

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12215 of 2021

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Gomati Infratech Proprietor Minnat Kumari through attorney
Rajesh Kumar Jha, aged about 45 years, Male, S/o Chandra
Shekhar Jha, R/o Siswar, P.S.- Phulparas, District- Madhubani.
... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
2. The Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Govt. of Bihar, Patna.
4. The Chief Engineer- 3, Rural Works Department, Govt. of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Works Division, Darbhanga.
6. The Executive Engineer, Rural Works Department, Office of Chief Engineer-3, Govt. of Bihar, Patna.
7. The Executive Engineer, Rural Works Department, Works Division, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Pandey, Adv.
For the Respondent/s : Smt. Archana Meenakshee (GP 6)

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CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 28-03-2022

The present writ petition has been filed for quashing the decision of the Technical Bid Committee dated 18.05.2021 whereby and where under notice inviting re-tender for construction of different roads under MMGSY has been cancelled. The petitioner has



further prayed for opening its financial bid and awarding the contract in question to it.

2. The brief facts of the case are that a notice inviting re-tender i.e. RWD /MMGSY/19/ET/2020-21 was issued by the office of the Executive Engineer, Rural Works Department, Work Division, Madhubani inviting tenders for construction of different roads including maintenance thereof.

3. The petitioner is stated to have participated in the NIT and submitted its bid. The petitioner was the single bidder with respect to the construction of road work mentioned at Serial No. 4, 5 and 6 of the NIT. It is the contention of the learned counsel for the petitioner that the technical bid of the petitioner was accepted and thereafter, the respondents were required to open its financial bid, however, the financial bid was never opened and instead a decision was taken to cancel the tender in view of Clause 16 of the NIT.

4. The learned counsel for the petitioner has contended that no notice or information was given to the petitioner prior to cancellation of the tender in question, hence, the tender has been cancelled in an arbitrary manner, thus, the respondents are required to be directed to open the financial bid and award the



tender in question to the petitioner firm.

5. Per contra, the learned counsel for the Respondent State has submitted that the Respondents had invited short notice inviting Re-tender i.e, RWD /MMGSY/19/ET/2020-21 for construction and maintenance of 9 roads as described in NIT under MMGSY Scheme. Thereafter, the process for accepting the bid was initiated and as far as the petitioner is concerned, it had submitted bids for construction of roads as mentioned at Serial No. 2, 4, 5 and 6 of the N.I.T., acknowledgment whereof was issued to the petitioner. Thereafter, the meeting of the Technical Bid Committee was convened on 18.05.2021 for the purposes of technical evaluation of the bid submitted by the bidders, however, during the course thereof it came to the notice of the Technical Bid Committee that the clause regarding submission of the character certificate by the bidders is missing in the NIT, which is mandatory in light of the departmental letter no. 489 dated 28.01.2021, hence, it was decided to cancel the tender as per Clause 16 of the NIT in order to avoid any dispute in execution of the tender. In such view of the matter, the tender itself was cancelled in the meeting held on 18.05.2021 and the fact remains that



the Technical Bid Evaluation Committee neither evaluated the bids of any of the bidders nor it rejected any bid. It has also been submitted that the petitioner has not been declared qualified in the meeting of the Technical Bid Committee held on 18.05.2021. It is also the submission of the learned counsel for the Respondents that a reference has been made to the details uploaded on the Website, annexed as Annexure-5 series to the writ petition, by the learned counsel for the petitioner, however, the same nowhere depicts that the petitioner has been held to be successful in the technical bid, thus the same is of no value to the petitioner. The learned counsel for the Respondents has also referred to the proceedings of the Technical Bid Committee, as contained in Minutes of meeting dated 18.05.2021 (Annexure-B series to the counter affidavit) to show that neither the bids of any of the bidder has been accepted nor rejected and on the contrary, the NIT in question has been cancelled. It is also submitted that after cancellation of the earlier tender in question, fresh short notice inviting re-tender with respect to the same work has been issued on 16.07.2021, in pursuance whereof bids were submitted and the same has also attained finality in as much as



the works in question have already been allotted to the eligible/ successful contractors.

6. The learned counsel for the Respondent State has also given details regarding the allotment of work in question to various contractors in as much as vide Agreement No. 16 SBD/ 2021-22 the construction and maintenance work and CD work pertaining to Bramotra to Ghaupari Ghat road has been allotted to an Agency namely Uuvaan Rinsing Pvt. Ltd.. Likewise vide Agreement No. 75 SBD/2021-22, the Construction and maintenance work and CD Work pertaining to Ranti Rajnagar road (Md. Aziz house) to Chhota Sonwari Road, has been allotted to an Agency namely Prashant and Raj Construction Pvt. Ltd. Further vide Agreement No. 57 SBD/2021-22, the construction and maintenance work and CD work of TOI Ranti Rajnagar to Dakshinari tola Bharia road has been allotted to an Agency namely Prashant and Raj Construction Pvt. Ltd. Lastly vide Agreement No. 72 SBD/2021-22, the Construction and maintenance work and CD work of Hanuman Mandir Pandit tola to Sugauna South tola road has been allotted to an Agency namely Sri Avinash Kumar Singh.

