

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5424 of 2023

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Anil Kumar Prasad, Son of Virendra Kumar Prasad, Residing at- Orma Uttar Tola, P.O.- Haakam, P.S.- Siwan (M), District- Siwan- 844126, Address as per Adhar Card Resident of- 27-C, Pocket A1, LIG, Flat Mayur Vihar, Phase- 3, Vasundhara Enclave, ASO East, Delhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer-In-Chief, Rural Works Department, Bihar, BRRDA, 3rd Floor, Land Development Bank Building, Budh Marg, Patna, Bihar 800001.
3. The Chief Engineer, Rural Works Department, Patna.
4. The Superintending Engineer, Work Circle, Rural Works Department, Siwan.
5. The Executive Engineer, Rural Works Department, Work Division, Siwan 1.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate Mr. Yogesh Kumar, Advocate Mr. Ayush Kumar, Advocate Mr. Kanishk Kaustubh, Advocate Mr. Shikhar Mani, Advocate
For the Respondent/s	:	Mr. Kameshwar Pd. Gupta (GP10) Mr. Virendra Kumar, AC to GP 10

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-04-2023

In the instant petition, petitioner has prayed for the following relief(s):-

“(i) For setting aside the decision of the Technical Tender Committee dated 11.03.2023, issued with the signature of the Engineer-in-Chief, Rural Works Department, Bihar, Patna, to the extent it relates to the petitioner whereby the petitioner has



been declared ineligible in terms of clause 4.2 (g) of the MBD in the NIT No. MR-3054-20/2022-23, Package No.- MR-N/22-23, Siwan 1/05 (Tender ID- 119446).

(ii) For issuance of direction to the consider the objection of the petitioner submitted vide Letter No. 07 Dated 16.03.2023, whereby the petitioner apprised the respondents that on the similar Bank Credit Facility, the petitioner was declared qualified at least in seven tenders.

(iii) For any other relief/reliefs for which the petitioner may be deemed entitled to.”

2. The petitioner is one of the bidders pursuant to the NIT No. MR-3054-20/2022-23, Package No.- MR-N/22-23, Siwan 1/05 (Tender ID- 119446) vide (Annexure-2). Petitioner's technical bid has been rejected on 11.03.2023 on the score that the petitioner did not fulfill the qualification criteria in particularly 4.2(g) of Model Bid Document (MBD). Clause 4.2(g) of qualification criteria of MBD reads as under:-

“(g) evidence of access to line(s) of credit and availability of other financial resources/facilities certified by banker (the certificate being not more than 3 months old) up to the percentage (defined in the Bid Data Sheet) of the contract price of works, during the implementation of the works.”

3. Perusal of HDFC Bank certificate dated 19.07.2022 there is a condition “if he fulfills the term and condition of the Bank”. This has been taken note of for the purpose of rejection of petitioner's bid at the technical bid stage. The petitioner has



submitted bid on 20.07.2022.

4. Learned counsel for the petitioner submitted that there is no instruction to the bidders as to how the Bank certificate was required to be obtained to the extent that such certificate shall not be conditional one. In the absence of such instruction to the bidders, rejection of petitioner's technical bid on this account is arbitrary and illegal.

5. *Per contra*, learned counsel for the respondent resisted the aforementioned contentions of the petitioner and submitted that there is no infirmity in the rejection of technical bid in the light of the condition imposed by the HDFC Bank to the extent that "if he fulfills the term and condition of the Bank".

6. Heard the learned counsels for the respective parties.

7. Core issue involved in the present *lis* is whether rejection of petitioner's technical bid is in order or not? The technical bid of the petitioner was rejected with reference to Clause 4.2(g) of the MBD. Reading of Clause 4.2(g) of the MBD read with certificate of HDFC Bank, the concerned officials have not issued instruction to the bidders that bank certificate shall not with any condition. In the absence of such instruction to the bidders, rejection of petitioner's technical bid on the ground that certificate issued by the HDFC Bank is a



conditional one and it cannot be relied on for the purpose of rejection of petitioner’s technical bid. We find that rejection of petitioner’s technical bid is arbitrary and illegal, accordingly, the petitioner has made out a *prima facie* case so as to interfere with the impugned action of the respondent and hence, decision of the Technical Tender Committee dated 11.03.2022 issued with the signature of the Engineer-in-Chief, Rural Works Department, Bihar, Patna stands set aside insofar as the petitioner is concerned with further direction to consider petitioner’s bid if it is otherwise in order.

8. Accordingly, the writ petition stands allowed.

9. Pending Interlocutory Applications, if any, stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Balmukund/-
DKS/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	25.04.2023
Transmission Date	NA

