

IIN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8734 of 2020

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Braj Bihari S/o-Lakshmi Narayan Rai, Resident of Vill and P.O.-Chatursi,
P.S.-Minapur, Dist.-Muzaffarpur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar. Old Secretariat, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Additional Chief Executive Officer-Cum-Secretary, Bihar Rural Road Development Agency, Rural Works Department, Government of Bihar, Patna.
4. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
5. The Chief Engineer-3, Rural Works Department, Government of Bihar, Patna.
6. The Superintending Engineer, Rural Works Department, Work Circle Muzaffarpur Cum-The Chairman of Technical Bid Committee, Rural Works Div. Muzaffarpur.
7. The Executive Engineer, Rural Works Department, Works Div. Muzaffarpur East-2.
8. The Executive Engineer, Rural Works Department, Works Div. Muzaffarpur West.
9. The Technical Advisor, Rural Works Department, Works Circle-Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kundan Kumar Ojha, Adv.
For the Respondent/s : Mr.Prabhu Narayan Sharma Adv.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 07-01-2021

Heard learned counsel for the petitioner and the State.

The Engineer-in-Chief Rural Works Department

Bihar on 28.11.2019 invited tender on behalf of the Govt. of



Bihar through E-procurement online system, (SBD based) from *bonafide* approved and eligible contractors registered with the specified Department for the MMGSY works including maintenance for 5 years after construction of work. The petitioner has submitted his bid in respect of the various tenders identified by an identification number. Altogether seven tender bids were submitted by the petitioner. The tender bids in respect of tender I.D. No 84461, 84468, 84471 and 84492 have been declared disqualified.

The short submission of the petitioner counsel is that the disqualification has been taken in the decision of the technical bid Committee dated 05.03.2020 by specifying a reason that the Advocate Welfare Stamp fee (Rs 25) was not affixed in the affidavit submitted in respect of the tender I.Ds, and as such, this deficiency disqualified the petitioner's bid. He further submits that such rejection is not sustainable. He refers to a communication of the Rural Works Department dated 31.01.2020 to submit, that as per the same, the Department on 31.01.2020 took a decision that hereinafter the requirement of affixing Advocate



Welfare Stamp (Rs 25) on the affidavit would be specified in the standard bidding document for the tenderers. Relying on this communication, he submits that since the petitioner's tender was submitted in response to the advertisement issued prior to 31.01.2020 the requirement of affixing Advocate Welfare Stamp of Twenty Five Rupees on the affidavit could not be enforced, and as such, non supply of Advocate Welfare Stamp for Twenty Five Rupees cannot be treated as disqualification.

A counter affidavit has been filed on behalf of the State. The learned State counsel has drawn the attention of the Court towards Annexure-D i.e. the Gazette notification dated 25.2.2019 , whereby, Bihar Advocates' Welfare Fund Amendment Act was notified. The same amended the amount of the Advocate Welfare fund stamp to be "Twenty Five Rupees" in place of "Fifteen Rupees". It is his submission that from the date of the said notification amended stamp fee Rs 25/- was a standard requirement enforceable by law and, therefore, the writ petitioner cannot be heard to say that till such time a separate notification was issued by the Department to supply Advocate Welfare



Stamp of Twenty Five Rupees, he cannot be put to such requirement.

This Court is in agreement with the submissions advanced by the State Counsel. Once the amount of Advocate Welfare Fund Stamp has been amended by an Act and duly notified in the Gazette on 25.02.2019, the requirement assumes the force of law and it is required to be complied with. Non supply of Advocate Welfare Stamp of Twenty Five Rupees on the affidavit submitted by the petitioner can therefore be considered to be a disqualification as the affidavit would be suffering with a defect to the extent that the amount of the Advocate Welfare Stamp affixed on the affidavit is insufficient. From the pleadings on record, it is further evident that on the similar grounds at least two other bidders bid has been disqualified. The respondents were enforcing this requirement uniformly and rightly so, in view of the Gazette notification.

The further submission of the petitioner's counsel is that from paragraph No 17 of the counter affidavit filed by the State , it is evident that at least three tender IDs are



still pending and for which the technical bid has not been opened, namely, Tender ID No 84463, 84469 and 84470. He submits that he should be given an opportunity to make good the defect by supplying the amount of Advocate Welfare Stamp fee which is deficient in the affidavit submitted in respect of these tenderers. The petitioner would be at liberty to supply the deficient amount of Advocate Welfare Stamp in respect of the three tenderers along with a request to accept the same, and the Authority would consider such request of the petitioner, in accordance with law.

The application stands disposed of.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.01.2021
Transmission Date	

