

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14147 of 2021

M/s Singh Enterprises - M/s EMS Infracon Pvt. Ltd. (JV) a joint venture between a proprietary concern and a Private Limited Company, Office of lead partner at 502, Om Sai Apartment, Anantpur, Ranchi, Jharkhand through its Authorized Signatory, namely, Rishu Bajaj, Male, aged about 37 years, Son of Shri Anil Kumar Bajaj Resident of 302 Pushpanjali Venkatesh Apartment, Budh Marg, P.S. Kotwali District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. The Development Commissioner, Bihar - Cum - Chairman, Bihar Urban Infrastructure Development Corporation Ltd. (BUIDCo), Main Secretariat, Patna.
3. The Principal Secretary, Urban Development and Housing Department (UD and HD), Government of Bihar Cum Project Director, State Program Management Group (SPMG) Vikash Bhavan, Bailey Road, Patna.
4. The Bihar Urban Infrastructure Development Corporation Ltd. (BUIDCo), having its office near Rajapur Pul, West Boring Canal Road, Patna - 800001 through its Managing Director.
5. The Managing Director, BUIDCo, near Rajapur Pul, West Boring Canal Road, Patna - 800001.
6. The Chief Engineer, Design, Planning and Monitoring, BUIDCo, Patna.
7. The Chief Engineer, Planning Design and Monitoring, Urban Development and Housing Department, Government of Bihar, Patna.
8. The Union of India, Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation through its Secretary having its office at Shram Shakti Bhavan, Rafi Marg, New Delhi - 110001.
9. The National Mission for Clean Ganga, Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation, Government of India, 1st Floor, Major Dhyanchand Stadium, India Gate, New Delhi through its Director General.
10. The Director General, National Mission for Clean Ganga, Ministry of Water Resources, Ministry of Jal Shakti, Department of Water Resources, River



Development and Ganga Rejuvenation, Government of India, 1st Floor,
Major Dhyanchand Stadium, India Gate, New Delhi.

11. The Executive Director, Technical, National Mission for Clean Ganga,
Ministry of Water Resources, Ministry of Jal Shakti, Department of Water
Resources, River Development and Ganga Rejuvenation, Government of
India, 1st Floor, Major Dhyanchand Stadium, India Gate, New Delhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Adv.
Ms. Parul Prasad, Adv.
For the BUIDCO : Mr. Lalit Kishore, Advocate General
Mr. Rabindra Kumar Priyadarshi, Adv.
For the State : Mr. Zaki Haider, Ac to SC-9

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 24-12-2021

The present writ petition has been filed for quashing the tender cancellation notice dated 27.5.2021, issued under the signature of the Chief Engineer, Planning, Design and Monitoring, Urban Development and Housing Department, Government of Bihar, Patna (hereinafter referred to as the "Chief Engineer, Urban Development and Housing Department") whereby and whereunder the NIT bearing No. BUIDCo/Yo-1493/ 20-171 dated 01.09.2020 has been cancelled. The petitioner has further prayed for quashing the notice inviting



retender for the Badhaiya I&D and STP project of National Mission for clean Ganga (hereinafter referred to as the "NMCG") bearing BUIDCo/YO/1493/20-22 dated 28.6.2021, issued under the signature of the Chief Engineer, Urban Development and Housing Department, as also for quashing that part of the Technical Bid Evaluation Committee Report dated 06.01.2021 whereby and whereunder the technical bid of the petitioner has been declared to be non-responsive only by observing that one of the JV partners of the petitioner, M/s EMS Infracon Pvt. Ltd., has been blacklisted and for consequently directing the respondent-BUIDCo to declare the petitioner as responsive in the technical bid, pertaining to NIT dated 1.9.2020 inasmuch as the aforesaid order of blacklisting has been quashed by the Hon'ble Patna High Court vide order dated 19.7.2021 passed in CWJC No. 9597 of 2021.

