

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8850 of 2020

Sarika Construction Pvt. Ltd. through its Proprietor Anil Kumar Singh, aged about 55 years, (M), Son of Satyanarayan Singh, At- Saketpuri, P.O.- Rajendra Nagar, P.S.- Kadam Kuan, District- Patna, Bihar. Present Village- Malki, P.S.- Garkha, Dist- Saran at Chhapra.

... .. Petitioner/s

Versus

1. State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, 5th Floor, Vishweshwaraiya Bhawan, Bailey Road, Patna.
2. The Secretary, Rural Works Department, Government of Bihar, 5th Floor, Vishweshwaraiya Bhawan, Bailey Road, Patna.
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, 5th Floor, Vishweshwaraiya Bhawan, Bailey Road, Patna.
4. Chief Engineer - 3, Rural Works Department, Government of Bihar, 5th Floor, Vishweshwaraiya Bhawan, Bailey Road, Patna.
5. The Superintending Engineer, Saran Circle, Chhapra.
6. The Executive Engineer, RWD, Works Division, Marhurah and Sonpur, Saran at Chhapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Yashraj Bardhan, Advocate
For the Respondent/s : Mr.Kumar Alok, SC-7

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 08-04-2021 Heard learned counsel for the parties online because of COVID pandemic restrictions.

2. The petitioner has filed the present writ application challenging the decision of a Technical Bid Committee of the Rural Works Department, Government of Bihar dated 19.08.2020 as contained in Memo No. 6449 of the same date, to the extent the same relates to the petitioner, whereby his technical bid submitted in response to a notice inviting tender



for rural road maintenance has been rejected. Evidently, the petitioner's technical bid has been rejected on the ground that he did not have requisite work experience of execution of similar works in terms of Clause 4.4A(c) of the Maintenance Contract Bid Documents (MBD).

3. Clause 4.4A of the MBD, admittedly, prescribes that to qualify for award of contract, each bidder should have in the last five years (five years immediately preceding the year, in which the bids are invited), satisfactorily completed, as prime contractor or sub-contractor at-least one similar work of value not less than 30% of estimated value of contract.

4. The petitioner relies on a certificate issued by the Executive Engineer, Rural Works Department (W) Division, Chapra-1 dated 29.06.2016 (Annexure-2 to this application) to claim that he satisfies the said requirement of work experience under 4.4A(c) of the MBD. From the said certificate, it appears that the petitioner has been certified to have satisfactorily completed similar work from 05.02.2013 to 02.09.2014.

5. Be it noted that Clause 4.4A specifically mentions that year would mean financial year for the purpose of calculation of experience of work in the last five years.

6. For the work in question, Notice Inviting Tender



was earlier floated in the financial year 2019-20. The petitioner had participated in the aforesaid tender and was declared qualified by the Technical Bid Committee in its decision dated 09.03.2020. The petitioner, however, being the only bidder against the said tender, the Technical Bid Committee had recommended for re-tender in the light of the policy decision of the State Government as contained in letter No. 7806 dated 30.09.2016, issued by the Finance Department, Government of Bihar.

7. Let it be noted, at this stage itself, that the petitioner was declared qualified in the financial year 2019-20 in terms of work experience as noted above, the date of completion and actual date of completion of work being 04.02.2014 and 02.09.2014 respectively.

8. A fresh Notice Inviting Tender (NIT) was issued on 16.05.2020 in which the petitioner participated with the same experience certificate which he had earlier enclosed. Since the subsequent tender was issued in the financial year 2019-20 and the petitioner was not found to be having work experience of similar work during preceding five years, the Technical Bid Committee rejected his technical bid.

9. Mr. Yashraj Bardhan, learned counsel appearing on



behalf of the petitioner has argued that since the petitioner was declared qualified in the technical bid in respect of the same work on the basis of original tender, he ought not to have been disqualified in the subsequent tender process. He contends that the NIT issued on 16.05.2020 was mere extension of the original tender issued in the financial year 2019-20 in which the petitioner had qualified. He has further submitted that solely because the petitioner was the only bidder, who had participated in the original tender process, he was not awarded the work contract.

10. Learned counsel appearing on behalf of the State of Bihar, on the other hand, has submitted that, admittedly, re-tender notice was issued and bids were invited in the financial year 2020-21 and, therefore, in view of Clause 4.4A(c) of MBD, a bidder must have had the experience of work of financial year 2015-16 onwards. Since the work completion certificate submitted by the petitioner was of financial year 2014-15, the same was rightly not treated to be qualifying experience certificate, by the Technical Bid Committee. It is accordingly being argued on behalf of the State of Bihar that there is no illegality in the impugned decision of the Technical Bid Committee.



11. The facts, which have been noted above, are not at all in dispute. The petitioner, admittedly, did not have any requisite work experience from the financial year 2015-16 till submission of his technical bid pursuant to the NIT issued on 16.05.2020. The plea that since the petitioner was earlier declared successful in technical bid taking into account his work experience, in the Court's opinion, cannot be a ground for him to be held to be qualified on the basis of NIT issued in the financial year 2020-21. The Technical Bid Committee did not have any choice but to reject the petitioner's technical bid in view of clear stipulation in Clause 4.4A(c) of MBD.

12. For the aforesaid reason, in the Court's opinion, this writ application has no merit and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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