

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4513 of 2021

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M/s Vinay Construction, Ram Nagar, Nawada through its partner Ram Naresh Singh Yadav, aged about 62 years, male, son of Late Ram Lakhan Yadav, resident of village- Ramnagar, P.S.- Nawada, District- Nawada

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Road Construction Department, Patna
2. The Additional Chief Secretary, Road Construction Department, Bihar, Patna
3. The Engineer in Chief cum Additional Commissioner (Work Management) Road Construction Department, Bihar, Patna
4. The Chief Engineer, South Division, Road Construction Department, Bihar, Patna
5. The Superintendent Engineering, Road Construction Department, Magadh Road Circle, Gaya
6. The Executive Engineer, road division, Nawada
7. M/s Surendra Prasad and Company through its partner Anup Kumar, aged about 54 years, male, son of Late surendra Prasad, resident of mohalla- Anandpura, P.O.- Kadirganj, P.S.- Nawada, District- Nawada

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar, Advocate
For the State	:	Mr. Manoj Kr. Ambastha
For the respondent no. 7	:	Mr. Alok Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

4 23-03-2022 The present writ petition has been filed for setting aside the decision of the Tender Committee dated 28.12.2020, whereby and whereunder the work for widening and strengthening of Nawada-Nardiganj road for the year 2019-20



(package no. BR-25/RC-244), has been given to the private respondent no. 7 even though the registration of the respondent no. 7 was suspended for three months on 09.10.20020. It is further prayed that after setting aside the work in question awarded to the respondent no. 7, the same be awarded to the petitioner herein since it was declared L-2.

2. The brief facts of the case are that the notice inviting tender no. RCD/PMGSY/NAW/01/2020-21 was issued by the Road Division, Nawada for widening and strengthening of various roads under the Road Division, Nawada by the Executive Engineer, Road Division, Nawada in which petitioner and six other bidders had participated. It was found, upon opening of the technical bid, that the petitioner and three others had qualified in the technical bid and accordingly recommendations were sent to the departmental tender committee for its approval. The departmental tender committee had then held a meeting on 11.09.2020, in which it had approved the recommendations sent to it and the same was uploaded on the website and objections, if any, were invited, however, till 18.09.2020 no objections were received. The financial bid of all the four successful bidders was opened on 18.09.2020 and the bid of the private respondent no. 7 was



found to be the lowest amongst all the four bidders while the petitioner was found to be L-2. Accordingly, the technical bid evaluation committee had recommended to allot the work in question in favour of the private respondent no. 7. Thereafter, the departmental tender committee had held a meeting on 28.12.2020 and considered the recommendations made by the technical bid evaluation committee in relation to financial bid of all the four bidders and had found that the private respondent no. 7 has quoted the lowest rate out of the four bidders and accordingly the financial bid of the private respondent no. 7 was approved.

3. The learned counsel for the petitioner has submitted that though the registration of the private respondent no. 7 had been suspended for six months vide order dated 10.08.2020 but still he has been allotted the tender/work in question, hence it is imperative that the same should be set aside and the work in question should be allotted to the petitioner.

4. At this juncture, it has also been submitted that though the respondent had challenged the order of suspension of its registration dated 10.08.2020 by filing a writ petition bearing CWJC No. 7298 of 2020 wherein by an interim order this Hon'ble Court had directed the respondents to consider the



technical bid of the respondent no. 7 during the pendency of the writ petition but the said writ petition was finally disposed off vide order dated 18.09.2020, whereby and whereunder the aforesaid order suspending the registration of the petitioner was quashed and the matter was remanded back to the authorities for passing a fresh order, after affording an opportunity of hearing to the private respondent no. 7. Thereafter, the Principal Secretary, Building Construction Department, Government of Bihar, Patna has passed a fresh order dated 09.10.2020, whereby and whereunder the registration of the private respondent no. 7 has been directed to remain suspended for three months with effect from 10.08.2020. The learned counsel for the petitioner has submitted that the said order dated 09.10.2020 passed by the Principal Secretary, Building Construction Department, Government of Bihar, Patna is illegal and could not have been passed from a retrospective date, hence it is apparent that the same has been passed in order to help the private respondent no. 7.