2. The brief facts of the case, according to the petitioner, are that National Mission of Clean Ganga has been established as a registered society



i.e. responsible for the effective implementation of the overall National Ganga River Basin Authority Program at the National level. It is submitted that the entire programme of designing, developing, building, testing and commissioning of sewage treatment plant on the bank of river Ganga at Barahiya is funded entirely by the Central Government without any contribution by the State Government. The Respondent-BUIDCo, being the executing agency for implementation of the project of Namami Ganga on behalf of the NMCG, issued an NIT bearing BUIDCo/Yo-1493/20-171 dated 01.09.2020 for the project, pertaining to designing and building of sewage treatment plant etc., whereafter the petitioner had submitted its bid along with three others. The Technical Bid Evaluation Committee had then evaluated the technical bid of the bidders in its meeting held on 06.01.2021, however, the technical bid of the petitioner was declared to be non-responsive, though it was fulfilling all the parameters relating to technical qualifications and eligibility, merely on



the ground that one of the JB partners of the petitioner, namely, M/s EMS Infracon Pvt. Ltd., was under blacklisting as on 6.1.2021 inasmuch as it had been blacklisted vide Order No. 7559 dated 04.11.2020. It is submitted that the bid of M/s Anodyne Water Engineering Co. Pvt. Ltd. was not evaluated since it had not submitted the bid document fees and as far as the other two bidders are concerned, they were declared to be technically non-responsive. Thereafter, the Respondent-BUIDCo had cancelled the aforesaid NIT vide notice dated 27.5.2021, under the signature of the Chief Engineer, Urban Development and Housing Department and a fresh Notice inviting retender of the aforesaid Barahiya I&D and STP Project was issued on 28.6.2021 vide NIT No. BUIDCo/Yo-1493/20-22, though on the letter head of BUIDCo but signed by the Chief Engineer, Planning, Design and Monitoring, Urban Development and Housing Department.

3. The learned Senior Counsel for the petitioner has submitted that the NIT dated 01.09.2020 for



the Barahiya I&D and STP Project as well as the bidding documents clearly stipulate that the owner of the project is BUIDCo and the Owner's representative, as provided in Article 8.1.1 of the bid document, is the Design-Build-Operations Engineer, during the Design-Build period. It is submitted that nowhere in the entire bid document, the Chief Engineer, Planning, Design and Monitoring, Urban Development and Housing Department has been empowered to issue the tender cancellation order. In fact, the fresh tender notice dated 28.6.2021 has also been issued under the signature of the Chief Engineer, Planning, Design and Monitoring, Urban Development and Housing Department, hence, the same is without the authority of law.

4. The learned Senior Counsel for the petitioner has thus submitted that first of all, the NIT dated 01.09.2020 has been cancelled by tender cancellation notice dated 27.5.2021 by the Chief Engineer, Planning, Design & Monitoring, Urban Development and Housing Department, Govt. of



Bihar, Patna, who has got nothing to do with BUIDCo and secondly, the NIT dated 28.6.2021 has also been issued by an authority not competent to issue the same i.e. the Chief Engineer, Planning, Design and Monitoring, Urban Development & Housing Department, Govt. of Bihar, Patna.

5. It is the further submission of the learned Senior Counsel for the petitioner that BUIDCo is a Government Company, hence, for such purpose like cancellation of tender or issuance of fresh NIT, decision is to be taken by the Board of Directors. At this juncture itself, it may be mentioned that no such pleading has been made in the entire writ petition, hence such contentions cannot be permitted to be raised at the time of final arguments specially in absence of grant of any opportunity to the respondents to rebut the same. It is a well settled law that contentions, specially factual ones, which are not based on pleadings cannot be permitted to be raised at the time of arguments.



6. The second limb of argument advanced by the learned Senior Counsel for the petitioner is that the decision arrived at in the meeting of the Technical Tender Committee dated 06.01.2021 qua the petitioner herein to the effect that since JV partner of the petitioner i.e. M/s EMS Infracon Pvt. Ltd. has been blacklisted by BUIDCo, the petitioner is being declared to be non-responsive, is incorrect and illegal inasmuch as the order of blacklisting dated 4.11.2020 passed by BUIDCo qua M/s EMS Infracon Pvt. Ltd. was quashed by the Hon'ble Patna High Court by a judgment dated 04.02.2021 passed in CWJC No. 8929 of 2020 and then the subsequent order of blacklisting dated 04.03.2021 was also quashed by a judgment dated 19.7.2021 passed in CWJC No. 9597 of 2021.

