

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8782 of 2020

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Shapoorji Pallonji and Company Pvt. Ltd. having its registered office at 70, Nagindas Master Road, Fort, Mumbai, Maharashtra through its authorized representative Mr. Surendra Nath Prasad aged about 50 years, Son of Lt. Shri Raghbir Prasad, Resident of J/64, First Floor, P.C. Colony, P.S. Ashok Nagar, Kankarbagh, Patna- 800020

... .. Petitioner/s

Versus

1. The Bihar Urban Infrastructure Development Corporation Ltd. West Boring Canal Road, Raja Pur Pul, Patna- 800001 through its Managing Director.
2. The National Mission for Clean Ganga Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation), Government of India, 1st Floor, Major Dhyan Chand National Stadium, India Gate, New Delhi through its Director General.
3. M/s VA TECH WABAG LIMITED, having its registered office at 'Wabag House', No. 17, 200 feet Thoraipakkam- Pallavaram Main Road, Sunnambu Kolathur, Chennai, Tamilnadu.
4. M/s DK SEWAGE PROJECT LIMITED having its registered office at No.17, Wabag House, 200 Feet Thoraipakkam, Pallavaram, Main Road, Chennai, Tamilnadu.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vivek Singh, Advocate
For the Respondents No. 3 and 4 : Mr. Niraj Kumar, Advocate
For the B.U.I.D.C.O. : Mr. Rabindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date : 17-01-2023

Heard Mr. Vivek Singh, learned counsel for the petitioner, Mr. Niraj Kumar, learned counsel for the respondents no. 3 and 4 and Mr. Rabindra Kumar Priyadarshi, learned counsel for the Bihar Urban Infrastructure Development Corporation Ltd. (hereinafter referred to as the 'BUIDCO').



2. The petitioner has moved the Court for the following reliefs:

“A. A Writ in the nature of Certiorari or any other appropriate writ, order/s, direction/s quashing the letter of award [hereinafter referred to as LOA] and consequent execution of Contract Agreement by the Respondent No.1 to develop/construct Digha-Kankarbagh sewage treatment plant and sewerage network in Patna to the Respondent No.3 pursuant to its Invitation for Bids- IFB No. IN-BUIDCo/yo-911/18-32 and consequently declare the concession agreement with respondent no.4 null and void and inoperative;

B. A Writ in the nature of Mandamus or any other appropriate writ, order/s direction commanding the Respondent No.1 to consider the bid of the petitioner herein and award the project as per its Invitation for IFB No. IN-BUIDCo/yo-911/18-32 to develop/construct Digha-Kankarbagh sewage treatment plants and sewerage network in Patna to the petitioner herein.

C. For any other relief/s for which the Petitioner is entitled to.”

3. Basically, the contention of the petitioner is that the work experience for having executed successfully the sewerage work for 150 kilometres is not satisfied by the respondents no. 3 and 4 who have been allotted the work in question. In support of such contention, learned counsel submits that as per the Central Public Health and Environmental Engineering Organisation (hereinafter referred to as the ‘CPHEEO’) guidelines, the experience had to be in laying down of actual sewerage having a



diameter of 150 mm and not the last mile connection from the main sewerage to the individual houses which is included in the work experience of the respondents no. 3 and 4 which makes them ineligible for even being considered for the tender in question. Learned counsel submitted that these guidelines are now required to be strictly followed and the respondents no. 3 and 4 not satisfying the same, ought not to have been considered. On the other hand, it was contended that the petitioner fully satisfied the requirement having done sewerage work for more than the required experience needed for the current tender.

4. Learned counsel for the State submits that the award has already been awarded in the year 2019 and there is no major complaint.

5. Learned counsel for the respondents no. 3 and 4 submit that the contention of the petitioner is misconceived for the reason that the requirement of any tender or project is as per what the contractor would have to do once awarded the contract. However, it was submitted that there is a distinction between a pre-tender qualification and the requirement to execute the work in terms of the specification which may be required. In the present case, it was submitted that the respondents no. 3 and 4 shall comply with all the required standard of the work which has been



allotted to them including the guidelines of CPHEEO. It was contended that the contention of not fulfilling the eligibility criteria is also erroneous for the reason that the work allotted to the respondents no. 3 and 4 with regard to laying down the sewerage network in the city of Chennai was a composite project of sewerage and cannot be bifurcated into segments like the main sewerage, the last mile connection to the houses, etc. Thus, it was contended that the objection with regard to the diameter of the pipes to be laid is not worth considering as it is only a change in the size of the pipes and not the nature of the work. Thus, learned counsel submitted that the work having been satisfactorily concluded, it is immaterial as to what size of material was used, which varies from project to project and even in the present case, there will, but necessarily, be different sizes of pipes, which will have to be put in place. However, on a categorical query of the Court with regard to the quality and time frame, an unconditional assurance has been given to the Court that the work would be completed as per the specification and standard without any compromise and the time limit would also be adhered to barring unforeseen circumstances.

6. At this juncture, the Court also called upon learned counsel for the BUIDCO to take a stand and he also reiterated that



they would maintain strict supervision over the work to be executed and would ensure that there is no slackness in the quality of the work done and also the time frame.

7. Learned counsel for the petitioner submitted that even till date after more than three years of the contract being awarded to the respondents no. 3 and 4, only 15 per cent of the work has been done.

8. Learned counsel for the BUIDCO and respondents no. 3 and 4 submitted that it is close to 30 per cent. It was further explained that initially the laying down of the foundational work takes more time and once the basic structure is in place, the execution of the work is at a faster pace and still they will be able to complete the work in the extended time which has been allowed to them.

9. Be that as it may, as the respondents no. 3 and 4 have been allotted the work and there is no complaint from the BUIDCO, the Court does not find any grounds to interfere in the matter.

10. The issue with regard to the eligibility may not be germane for the reason that as has been submitted by learned counsel for the respondents no. 3 and 4, the experience had to be in execution of sewerage line as a whole being a composite



project and could not have been bifurcated at the time of award of contract. From perusal of the documents on record, it appears that the sewerage laying contract as a composite project was awarded to the respondents no. 3 and 4 for Chennai and thus this would not technically unsuit them in the eligibility criteria.

11. Having considered the matter, the writ petition stands disposed of.

12. The Court, at the cost of repetition, would indicate that the work to be performed under the contract by the respondents no. 3 and 4 should not be lacking in any manner with regard to the quality and the time frame should also be adhered to being in the larger public interest.

(Ahsanuddin Amanullah, J)

(Harish Kumar, J)

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