required to accommodate the petitioner up to 29.05.2021 to complete all the formalities/ paper works connected with the submission of tender document on account of lockdown continuing in the State.

12. With the aforesaid, the writ application stands disposed of.

13. Let a copy of this order be communicated to the Principal Secretary, Road Construction Department, Government of Bihar, Patna for the needful.

(Anil Kumar Upadhyay, J)

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