7. The learned Senior Counsel for the petitioner has thus submitted that at the time when the petitioner had submitted its bid as also on the date fixed for opening of the technical bid, the JV partner of the petitioner was not blacklisted and only with a view to somehow disqualify the



petitioner, the Technical Tender Committee had met belatedly on 06.01.2021 and during the interregnum period, had blacklisted the JV partner of the petitioner firm by an order dated 4.11.2020 as also vide order dated 04.03.2021, both of which have stood quashed by the Hon'ble Patna High Court, as aforesaid, hence, the bid of the petitioner is required to be declared responsive.

8. Per contra, the learned Advocate General, Sri Lalit Kishore, Senior Advocate, appearing for the Respondent-BUIDCo, has submitted that National Mission for Clean Ganga (NMCG) has been established for implementation of overall national Ganga river basin authority program at national level and in this connection several projects/ programs are being conducted in the State of Bihar through BUIDCo. In this connection, at Barahiya in the district of Lakhisarai, Administrative approval and expenditure sanction was made for Barahiya interception and diversion as also for STP project, by NMCG on 30.12.2019 vide letter no. T-13/216-17/699/NMCG Barahiya, for a sum of Rs. 27 crore,



reference whereof has been made in annexure-1 to the writ petition, whereafter, NIT was issued on 23.5.2020 vide NIT No. BUIDCo/YO-1493/20-157 and in pursuance thereof three bidders had participated namely M/s ARE-SNET(JV), M/s Krushi Infrass India Private Ltd. and M/s Subhash Infra Engineers Pvt. Ltd. Thereafter, the meeting of the Technical Tender Committee was held on 21.8.2020 but all the three bidders were declared non responsive due to non-fulfillment of qualification criteria. M/s ARE-SNET (JV) failed to fulfill clause 1.4(a)2, 1.4(a)4, 1.4(a)6, 1.4(a)8 and 1.5(c) and clause 3.3. M/s Krushi Infrass India Pvt. Ltd. failed to fulfill clause 1.4(a)2 & clause 3.3. M/s Subhash Infra Engineers Pvt. Ltd. failed to fulfill clause 1.4(a)2, 1.4(a)5, 1.4(a)6, 1.4(a)7 and 1.5(a) and clause 3.3.

9. The learned Senior Counsel appearing for the Respondent-BUIDCo. has further submitted that as per the direction of the Technical Tender Committee, the proceeding of meeting dated 21.08.2020 was uploaded on e-proc website for 7



days, inviting objections, however, no objections were received in those 7 days. It is stated that since nobody had succeeded/passed in technical evaluation process pertaining to the aforesaid NIT, a notice inviting retender was issued on 01.09.2020 vide NIT No.- BUIDCo/YO-1493/20-171. As per this NIT, the last date for uploading the Bid on the website was 06.10.2020. Till the time of opening of bid on 07.10.2020, 4 bidders had participated in the bid namely:-(i) ARE-SNET(JV) (ii) Anodyne Water engineering Co. Pvt. Ltd. (iii) Singh Enterprises & EMS Infracon Pvt., Ltd. (JV) (iv) TC-R&B JV. Out of the aforesaid four bidders, documents of only three bidders were downloaded from e-proc website. Bid of M/s Anodyne Water Engineering Co. Pvt. Ltd. was not downloaded from the e-proc website since it had not submitted the bid document cost.

10. The learned Senior Counsel appearing for the Respondent-BUIDCo has next submitted that for evaluation of bid, meeting of the Technical Tender Committee was held on 06.01.2021 in which all



three bidders were declared non responsive. As far as M/s ARE- SNET (JV) and M/S TC-R&B JV are concerned, they were declared non-responsive due to non-fulfillment of qualification criteria clause no.-1.5(c), 1.4 (a) 2, 1.4(a) 4 and non-submission of Design and conceptual Drawing respectively, while M/S Singh Enterprises & EMS Infracon Pvt. Ltd. (JV) was declared non responsive since the JV partner M/s EMS Infracon Pvt. Ltd. had been blacklisted in BUIDCo vide order no. 7559 dated 04.11.2020. Thereafter, as per the direction of the Technical Tender Committee, the proceedings of the meeting held on 06.01.2021 was uploaded on e-proc website for 7 days, inviting objections, however, no objections were received in those 7 days. It is stated that since nobody had succeeded/passed in technical evaluation process pertaining to the aforesaid NIT, the tender was cancelled on 27.05.2021 and Notice Inviting retender was issued on 28.06.2021.