5. Per contra, the learned counsel for the respondent-State has submitted that though it is true that the registration of the private respondent no. 7 was suspended for six months with effect from 10.08.2020, however, the same was challenged by



the petitioner before this Hon'ble Court by filing a writ petition bearing CWJC No. 7298 of 2020 and vide order dated 31.08.2020, this Hon'ble Court had granted permission to the private respondent no. 7 to participate in the tender in question i.e. the one issued by the Road Construction Department, Nawada, which was going to be opened on the next date of the said order dated 31.08.2020. It is further submitted that the said writ petition bearing CWJC No. 7298 of 2020 was finally disposed off by an order dated 18.09.2020 and the aforesaid order of suspension dated 10.08.2020 was quashed and the matter was remitted back to the department for fresh consideration. It is thus submitted that as on the relevant date i.e. 18.09.2020 when the financial bid was opened, the order of suspension of the registration of the petitioner was no longer in existence, hence the contention of the petitioner is legally not tenable in the eyes of law. It is further submitted that in compliance of the orders of this Hon'ble Court dated 18.09.2020 passed in CWJC No. 7298 of 2020, the Principal Secretary, Building Construction Department, Government of Bihar, Patna had considered the case of the private respondent no. 7 afresh and had also taken into account the fact that the punishment of suspension of registration, which was required to



be imposed on the private respondent no. 7 in the year 2014, has been inflicted much belatedly only in the year 2020, hence the same appears to have been inflicted after a great delay thus the learned Principal Secretary, Building Construction Department, Government of Bihar, Patna had deemed it fit and proper to suspend the registration of the private respondent no. 7 with effect from the date on which the suspension order was issued earlier i.e. 10.08.2020. Thus, it is submitted that in fact as a consequence to the aforesaid order dated 09.10.2020, the registration of the private respondent no. 7 once again stood suspended with effect from 10.08.2020 to 09.11.2020, however, the same stood revived with effect from 10.11.2020. It is further submitted that since the departmental tender committee had allotted the work in question to the private respondent no. 7 in its meeting held on 18.12.2020, a date on which the registration of the private respondent no. 7 was not under suspension apart from the fact that as on 18.09.2020 when the financial bid of the private respondent no. 7 along with others was opened, the private respondent no. 7 was not disqualified to participate in the said tender on account of the interim order dated 31.08.2020 passed by this Hon'ble Court in favour of the private respondent no. 7, no illegality can be found as far as allotment of



tender/work in question is concerned. It has been further submitted that as on 21.12.2020, the private respondent no. 7 has completed about 65 per cent of the work in question, hence the present writ petition is fit to be dismissed.

6. We have heard the learned counsel for the parties and gone through the materials on record. We find that vide order dated 10.08.2020, passed by the departmental authorities, the registration of the private respondent no. 7 was suspended for a period of six months, however, the petitioner had approached this Court by filing a writ petition bearing CWJC No. 7298 of 2020 and this Court vide interim order dated 31.08.2020 had granted permission to the private respondent no. 7 to participate in the tender in question, whereafter the petitioner had participated along with others in the tender in question. In the meantime, a learned Single Judge of this Court vide order dated 18.09.2020 passed in CWJC No. 7298 of 2020 had quashed the order of suspension of registration of the private respondent no. 7 and remanded the matter back to the departmental authorities for fresh consideration. On this very date i.e. on 18.09.2020 the financial bid of the tender in question was opened and private respondent no. 7 was found to have quoted the lowest rate and since on the said date the order of



suspension of the registration of the private respondent no. 7 was no longer in existence, a decision was taken to declare the private respondent no. 7 as the successful bidder (L-1). We further find that upon remand of the case of the private respondent no. 7, the Principal Secretary, Building Construction Department, Government of Bihar, Patna has passed a fresh order dated 09.10.2020, whereby and whereunder the registration of the private respondent no. 7 has been directed to remain suspended with effect from 10.08.2020 for three months. Thus, apparently the registration of the petitioner had stood revived on 10.11.2020 and only thereafter the departmental tender committee in its meeting held on 28.12.2020 has considered the recommendation of the technical bid evaluation committee in relation to the financial bid of all the four bidders individually and had found that the private respondent no. 7 to have quoted the lowest rate, hence the financial bid of the private respondent no. 7 was approved and the work in question was allotted in favour of the private respondent no. 7 on a date on which the candidature of the petitioner did not suffer from any lacuna. We also find that though the petitioner, private respondent no. 7 and three others had qualified in the technical bid which was approved by the departmental tender committee



in its meeting held on 11.09.2020 and the minutes of meeting of the departmental tender committee dated 11.09.2020 was uploaded on the website calling for objection, however, till the appointed date i.e. till 18.09.2020, no objections had been received, thus apparently the petitioner, at that moment of time had not thought it appropriate to file any objection and only when he has been ousted from the tender process on account of being found to be L-2, he has now turned around and thought it proper to challenge the decision regarding allotment of work to the private respondent no. 7, which clearly smacks of mala fide.

7. Having regard to the facts and circumstances of the case and for the reasons discussed herein above, we are of the view that the contention of the petitioner that the private respondent no. 7 was disqualified to participate in the tender process in question on account of his registration having been suspended vide order dated 10.08.2020 is thoroughly misconceived and sans any merit. In the result, the writ petition, being devoid of merit stands dismissed, however, with no order as to costs.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

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