

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7687 of 2023

M/s Rajeev Ranjan a proprietary concern, having its registered office at Parsa Bazaar, Kurthaul, Patna- 804453 and Aurick Construxive, a partnership firm, having its registered office near Brindavan Nursing Home, House No. 31/A, Bolia Par Gali No. 3, Salimpur Ahra, Kadamkuan, Patna a Joint Venture through its authorized representative Sanjeev Kumar, Male, aged about 23 years, Son of Manoj Sharma, 31/a, Salimpur Ahra, Bolia Par, Galli No. 3, Kadam Kuan, Police Station- Gandhi Maidan, District- Patna.

... .. Petitioner/s

Versus

1. The Infrastructure Development Authority through its Managing Director, First Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
2. The Managing Director, Infrastructure Development Authority, First Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
3. The Executive Engineer (PDA), Infrastructure Development Authority, through its Managing Director, First Floor, Udyog Bhawan, East Gandhi Maidan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Advocate
For the Respondent/s : Mr. Lalit Kishore, Sr. Advocate

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

Date : 04-08-2023

Heard learned counsels for the parties.

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

"1. That the instant writ application is being preferred for issuance of appropriate writ(s), order(s) and/or direction(s);

i. In the nature of certiorari, for quashing of the part of the decision, rendered and communicated, vide, minutes of meeting, dated 12.05.2023, held in connection with NIT No.



06/TEN/IDA/23, issued for the work of construction of flexible pavement, boundary wall, and street light mega leather footwear & accessories cluster in industrial area, Mahbal, Motipur, Muzaffarpur, whereby the Technical Bid Committee found bid of the petitioner to be non-responsive to the requirements of the bidding document and further declared unsuccessful and disqualified the petitioner in terms of clause 4 of the Instructions to Bidders read with clause 5.2 of the letter no. 8131, dated 24.07.2012;

ii. In addition, for issuance of a writ in the nature of certiorari for quashing the decision, contained in, minutes of meeting, dated 15.05.2023, whereby the Bid Committee evaluated the Part-II of the Bid i.e. financial bid of the bidders and further rejected the complaint/objection, dated 13.05.2023, mechanically;

iii. Furthermore, for issuance of a writ in the nature of prohibition, restraining the respondents from proceeding further in connection with the tender process abovementioned, in other way, not to issue letter of award/work order by executing the agreement and/or for any other relief(s) for which the Petitioner may be found entitled to in the facts & circumstances of the present case."

3. The petitioner M/s Rajeev Ranjan and Aurik Construxive (a Joint venture partners, for short 'J.V. Partners') have presented this petition questioning the validity of communication/order dated 12.05.2023 (Annexure-6) and rejection of objection dated 15.05.2023, Annexure-8.



Respondents have issued N.I.T. on 16.03.2023 for construction of flexible pavement, boundary wall, and street light mega leather footwear & accessories cluster in industrial area, Mahbal, Motipur, Muzaffarpur through E-procurement System from the eligible contractors. In response J.V. Partners participated in the process of tender. Petitioner- J.V. Partners' eligibility criteria for participation in the tender was considered and they have been disqualified in technical bid on 12.05.2023. They had filed objection on 13.05.2023 and it was rejected on 15.05.2023. Hence, the present writ petition.

4. Learned counsel for petitioner submitted that reasons for disqualification in the technical bid is that second partner Aurik Construxive is only a financial partner. Therefore, rejection is contrary to Clause 5.2 read with Clause 5.3.

5. Learned counsel for the petitioner submitted that lead partner is Rajeev Ranjan. He has fulfilled Clause 5.1. Second partner Aurik Construxive need not fulfill Clause 5.2 in the event of fulfilling Clause 5.3. In other words, Aurik Construxive is fulfilling Clause 5.3 to the extent in providing liquidity support to the project to the extent of 10 % of the value of contract. In such an event he need not fulfill the eligibility criteria mentioned in Clause 5.2. Further it is submitted that



stand of respondent is at para 18 to the counter affidavit, which reads as under:-