11. The learned Senior Counsel appearing for the Respondent-BUIDCo. has contended that a



Technical Bid Evaluation Committee (TBEC) has been constituted by BUIDCo. vide office order no. 35 dated 13.02.2021, in light of the decision taken by the Board of Directors of BUIDCo. in its 67th meeting held on 09.02.2021. The Members of TBEC are as follows:-

- (i) Chief Engineer, Planning, Design and Monitoring, UD & HD-Chairman
- (ii) Concerned Superintending Engineer of the Project-Member
- (iii) Executive Engineer, Planning, Design and Monitoring, UD&HD-Member
- (iv) General Manager (Finance), BUIDCo-Member.

It is stated that a tender committee (TC) has also been constituted in BUIDCo vide office order no. 34 dated 13.2.2021, in light of the decision taken by the Board of Directors of BUIDCo in its 67th meeting held on 09.02.2021. The Members of tender committee are as follow:-



(i) Managing Director, BUIDCo-Chairman

(ii) Engineer-in-Chief, UD&HD-Member

(iii) Internal Financial Advisor, UD&HD-Member

(iv) Chief Engineer, Planning, Design and Monitoring, UD&HD-Member

(v) Concerned Chief Engineer of the Project-Member

(vi) Superintending Engineer, Planning, Design and Monitoring, UD&HD-Member

(vii) Concerned Superintending Engineer of the Project-Member.

12. The learned Senior Counsel appearing for the Respondent-BUIDCo., in reply to the ground raised by the learned Senior Counsel for the petitioner to the effect that the tender cancellation notice and the notice inviting retender bear the signature of the Chief Engineer, Planning, Design and Monitoring, Urban Development and Housing Department, Government of Bihar, Patna and not



that of the Chief Engineer, Planning, Design and Monitoring, BUIDCo., has submitted that on account of typographical error, the designation had been wrongly mentioned in the notice inviting retender dated 01.09.2020 as Chief Engineer, Planning Design and Monitoring, BUIDCo. in place of Chief Engineer, Planning, Design and Monitoring, Urban Development and Housing Department, however the said tender was rightly cancelled by the Chief Engineer, Planning, Design and Monitoring, Urban Development and Housing Department. In this regard, it has been further submitted by the Ld. Senior Counsel appearing for the Respondent-BUIDCo. that the Bihar Urban Infrastructure Development Corporation Ltd. is a Government of Bihar undertaking and the said Govt. Company was formed by the Government of Bihar under the provisions of the Companies Act in the year, 2009 for executing infrastructure development work in the State of Bihar. At the time of formation of BUIDCo., vide Sankalp memo no. 5426 dated 13.11.2009 and sankalp memo no.



1295 dated 31.5.2013 total 44 posts of engineer had been sanctioned by the State Government with various designations like Deputy Project Directors, project Directors, General Managers, Chief General Manager, Executive Assistant (project), Managing Director etc. Apart from the above 44 numbers of Engineers, several posts of non-technical staffs were also sanctioned by the State Government. It is next stated that since the year 2009 till 2018 (when BRJP, BUDA and DUDA were merged with BUIDCo vide Govt. Sankalp no. 2690 dated 16.5.2018) BUIDCo was executing infrastructure development work with the help of these engineers and non-technical staffs. Procurement/issuance of tender was done by Chief General Manager, who was the technical head of the Corporation and approval of Managing Director, BUIDCo was solicited, being the administrative head of the Corporation. General Managers, Project Directors and Deputy Project Directors were assigned the duty of execution of projects. However, after merger of Bihar Rajya Jal Parishad,



