

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7399 of 2020

Prashant Bhaskar [Male, aged about 30 years] S/o Sri Lal Babu Roy, Resident of Nandpuri Bhagwanpur, P.S.- Sadar, P.O.- Bhagwanpur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary Bihar Rural Work Department, Patna.
2. Secretary, Bihar Rural Roads Development Agency (BRRDA), Patna.
3. Chief Engineer -3, Rural Work Department, Bihar, Patna.
4. Superintending Engineer, Rural Work Department, Work Circle, Sitamarhi.
5. Executive Engineer, Rural Work Department, Work Division, Belsand.
6. Virat Samrat construction Proprietor Vinai Kumar, S/O Sri Kishori Rai Resident of Village- Punarwara, P.O.- Chak Shambhu, P.S.- Runisaidpur, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar @ S.K.
For the Respondent/s : Mr. Patanjali Rishi, AC to AAG – 6

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 04-03-2021 Heard Mr. Sanjay Kumar @ S.K., learned counsel for the petitioner and Mr. Patanjali Rishi, learned AC to A.A.G. No. 6 appearing for the State.

2. The present writ application has been filed for quashing the financial bid dated- 26.06.2020 decided in favour of the respondent no. – 6 by the respondent no. – 5 for construction of Hardia to Mahesha road pursuant to Tender Id no. 81257 on the ground that respondent no. – 6 does not fulfill the eligibility criteria for award of tender.

3. The brief facts giving rise to the present writ



application is that the respondent – Rural Works Department invited N.I.T. bearing Tender Id no.- 81257 for construction of Hardia to Mahesha road under “Mukhyamantri Gramin Sadak Yojna (MMGSY)” Scheme and in pursuance thereof the petitioner as well as respondent no. – 6 submitted their bids. The Technical Bid Committee in its meeting held on 30.12.2019 approved the bids submitted by the petitioner as well as the respondent no. – 6 and declared them qualified in the technical bid. The petitioner being dissatisfied with the decision of the Technical Bid Committee filed a complaint on 30.01.2020 alleging therein that experience certificate furnished by the respondent no. – 6 was not proper and is wrong as well as key personnel criteria was not fulfilled by the respondent no. – 6 as per the provisions of Standard Bidding Document (hereinafter referred to as the “SBD”) inasmuch as per the requirements, the respondent no. 6 did not submit the affidavit of 02 key engineers (key personnel) and had only submitted the affidavit of one engineer (i.e. key personnel). It has further been stated that respondent no.– 6 is only having the experience of P.C.C. work and is not having any experience of B.T. work as required in the tender. It has further been stated that respondent no.– 6 is also not fulfilling the criteria of 25% of estimated value of



contract.

4. On the other hand, a counter affidavit has been filed on behalf of the respondent nos. 2 to 4 stating therein that in the light of aforesaid complaint of the petitioner, the Executive Engineer, Rural Works Department, Work Division- Belsand vide letter no. 301 dated- 26.02.2020 (Annexure – “B” to the counter affidavit) submitted his report to the Superintending Engineer, Rural Works Department, Work Circle- Sitamarhi stating therein that upon enquiry it has been found that respondent no. – 6 was having the experience of required “turn over” and equivalent amount work experience. It has further been stated in the counter affidavit that the Superintending Engineer, Rural Works Department, Work Circle, Sitamarhi vide his letter dated- 14.05.2020 reported that all the allegations levelled by the complainant / petitioner against the respondent no. – 6 have been found to be false and incorrect. In the light of aforesaid enquiry report, the Technical Bid Committee held its meeting on 23.05.2020 and arrived at the conclusion to keep intact its earlier decision taken on 30.12.2019 and the same has been communicated vide memo no. 3249 dated - 23.05.2020 (Annexure – “D” to the counter affidavit) and the Executive Engineer, Rural Works Department, Work Division -Belsand



was directed to open the financial bid of the said tender.