7. It has also been submitted that after execution



of the aforesaid agreements in question, the construction work of the roads in question is going on in full-swing. It has also been pointed out that the said agreements have been executed prior to passing of the interim order dated 22.02.2022, by this Court, in the present case whereby and where under it has been directed that in case the tender in question is allotted subsequently to anyone, the same shall be subject to the final outcome of the present writ petition. It has also been brought to the notice of this Court that the petitioner had not participated in the short notice inviting re-tender i.e. RWD /MMGSY/05/ET/2021-22, hence it has no locus to maintain the present writ petition.

8. We have heard the learned counsel for the parties and gone through the materials on record. At the outset we have put a query to the learned counsel appearing for the petitioner to show any document to indicate that its technical bid was accepted by the Technical Bid Committee apart from asking the learned counsel for the petitioner, as to whether the petitioner has participated in the short notice inviting re-tender dated 16.07.2021, as to whether it has challenged the various agreements executed in between the



successful bidder and the respondent State and as to whether it has made the successful bidders as party respondents to which neither the learned counsel for the petitioner is able to show any order/ proceedings of the Technical Bid Committee accepting the technical bid of the petitioner nor his answer to the rest of the queries is in the affirmative, rather it is in the negative. We thus find that on account of cogent reasons and in order to avoid unnecessary litigation/ complications in future on account of non-observance of the guidelines regarding furnishing of character certificate having been omitted to be mentioned in the terms and conditions of the NIT in question, the Technical Bid Committee vide its proceeding dated 18.05.2021 has rightly recommended for cancellation of the Technical Bid in question.

9. Thus, we do not find the decision of the Respondent State to invite fresh tender to be either mala fide or arbitrary. In this connection it would be apropos to refer to a judgment rendered by the Hon'ble Apex Court in the case of **State of Jharkhand & Ors. Vs. CWE- SOMA Consortium** [(2016) 14 SCC 172], paragraphs no. 20 to 23 whereof are reproduced herein below:-



“20. Admittedly, in the pre-bid meeting held on 24-3-2014, ten tenderers have participated. After conclusion of the pre-bid meeting on 24-3-2014, as a result of stringent conditions prescribed in Clauses 4.5(A)(a) and 4.5(A)(c), only three tenderers could participate in the bidding process and submit their bids. As noticed earlier, upon scrutiny two were found non-responsive. In our considered view, the High Court erred in presuming that there was adequate competition. In order to make the tender more competitive, the Tender Committee in its collective wisdom has taken the decision to cancel and reinvite tenders in the light of SBD norms. As noticed earlier, the same was reiterated in a subsequent meeting held on 9-7-2014. While so, the High Court was not justified to sit in judgment over the decision of the Tender Committee and substitute its opinion on the cancellation of tender. Decision of the State issuing tender notice to cancel the tender and invite fresh tenders could not have been interfered with by the High Court unless found to be mala fide or arbitrary. When the authority took a decision to cancel the tender due to lack of adequate competition and in order to make it more competitive, it decided to invite fresh tenders, it cannot be said that there are any mala fides or want of bona fides in such decision. While exercising judicial review in the matter of government contracts, the primary concern of the court is to see whether there is any infirmity in the decision-making process or whether it is vitiated by mala fides, unreasonableness or arbitrariness.

21. Observing that while exercising power of judicial review, the Court does not sit as appellate court over the decision of the Government but merely reviews the manner in which the decision was made, in *Tata Cellular v. Union of India* [*Tata Cellular v. Union of India*, (1994) 6 SCC 651], SCC in para 70 it was held as under : (SCC p. 675)



“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.”

(emphasis in original)

22. The Government must have freedom of contract. In *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.* [Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138] , SCC in para 12 this Court held as under : (SCC p. 147)

“12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government



must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)"

The Court does not have the expertise to correct the administrative decision as held in Laxmikant v. Satyawant [Laxmikant v. Satyawant, (1996) 4 SCC 208] , the Government must have freedom of contract.

23. *The right to refuse the lowest or any other tender is always available to the Government. In the case in hand, the respondent has neither pleaded nor established mala fide exercise of power by the appellant. While so, the decision of the Tender Committee ought not to have been interfered with by the High Court. In our considered view, the High Court erred in sitting in appeal over the decision of the appellant to cancel the tender and float a fresh tender. Equally, the High Court was not right in going into the financial implication of a fresh tender."*

We also find that neither the petitioner has made the successful bidders as party respondents nor the agreements executed in between the respondents



and the successful bidders have been challenged before this Court. Hence, even other wise, the present writ petition has been rendered insipit.

10. Having regard to the facts and circumstances of the case as also for the reasons mentioned herein above, we do not find any merit in the present writ petition, hence, the same stands dismissed, however, without any order as to costs.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	06-04-2022
Transmission Date	N/A

