

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5841 of 2023

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Niket Kumar son of Mithilesh Kumar Singh, resident of Nai Basti Mahadewa,
Siwan, Police Station-Muffasil, District-Siwan.

... .. Petitioner/s

Versus

1. The Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
2. The Chief Engineer, Rural Development Department, Govt. of Bihar, Patna.
3. The Engineer in Chief, Rural Development Department, Govt. of Bihar, Patna.
4. The Superintending Engineer R.W.D. (W) Circle, Siwan.
5. The Executive Engineer, Rural Works Department, Circle, Siwan.
6. Satendra Upadhyay, Village- Mohammadpur Bhatha, P.S.- Manjhi, District-Saran.
7. Deopura Infra Construction Pvt. Ltd. C/o Subahsh Kumar Shahi, Vill-P.O-Deopura, P.S.- Ekma, District- Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sarva Deo Singh, Advocate
For the State	:	Mr. Deepak Sahay Jamuar, AC to AAG-4
For Respondent No. 6	:	Mr. Ashok Kumar, Advocate
		Mr. Bibhuti Narayan, Advocate

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

Date : 28-07-2023

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for following reliefs:-

"1. That the petitioner prays for issuance of an appropriate writ/writs, order/orders, direction/ directions for quashing the decision/communication dated 23.2.2023 (Annexure-3) which was uploaded on 24/25.2.2023 by which the Bid submitted by the



petitioner has been rejected Under clause 4.4 A(c) of Model Bidding Document on the ground of "**not attached**" in the check-list of similar works documents. However, as per the instructions to Bidders (ITB) the petitioner has submitted the documents of similar works of more than five continuous years in the same Circle which has not been considered and the person against whom there is an allegation of unsatisfactory work standard (ATR) has been selected.

The petitioner further prays for direction to consider the application of protest which has been submitted on 2.3.2023 to the concerned officer and further direction to make allotment the work in favour of the petitioner.

And for the any other relief the petitioner may be found entitled."

3. Pursuant to N.I.T. dated 28.10.2022, petitioner is one of the bidder. His bid has been rejected for want of material with reference to Clause 4.4 (A) read with (c) of tender documents.

The aforementioned clause reads as under:-

"4.4 A To qualify for award of the Contract, each bidder should have in the last five years (5 years immediately preceding the year, in which the bids are invited, year means financial year);

(c) Satisfactorily completed, as prime contractor or sub contractor at least one similar work of value not **less than 30%** (Thirty Percent) of estimated value of contract."

4. Perusal of page 232, the document is dated 01.08.2016, in the light of Clause 4.4 (A)(c), is required to be taken note of with reference to certificate of execution of work



should be within five years, whereas the certificate produced by the petitioner is dated 01.08.2016. Therefore, certificate has no relevancy for the purpose of meeting of the aforementioned clauses.

5. Learned counsel for the petitioner further submitted that in terms of Clause 7.1, bid could be amended or amendment of bidding document. Such a power is vested with the Engineer-in-Chief and not at the behest of the bidder. It is to be noted that once the N.I.T dated 28.10.2022 prescribed last date as on 12.12.2022, the petitioner cannot produce documents dated 06.04.2023, vide Annexure- 6 series, in other words, Annexure-6 series is beyond the last date for submission of bid. Therefore, there is no infirmity in rejection of the bid insofar as non-production of material information along with bid to satisfy Clause 4.4 A(c) of the bid documents.

6. Accordingly, the present petition stands rejected.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.08.2023
Transmission Date	N.A.