Bihar Urban Development Agency and District Urban Development Agency with BUIDCo., nomenclature and name of post of engineers of BUIDCo. was changed from Chief General Manager to Chief Engineer, General Manager to Superintending Engineer, Project Director to Executive Engineer and Deputy Project Director to Assistant Engineer vide BUIDCo Board resolution no. 55/7. Several new posts of Engineers were created and all the posts of BUIDCo, BRJP, BUDA and DUDA were merged with newly sanctioned created posts and a unified engineering cell for BUIDCo., under the Urban Development & Housing Department, was created by the above stated Govt. decision / sankalp. Total number of engineers under the unified engineering cell are 577 which includes the previously sanctioned posts of engineers in BUIDCo, BRJP, BUDA and DUDA. Subsequently, vide sankalp memo no. 5727 dated 6.11.2018, additional 316 new posts of engineers were created by the State Govt. Thus a total number of 893 posts of Engineer were created by



the State Govt. for BUIDCo. Thereafter, vide sankalp memo dated 18.9.2019, all the 893 posts of engineer have been transferred to Urban Development and Housing Department.

13. The learned Senior Counsel appearing for the Respondent-BUIDCo has further submitted that vide sankalp memo no. 5288 dated 01.10.2019, it was stipulated that technical supervision of all the projects under the purview / jurisdiction of BUIDCo. will be done by the engineers of unified engineering cell under the Urban Development and Housing Department and they shall directly report to the Managing Director, BUIDCo. Under this scheme of arrangement, procurement of tender for BUIDCo. is done by the Chief Engineer Planning, Design and Monitoring, Urban Development and Housing Department. In fact not only procurement but also the Technical approval, technical sanction of schemes and execution of projects of BUIDCo. is being carried out by the engineers of the unified engineering cell under the Urban Development and Housing Department. Thus, it is submitted that



since the procurement of tender for BUIDCo., pertaining to all its projects, is being carried out by the Chief Engineer, Design, Planning and Monitoring, Urban Development and Housing Department as also the technical approval / technical sanction of schemes and execution of projects of BUIDCo. is being done by the Engineers of the Unified Engineering Cell under the Urban Development and Housing Department, there is no illegality as far as issuance of tender cancellation notice dated 27.5.2021 and retender NIT dated 28.06.2021, under the signature of Chief Engineer, Planning Design and Monitoring of the Unified Engineering Cell under the Urban Development and Housing Department, is concerned.

14. It has been next submitted by the learned Senior Counsel appearing for the Respondent-BUIDCo. that the original NIT was issued on 23.05.2020, whereafter the Technical Tender Evaluation Committee had met on 21.08.2020 and had found all the bidders to be non-responsive. The finding of the Technical Tender Committee was



then uploaded on the website and objections were invited, however, no objections were received, thus Notice inviting retender dated 01.09.2020 was issued, in pursuance whereof, the petitioner had also submitted its bid and then the meeting of the Technical Tender Evaluation Committee was held on 06.01.2021 but all the bidders were found to be non-responsive, whereafter, the proceedings of the meeting dated 06.01.2021 were uploaded on the website for seven days, inviting objections, however, no objections were received in those 7 days. Consequently, the Notice inviting retender dated 01.09.2020 was cancelled vide tender cancellation notice dated 27.05.2021 and a notice inviting retender dated 28.06.2021 was issued. It is further submitted that on the date of opening of the technical bid and holding of the meeting of the Technical Tender Committee i.e. on 06.01.2021, the JV partner of the petitioner, namely, M/s EMS Infracon Pvt. Ltd., had stood blacklisted vide order dated 04.11.2020 and since the said order of blacklisting had been quashed by the Hon'ble High



Court only on 04.02.2021, i.e after holding of meeting and submission of report by the Technical Tender Committee, the petitioner has rightly been held to be non-responsive. It is also submitted that after the matter regarding blacklisting of the JV partner of the petitioner i.e M/s EMS Infracon Pvt. Ltd. was remanded back to the authorities, it was again blacklisted vide order dated 04.03.2021, however, the same has again been quashed by the Hon'ble High Court by a judgment dated 19.07.2021, passed in C.W.J.C. No. 9597 of 2021, but the Hon'ble Court has observed in paragraph no. 64 as follows:-

