

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7081 of 2023

M/s Nonpareil Constructions LLP, through its Designated Partner- Mr. Ranjan Kumar Singh, Male, Ages about 58 Years, S/o- Late Chunnu Prasad Singh, having its registered office at New Area, Old Hospital Road, Civil Lines, Urban Buxar, P.S.- Buxar, Bihar- 802101, R/o- Village and Post- Chaugain, P.S.- Murar, District- Buxar, (802115), Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Building Constructions Department, Government of Bihar, Vishwashriya Bhawan, Bailey Road, Patna, Bihar.
2. The Engineer-In-Chief, Building Constructions Department, Government of Bihar, Vishwashriya Bhawan, Bailey Road, Patna, Bihar.
3. The Chief Engineer (Patna), Building Constructions Department, Government of Bihar, Vishwashriya Bhawan, Bailey Road, Patna, Bihar.
4. The Planning Engineer, Patliputra Building Division, Building Constructions Department, Government of Bihar, Vishwashriya Bhawan, Bailey Road, Patna, Bihar.
5. The Superintending Engineer, South Bihar Building Circle, Building Constructions Department, Government of Bihar, Vishwashriya Bhawan, Bailey Road, Patna, Bihar.
6. The Executive Engineer, Patliputra Building Division, Rajvanshi Nagar, Patna, Bihar.
7. Engineer-in-Chief, Technical Examiner Cell, Vigilance Department, 4th Floor Suchana Bhawan Opp., New Secretariat, Patna, Bihar- 800015.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ankur Apurv Singh, Advocate
For the Respondent/s : Mr. P.K. Shahi, AG

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-11-2023

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



(a) For issuance of a writ in the nature of certiorari for quashing and setting aside the arbitrary discharge of tender vide letter no.- Building/Chief Engineer(W) Planning Department-1-52/ 2022/ 732(P), Patna, dt.- 19/04/2023 in connection with E-NIT No.- 01/Patliputra Building Division/22-23 which is having its PR Number as 11515 (Building) 2022-23 which was published in Dainik Jagran and Hindustan News Paper dt.- 07/12/2022 by the respondents.

(b) For issuance of a writ in the nature of certiorari for quashing and setting aside the effect of last Corrigendum issued vide PR No.- 1643 (BCD) 2022-23.

(c) For issuance of a writ in the nature of certiorari for quashing and setting aside the E-NIT No.- 01/Patliputra Building Division/22-23 which is having its PR Number as- 11515 (Building) 2022-23 which was published in Dainik Jagran and Hindustan News Paper dt.- 07/12/2022 by the respondents.

(d) For issuance of a writ in the nature of certiorari for quashing and setting aside the effect or any further proceedings initiated or pending with respect to the E-NIT No. 01/Patliputra Building Division/22-23 which is having its PR Number as 11515 (Building) 2022-23 dated 07.12.2022 as clause 04 of the said NIT is violated itself by the respondent authorities.

(e) For issuance of a writ in the nature mandamus for directing the respondent authorities to not to further initiate any proceeding with respect to the same tender proceeding till the disposal of this suit.

(f) For issuance of a writ in the nature mandamus for directing the respondent



authorities to not to further initiate/float any fresh tender with respect to the same work which is pending before this Hon'ble Court.

(g) For issuance of a writ in the nature mandamus for directing the respondent authorities to consider the petitioner to participate in the Financial Bid and also participate in the lottery as well.

(h) For issuance of a writ in the nature of mandamus for directing the respondent no. 07 to initiate enquiry against the arbitrary and unlawful discharge of tender by the respondent no. 3, 4, 5 and 6;

(i) For any other relief(s) which the petitioner is deemed to be entitled in the facts and circumstances of this case.

2. At the time of admission of the present matter interim order was not granted on account of the fact that public interest would suffer. Respondents have filed counter affidavit on 10.07.2023. As on 10.07.2023, certain developments has taken place to the extent that technical bid has attained finality and agreement was entered by the official respondents with one Manish Kumar and the same has not been highlighted in the counter counter affidavit whether it is a *bonafide* mistake or the very object of suppressing the material is not forthcoming.

3. Coming to the merits of the case, the petitioner has assailed the impugned order/decision on the score that there is no provision for award of marks/points at the time of technical evaluation. In this regard, we have apprised the State-Respondents



counsel time and again, even though they have filed two supplementary counter affidavits. However, they have not apprise this Court with any material information to the extent that at the time of technical bid evaluation the concerned authorities were required to adhere to the principle of award of marks/points to various issues before finalizing the technical bid evaluation. To that effect there are no material or information or instruction given to the respective bidders. On the other hand, they have taken such information from the internal communication of the Chief Engineer. We find, that any material taken behind the back of the petitioner and other bidders in so far as adoption of certain procedure in so far as evaluation of technical bid. That apart the official respondents have not approached this Court with a clean hands in not giving factual aspects of the matter as on the date of filing of the first counter affidavit on 10.07.2023 to the extent that bid was finalized and work was allotted to one Manish Kumar. It is also submitted that Manish Kumar has already executed the work and he had time till December, 2023. The tenure of the work is for a period of six months. The work was allotted to Manish Kumar in the month of June, 2023 such allotment of work in favour of the Manish Kumar and procedure adopted by the official respondents.



In so far as technical bid evaluation is concerned, to the extent of award of marks or points is an extraneous procedure.

4. Taking note of these facts and circumstances at this stage, petitioner is not entitled to relief sought in the present writ petition in view of a later development that Manish Kumar has been allotted work and he is almost completed the allotted work. *Prima-facie*, there may be a collusion among the official respondents and the Manish Kumar, since they have adopted extraneous method which was not made known to the respective bidders. Further, we have noticed that the petitioner has failed to implead Manish Kumar as a necessary and proper party. On this issue, learned counsel for the petitioner submitted that petitioner's were not made known in so far as allotment of work to one Manish Kumar. Further, in their counter affidavit they have not indicated that work has been allotted to Manish Kumar so as to implead Manish Kumar as necessary and proper party.

5. Taking note of these facts and circumstances, it is a case warranting for award of cost in favour of the petitioner. Cost has been quantified to Rs. 1,00,000/- (One Lakh). Cost shall be paid to the petitioner by the official respondents within a period of eight weeks from today.



6. Learned counsel for the respondents submitted that in so far as pleadings of agreement and allotment of work in favour of Manish Kumar was made known to this Court only on 11.09.2023 in the 3rd supplementary counter affidavit, the same has taken note of.

7. CWJC No. 7081 of 2023 stands disposed of.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Anand Kr./Brajesh Kr.

AFR/NAFR	
CAV DATE	
Uploading Date	08.11.2023
Transmission Date	

