

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7587 of 2020

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Angesh Kumar Son of Late Shesheshwar Prasad Singh, resident of Village-
Aunta, P.O.- Aunta, Police Station- Hathidah, District- Patna one of the
partners of M/S Rama Shri Sai Construction Private Limited, At and P.O.-
Aunta, P.S.- Hathidah, District- Patna- 803303.

... .. Petitioner/s

Versus

1. Chairman and Managing Director, Food Corporation of India 16-20 Barakhamba Lane, New Delhi - 110001.
2. Executive Director (P and E), Food Corporation of India, 16-20 Barakhamba Lane, New Delhi - 110001.
3. General Manager (Engg.), Food Corporation of India, 16-20 Barakhamba Lane, New Delhi - 110001.
4. Executive Director (East Zone), Zonal Office, 10 A, Middleton Row, Kolkata, West Bengal- 700071.
5. General Manager (Region), Regional Office, Bihar, Exhibition Road, Patna- 800001.
6. Assistant General Manager (Civil Engg.), Food Corporation Of India, Bihar, Patna.
7. Manager (Civil Engg.), Food Corporation of India, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manish Kumar No.2
		Mr.Gajendra Kumar Singh, Advocates
For the Respondent/s	:	Mr.Prabhakar Tekriwal, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 21-05-2021

Heard Mr. Manish Kumar No.2, learned counsel
for the petitioner and Mr. Prabhakar Tekriwal, learned Senior
Counsel representing the Food Corporation of India.

2. The petitioner has challenged a communication
dated 24.01.2020 made by the Deputy General Manager,



Regional Office, Bihar, Food Corporation of India (hereinafter referred to as 'the FCI') to the General Manager (Engg.) FCI Head Quarters, New Delhi, whereby a tender notice inviting tender issued by the FCI has been scrapped on the ground that the FCI does not have the requisite engineering staff to monitor and supervise the work in question. The petitioner is also seeking a direction to the respondents, particularly the Chairman and Managing Director of the FCI to hold an inquiry in respect of cancellation of the said bid and award the work on the basis of the said tender notice.

3. Indisputably, the tenders were invited for works pertaining to replacement of completely damaged bituminous road with C.C. road at FSD, NRPA; Muzaffarpur, Chanpatia and Darbhanga. M/s Rama Shri Sai Construction Pvt. Ltd., had participated in the said tender and was found to be a lowest tenderer. The petitioner in the present writ application claims to be one of the partners of the said Pvt. Limited Company. It is the petitioner's case as stated in paragraph 9 of the writ application that the financial bid of the Company was accepted, relying on tenders summary reports dated 20.02.2020. It is the specific case of the respondents-FCI on the other hand, that acceptance letter for the said tender was never issued to the



lowest bidder.

4. The validity of tender was subsequently extended from time to time by the FCI, which was consented to, by the petitioner as the price bid was under process. It is the petitioner's case that whenever a request was made by FCI for extension of validity of the said tender, the same was accepted by the petitioner. It appears from Annexure-7 of the writ petition that a request was made by the Assistant General Manager (C.E.) for extension of validity of tender up to 30.11.2019. It was mentioned in the communication dated 28.10.2019 (Annexure-7) that price bid of the work had been opened on 06.08.2019 and forwarded to the Head Quarters, which had been examined by the Head Quarters level and recommended for acceptance of work. The award of work was under progress which would take sometime, the said letter dated 28.10.2019 mentioned. Annexure-7 goes to suggest that the work was not awarded to the petitioner till the said date. The said request was accepted by the petitioner through his response dated 30.10.2019, These facts are also not in dispute. As is evident from the letter dated 28.10.2019, the validity of tender was extended up to 30.11.2019 only.

5. It is the case of the petitioner that another



request was made by the Assistant General Manager (C.E.), FCI through his letter dated 11.01.2020 addressed to the Company for extension of validity of the said tender up to 30.01.2020.

6. It is the case of the respondents in the counter affidavit, on the other hand, that once the validity of the bid expired on 30.11.2019, the same would not have been revived after expiry of the bid validity. It is the specific case of the FCI that the said extension request letter dated 11.01.2020 was issued by respondent No.6 without acknowledging the fact that the General Manager (Region), respondent No.5 had already recommended for scrapping the tender, though he himself was competent to scrap on the ground that sufficient engineering staff was not available with the FCI for supervising the construction work in question. It is the case of the respondents that out of inadvertence the letter dated 11.01.2020 was issued by respondent No.6 without acknowledging the said letter dated 17.12.2019 written by the General Manager (R), Respondent No.5 which has been brought on record by way of Annexure-B to the counter affidavit. It was specifically mentioned therein that because of acute shortage of Engineering Officers/officials in Bihar Region to supervise the work in question, it was not possible to accept the said tender and, therefore, it was



recommended for scrapping further course of action. Evidently, the impugned communication dated 24.01.2020 is a sequel to letter dated 17.12.2019. It is further case of the respondents that as a matter of fact, the General Manager (Region) was the competent authority to scrap the tender process and inadvertently instead of scrapping the tender, a recommendation was made for scrapping it. It has been clearly mentioned in the said letter dated 24.01.2020 issued by the In-charge General Manager (Region) that because of absence of sufficient engineering staff to monitor and supervise the work, the tender process was being scrapped.

7. Mr. Manish Kumar No.2, learned counsel for the petitioner has argued that once the petitioner was found to be lowest bidder, in all fairness the work ought to have been awarded to him by the FCI, which is the State within the meaning of Article 12 of the Constitution of India. Scrapping of the tender process itself after accepting bid submitted by the Company on imaginary and unsustainable grounds is wholly arbitrary, illegal and, therefore, this Court's interference is required by granting the petitioner's relief as sought in the present writ application, he contends.

8. Mr. Prabhakar Tekriwal, learned Senior Counsel



appearing on behalf of the FCI, on the other hand has reiterated in his submission that there is no document to demonstrate that the petitioner's tender was accepted inasmuch as there was no communication made by the FCI to the petitioner accepting the said tender. He has further submitted that despite being the lowest tenderer, the petitioner cannot claim award of contract by way of right inasmuch as the petitioner cannot be said to have acquired any legal right to the said effect. He has relied on Clause-17 of the notice inviting tender, which reads that the FCI does not bind itself to accept the lowest or any tender.

9. I have carefully examined the pleadings on record. I find substance in the submission made on behalf of the Food Corporation of India that the petitioner did not acquire any legal right by virtue of being lowest tenderer for award of work in his favour. The reason assigned in the communications dated 17.12.2019 and 24.01.2020 for scrapping the tender cannot be said to be arbitrary or baseless. Since the Regional Office of the FCI was finding it impossible to properly supervise execution of the works in question, in the absence of requisite human resource, a decision was apparently taken to scrap the tender process which cannot be said to be unreasonable. No *mala fide* nor any ulterior motive has been alleged by the petitioner



against the respondents in taking the impugned decision of scrapping the tender process.

10. It is true that a State within the meaning of Article 12 of the Constitution of India while exercising contractual powers may be subject to judicial review under Article 226 of the Constitution of the India in order to prevent arbitrariness or favoritism on their part. However, the scope of review is limited to the extent of looking into the decision making process.

11. In my opinion, no case is made out for this Court's interference in the present matter.

12. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.06.2021.
Transmission Date	N/A