"64. It is, therefore, observed that the Court has not given a complete clean chit to the petitioner, which possibly cannot be done in exercise of power under Article 226 of the Constitution of India. The respondents shall be at liberty to act in accordance with law in this regard. For the said purpose, however, the respondents shall be under obligation to issue to the petitioner a fresh show cause notice, if black-listing is proposed under Bihar Contractor Registration Rules, 2007. Before issuance of such show cause



notice, however, the competent authority shall be obliged to record a finding that the said executive instruction is applicable even in respect of the externally aided project in question."

15. The learned Senior Counsel appearing for the Respondent-BUIDCo has next contended that it is a well-settled law that the bidders have got no locus to challenge the cancellation of tender by the employer / institution, hence, the present writ petition is fit to be dismissed on this score alone. In this connection, the learned Senior Counsel appearing for the Respondent-BUIDCo has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***State of Jharkhand & Ors. Vs. M/s CWE-SOMA Consortium***, reported in (2016) 14 SCC 172, paragraph nos. 13 to 15 whereof are reproduced herein below:-

"13. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the



status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour (vide *Laxmikant v. Satyaw* [Laxmikant v. Satyaw an, (1996) 4 SCC 208] , *Rajasthan Housing Board v. G.S. Investments* [Rajasthan Housing Board v. G.S. Investments, (2007) 1 SCC 477] and *U.P. Avas Evam Vikash Parishad v. Om Prakash Sharma* [U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182]).

14. The appellant State was well within its rights to reject the bid without assigning any reason thereof. This is apparent from Clause 24 of NIT and Clause 32.1 of SBD which read as under:

“Clause 24 of NIT.—‘Authority reserves the right to reject any or all of the tender(s) received without assigning any reason thereof.’

Clause 32.1 of SBD.—‘... the employer reserves the right to accept or reject any bid to cancel the bidding process



and reject all bids, at any time prior to award of contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the employer's action.'"

In terms of the above Clause 24 of NIT and Clause 32.1 of SBD, though the Government has the right to cancel the tender without assigning any reason, the appellant State did assign a cogent and acceptable reason of lack of adequate competition to cancel the tender and invite a fresh tender. The High Court, in our view, did not keep in view the above clauses and right of the Government to cancel the tender.

15. The State derives its power to enter into a contract under Article 298 of the Constitution of India and has the right to decide whether to enter into a contract with a person or not subject only to the requirement of reasonableness under Article 14 of the Constitution of India. In the case in hand, in view of lack of real competition, the State found it advisable not to proceed with the tender with only one responsive bid



available before it. When there was only one tenderer, in order to make the tender more competitive, the Tender Committee decided to cancel the tender and invited a fresh tender and the decision of the appellant did not suffer from any arbitrariness or unreasonableness."

16. I have heard the learned counsel for the parties and gone through the materials on record. As regards the first contention of the petitioner to the effect that the tender in question has been cancelled vide tender cancellation notice dated 27.5.2021 by an authority incompetent to do so as also the notice inviting retender dated 28.06.2021 has been issued by an incompetent authority, hence, the same are hit by the principles of coram non judice, thus are fit to be set aside, this Court finds that the same is not only thoroughly misplaced but is also not tenable in the eyes of law in view of the explanation furnished by the Respondent-BUIDCo to the effect that the tender in question has been cancelled vide tender cancellation notice dated 27.5.2021 by an



authority competent to do so and the notice inviting retender dated 28.06.2021 has also been issued by a competent authority whereas on account of typographical error, the designation had been wrongly mentioned in the notice inviting retender dated 01.09.2020 as Chief Engineer, Planning Design and Monitoring, BUIDCo. in place of Chief Engineer, Planning, Design and Monitoring, Urban Development and Housing Department. This Court further finds that it is the stand of the respondents that the Bihar Urban Infrastructure Development Corporation Ltd. was formed/incorporated by the Government of Bihar under the provisions of the Companies Act in the year, 2009 for executing infrastructural development work in the State of Bihar and at the time of formation of BUIDCo., 44 posts of engineers had been sanctioned by the State Government with various designations apart from creation of several posts of non-technical staffs by the State Government. The procurement/ issuance of tender was being done by Chief General Manager, who