5. Learned counsel for the petitioner submits that the respondent- authorities while opening the financial bid and deciding the tender in favour of respondent no.- 6 has failed to consider the fact that respondent no.- 6 did not fulfill the eligibility criteria as prescribed in the SBD as well as N.I.T. inasmuch as the respondent no.- 6 lacked the criteria of experience of similar nature work, key personnel number requirement etc. and despite the complaint made by the petitioner financial bid was opened and tender has been awarded in favour of respondent no. - 6 in an arbitrary manner.

6. On the other hand, learned counsel for the State referring to paragraph no.13 of the counter affidavit submits that Rural Works Department vide its letter no. 4842 dated 14.11.2014 has relaxed some clauses of the Standard Bidding Document / Model Bidding Document. As such, for construction works starting from Rs. 50 Lacs up to Rs. 2 Crores it requires experience of similar work of 10% of the estimated value of work in question as well as the specific key personnel number mentioned in SBD has also been relaxed. It has further been submitted by learned counsel for the State that the contention of the petitioner regarding forged similar nature work



certificate of respondent no. – 6 was enquired into and was verified by the Executive Engineer, Rural Work Department, Work Division - Belsand and it was found that experience certificate of similar nature work of L.A.E.O. Work Division-1 Sitamarhi of Rs. 13.54 Lacs submitted vide letter no. 1313 dated 24.08.2019 was found to be genuine and was issued by the concerned Division. Referring to paragraph no. 16 of the counter affidavit it has been submitted by the State that Technical Bid Committee also came to the conclusion that the road in question namely, Hardiya to Mahesha road is of 1450 Meters in length of which 490 Meters is of P.C.C. work and remaining 960 Meters is of bitumen work for which similar work certificate attached by respondent no. 6 of P.C.C. work meets the eligibility criteria of 10% of estimated cost and also key personnel requirement. It has also been submitted that work has already been allotted in favour of respondent no. – 6 as he was the lowest bidder and at present the work in question has already been started and running smoothly.

7. Learned counsel for the petitioner in reply submits that it is not the case of the petitioner that work experience certificate submitted by respondent no. 6 was forged but the contention of the petitioner is that the same is incomplete upon



which, learned counsel for the State replies that from perusal of Annexure – “1” to the writ petition, which is complaint submitted by the petitioner before the Chief Engineer, Rural Works Department, Bihar, Patna and from paragraph no.– 3 of the said complaint it would be evident that the petitioner has made a complaint that experience certificate produced by the respondent no.– 6 is wrong. Paragraph no. 3 of Annexure -“1” to the writ petition is quoted hereinbelow:-

“3. Experience provided is also seems to be wrong.”

8. I have heard learned counsel for the parties at length and from perusal of Annexure- “1” to the writ petition dated 03.01.2020 it is evident that the petitioner filed a complaint regarding ineligibility of respondent no.– 6 which was dully enquired by the respondent - authorities at various stages and it is specific stand of the State that in terms of SBD vide letter no. 4842 dated 14.11.2014 (Annexure – “E” to the counter affidavit) the clauses of the SBD has been relaxed and the complaint of the petitioner was duly examined and it was found that the respondent no. – 6 was fulfilling the eligibility criteria on both counts i.e. the similar nature work experience as well as key personnel number requirement and further the Technical Bid Committee in its meeting held on 23.05.2020 considered the complaint of the petitioner and other documents



and came to the conclusion that all the allegations regarding ineligibility of respondent no. – 6 are not correct and the decision of the Technical Bid Committee taken earlier was kept intact. This Court while sitting in writ jurisdiction is required to examine the decision making process and not the decision itself and from perusal of the materials available on record this Court is satisfied that there is no infirmity in the decision making process in arriving at the conclusion that respondent no.– 6 was fulfilling the eligibility criteria and further it is admitted position that the construction work has already been started and the same is going on smoothly, as such, this Court is not inclined to interfere with the impugned order.

9. Accordingly, the present writ application is dismissed. However, there shall be no order as to cost.

(Anil Kumar Sinha, J)

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