

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18133 of 2021

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M/s Maa Vindvasini Enterprises having its registered office at 301, Aastha Sai Vihar, Ashok Ashram Dibadih, P.O. and P.S. Doranda, District - Ranchi (Jharkhand), through its partner Ramesh Kumar Singh (Male), aged about 51 years, Son of Bidya Nand Singh, resident of 301, Aastha Sai Vihar, Ashok Ashram Dibadih, P.O. and P.S. Doranda, District - Ranchi (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director - in - Chief, Health Services, Bihar, Patna.
4. The Principal Secretary, Finance Department, Government of Bihar, Patna.
5. The Bihar Medical Services and Infrastructure Corporation Ltd, Hospital Road, Shastri Nagar, Patna through the Managing Director,
6. The Managing Director, The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.
7. The Chief General Manager, The Bihar Medical Service and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.
8. The General Manager (P and D), The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Advocate
		Mr. Awnish Kumar, Advocate
For the Respondent/s	:	Mr. Nagendra Pd. Yadav, SC 23
For the Resp. nos. 5 to 8 :		Mr. Vikash Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 06-12-2022

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Bihar Medical Services and Infrastructure Corporation Ltd.

The petitioner has filed the instant writ application for the following reliefs :-



“(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the Corrigendum Notice No.5 dated 13.08.2021 issued by the Chief General Manager (Personnel) of Bihar Medical Services and Infrastructure Corporation Ltd., Bihar, Patna in reference to Notice Inviting Tender No.BMSICL/INFRA/28/2020 dated 05.09.2020, whereby and where under the Respondent Corporation Ltd. has been pleased to notify the rejection of financial bid in respect of Group No.2 of Notice Inviting Tender No. BMSICL / INFRA /28 / 2020 dated 05.09.2020 for special repairing of different building of Darbhanga Medical College and Hospital, Laheriasarai, Darbhanga.

(II) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities for opening of the financial bid of the petitioner for the special repairing of different buildings of Darbhanga Medical College and Hospital, Laheriasarai, Darbhanga even if the petitioner's financial tender is a single tender, on the ground that since it was a case of re- tender and the petitioner company had offered for the aforesaid special repairing of the building for the cost lower than the estimated cost of repairing the Respondents



are not justified to reject the financial even before its opening and its consideration by the competent Committee in view of the Bihar Financial (Amendment) Rules, 2016 by which Rule-131A of the Bihar Financial Rules was amended, whereby and where under a decision was taken to refer the matter to a higher committee if in re-tendering process, there is only one surviving bidder qualifying for opening of his financial bid.

(III) For issuance of any other appropriate writ/writs, order/ orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

As per the case of the petitioner, the respondent Bihar Medical Services and Infrastructure Corporation Ltd (hereinafter referred to as ‘the Corporation’) came out with a notice inviting tender bearing N.I.T no. BMSICL/INFRA/11/2020 on 2.6.2020 for the repair work of various building at DMCH, Laheriasarai, Darbhanga, pursuant to which the petitioner company submitted its tender document. As the petitioner alone filed its tender for the said work, the Technical Bid Committee decided to issue retender for the said work and pursuant to the said decision another notice inviting



tender bearing NIT no. BMSICL/INFRA/28/2020 was published on 5.9.2020. In response to the retender five persons including the petitioner submitted their tender document. However, on opening of the technical tender, the Technical Bid Committee found the technical bid of the other four persons to be defective and their bid was rejected. The technical bid of the petitioner was accepted by the Technical Bid Committee.

It is the case of the petitioner that on acceptance of his technical bid by the Technical Bid Committee, as directed by the respondent Corporation, the petitioner submitted its extended bank guarantee. However, the petitioner was surprised to learn that by Corrigendum Notice no. 5 dated 13.8.2021 issued under the signature of the CGM (P), BMSICL, Patna, the bid for group no. 2 besides others of the notice inviting tender no. BMSICL/INFRA/28/2020 dated 5.9.2020 was cancelled on the ground of it being a single responsive bid.

Learned counsel appearing for the petitioner submits that in terms of Rule 131J(c) of the Bihar Financial Rules, 1950, in case of single tender, as in the instant case, the matter required to be disposed off by the authority one level above the competent authority. The order impugned dated 13.8.2021 not having been passed in terms of the said Rule, is not sustainable



in law and fit to be quashed. As per learned counsel for the petitioner, the petitioner's financial tender was required to be opened by the Financial Bid Committee and thereafter the case being of single tender required to be referred to a committee constituted in the Corporation for consideration and disposal of the single bid cases of retender.

Having heard learned counsel for the petitioner and learned counsel for the respondent Corporation, we find merit in the submissions made on behalf of the petitioner.

Rule 131J of the Bihar Financial Rule, 1950 is quoted herein below for ready reference :-

“131J. Two bid system- For purchasing high value plant, machinery etc. of a complex and technical nature, bids may be obtained in two parts as under:-

(a) Technical bid consisting of all technical details alongwith commercial terms and conditions; and

(b) Financial bid indicating item-wise price for the items mentioned in technical bid.

The technical bid and the financial bid should be sealed by the bidder in separate covers duly superscribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly superscribed. The technical bids are to be



opened by the purchasing Department at the first instance and evaluated by a competent committee or authority. At the second stage financial bids of only the technically acceptable offers should be opened for further evaluation and ranking before awarding the contract.

(c) After evaluating the technical bids received by the purchaser department by the competent committee or authority, if only one tender remains or no tender is received in the first bid for evaluation of financial bid then re-tender shall be invited for it immediately. If after inviting re-tender also, only one tender remains for evaluation of financial bid after technical evaluation, then the matter will be disposed off by the authority of one level above of the competent authority.”

From perusal of section 131J(c) of the Bihar Financial Rules as quoted herein above it would transpire that the same provides that if after inviting retender also, one tender remains for reevaluation of financial bid after technical evaluation, then the matter is to be disposed off by the authority of one level above of the competent authority.

So far as the instant case is concerned, the notice inviting



tender (Annexure 2) dated 5.9.2020 issued by the Corporation would show that the same was issued under the signature of the Chief General Manager, BMSICL, Patna and the order impugned being Corrigendum Notice no. 5 dated 13.8.2021 (Annexure P-5) canceling the bid for group no. 2 besides others on account of the same being single responsive bid has also been passed by the CGM (T), BMSICL, Patna.

Thus, the order impugned dated 13.8.2021 (Annexure P-5) is clearly in teeth of Rule 131J(c) of the Bihar Financial Rules and is illegal and unsustainable in law.

Consequently the order impugned being Corrigendum Notice no. 5 dated 13.8.2021 (Annexure P-5) issued under the signature of the Chief General Manager (P), BMSICL, Patna is hereby quashed with liberty to the respondent Corporation to take steps in accordance with law.

The writ application stands allowed.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