was the technical head of the Corporation and approval of Managing Director, BUIDCo was solicited, being the administrative head of the Corporation, however, upon merger of Bihar Rajya Jal Parishad, Bihar Urban Development Agency and District Urban Development Agency with BUIDCo. vide Govt. Sankalp no. 2690 dated 16.5.2018, the nomenclature and name of the posts of engineers of BUIDCo. were changed from Chief General Manager to Chief Engineer, General Manager to Superintending Engineer, Project Director to Executive Engineer and Deputy Project Director to Assistant Engineer vide BUIDCo. Board resolution vide Agenda no. 55/7. Several new posts of Engineers are stated to have been created and all the posts of BUIDCo, BRJP, BUDA and DUDA were merged with the newly created and sanctioned posts and a unified engineering cell for BUIDCo., under the Urban Development & Housing Department, was created by the above stated Govt. decision. It has been informed that a total number of 893 posts of Engineers were created by



the State Govt. for BUIDCo., which have stood transferred to the Urban Development and Housing Department vide sankalp memo dated 18.09.2019. It has also been stated by the Respondent-BUIDCo that vide sankalp memo no. 5288 dated 01.10.2019, it has been specified that technical supervision of all the projects under the purview / jurisdiction of BUIDCo. will be done by the engineers of unified engineering cell under the Urban Development and Housing Department and they shall directly report to the Managing Director, BUIDCo., thus procurement/ issuance of tender, Technical approval, technical sanction of schemes and execution of projects of BUIDCo. are being carried out by the Chief Engineer Planning, Design and Monitoring, Urban Development and Housing Department as also by the engineers of the unified engineering cell under the Urban Development and Housing Department. This aspect of the matter has not been controverted by the petitioner. Thus, this Court finds that since the procurement of tender for BUIDCo., pertaining to all its projects, is being



carried out by the Chief Engineer, Design, Planning and Monitoring, Urban Development and Housing Department as also the technical approval / technical sanction of schemes and execution of projects of BUIDCo. is being done by the Engineers of the Unified Engineering Cell under the Urban Development and Housing Department, there is no illegality as far as issuance of tender cancellation notice dated 27.5.2021 and retender NIT dated 28.06.2021, under the signature of Chief Engineer, Planning Design and Monitoring of the Unified Engineering Cell under the Urban Development and Housing Department, is concerned.

17. Now coming to the next issue raised on behalf of the petitioner regarding it being erroneously held to be non-responsive in the meeting of the Technical Tender Committee dated 06.01.2021 on the ground that the JV partner of the petitioner i.e. M/s EMS Infracon Pvt. Ltd. had been blacklisted notwithstanding the fact that the said order of blacklisting has stood quashed by the Hon'ble Patna High Court, this Court finds that though the



order of blacklisting of M/s EMS Infracon Pvt. Ltd. (JV partner of the petitioner) dated 04.11.2020 was quashed by the Hon'ble High Court, by a judgment dated 04.02.2021, however, on the date of opening of the technical bid i.e. on 06.01.2021, the JV partner of the petitioner was under the effect of blacklisting, hence, this Court is of the view that the bid of the petitioner was rightly held to be non-responsive.

18. It is a trite law that a person issuing tender notice has the right to accept or reject any bid and even to annul the whole bidding process, but subject to a caveat that such a decision should not be unfair, mala fide or based on irrelevant considerations. Now coming back to the present case, this court finds that since, upon opening of the technical bid by the Technical Tender Committee on 06.01.2021, all the bids were found to be non-responsive, the respondent-BUIDCo. had no option but to cancel the tender and issue a notice inviting retender, thus, the decision of the Respondent-BUIDCo to cancel the tender vide



tender cancellation notice dated 27.5.2021 as also its decision to issue a fresh notice inviting retender dated 28.06.2021 cannot be faulted with.

19. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, accordingly, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	13.9.2021
Uploading Date	13.01.2022
Transmission Date	NA