"18. That in reply to statements made in Paragraph-7 of the writ application it is to be stated that the petitioner had submitted a tender, in the nature of Rajeev Ranjan - AurikConstruxive JV with JV agreement attached. The agreement clearly states the status of both partners with 51% & 49% share respectively. As stated earlier the fixing of in this JV responsibilities clearly indicates that AurikConstruxive is a JV partner who will give 10% financial assistance to JV. This makes Aurik Construxive eligible as financial partner too, i.e. it is working as financial partner as well as regular JV partner with certain responsibilities assigned to it under agreement. It clarifies that being both a JV member as well as a financial partner, Aurik Construxive has (i) to satisfy the criteria of both as per JV norms, i.e. being a regular JV partner with 49% share with responsibilities assigned to setting up of office, ensuring mobilization, successful execution of works etc. partner (ii). To satisfy all the Qualifying Criteria for remaining partners (except lead partner) which is to meet not less than 25% of all Qualifying Criterion in sub clauses 4.5A of I.T.B. as per clause 5.2 of JV conditions (Notified vide letter No. 8131 (1) dated 24.07.2012 by RCD). (it forms as Annexure-F to the counter affidavit).

Clause 5.3 states that in case of joint venture the partner proposed to be included primarily to provide financial strength to JV, such joint venture partner shall have to commit to provide liquidity to the extent of 10% of contract value.

But in this particular case the AurikConstruxive is not a member to give



financial strength only. Rather at the same time Aurik Construxive is holding JV shares along with sharing physical and executorial responsibilities, hence, it cannot be treated as sole financial partner, on the other hand it is a financial partner as well as a regular JV member. Therefore, it has to satisfy the criteria and conditions of both."

6. Respondents have not rejected the technical bid of the petitioners that second partner has not fulfilled Clause 5.2. Therefore, rejection of technical bid and so also objection is arbitrary and illegal.

7. *Per contra*, learned counsel for respondents resisted the aforesaid contentions and submitted that petitioner is required to fulfill the relevant criterias. The same has been taken note of by the concerned official respondents and it has been reiterated in para 18 of the counter affidavit.

8. Heard learned counsels for respective parties.

9. Core issue involved in the present *lis* is whether M/s Rajeev Ranjan and Aurik Construxive- petitioners- JV partners fulfill Clause 5.1, 5.2 and 5.3 or not? It is necessary to re-produce Clause 5, 5.1, 5.2 and 5.3, which read as under:-

"5. If bidder is Joint venture, the partners would be limited to three (including lead partner). Joint venture firm shall jointly and severally responsible for completion of the project. Joint venture must fulfil the following minimum qualification requirement.



5.1 The lead partner shall meet not less than 50% (fifty percent) of qualification criteria given in sub-clause 4.2, 4.5A, 4.5 B, 4.7 & 4.8 of ITB.

5.2 Each of the remaining partners shall meet not less than 25% (Twenty five percent) of all the qualifying criteria given in sub-clause 4.2, 4.5 A, 4.5 B, 4.7 & 4.8 of ITB.

5.3 However in case one of the joint ventures partner is proposed to be included primarily to provide financial strength to the joint venture, such joint venture partner shall have to commit to provide liquidity support to the project to the extent of 10% of the value of contract."

10. Petitioner's contention is that if the second partner fulfills Clause 5.3 in that event Clause 5.2 need not be fulfilled. It is submitted that in Clause 5.3 opening sentence is '*However in case one of the joint ventures partner is proposed to be included primarily to provide financial strength to the joint venture, such joint venture partner shall have to commit to provide liquidity support to the project to the extent of 10% of the value of contract*'. He vehemently contended that the word used in Clause 5.3 is required to be read that it is an option of fulfilling the criteria of Clause 5.2 or 5.3.

11. scanning of the aforementioned Clauses 5.1, 5.2 and 5.3, the concerned bidders were required to fulfill Clauses



5.1 and 5.2 as a mandatory, in other words, in Joint venture partner one would be lead partner and in the present case is Rajeev Ranjan. The other partner would fall under Clause 5.2. Whereas the second partner Aurik Construxive is fulfilling only Clause 5.3 insofar as committing to provide liquidity support to the project to the extent of 10% of the value of contract. Undisputedly, he is not fulfilling the criterias mentioned in Clause 5.2. It is to be noted that Clause 5.3 is only in respect of fulfilling financial aid. Therefore, Clause 5.2 is required to be fulfilled by one of the Joint venture partners. Obviously, Aurik Construxive does not fulfill the criterias mentioned in Clause 5.2.

12. In view of these facts and circumstances, there is not infirmity in rejection of technical bid of the petitioner.

13. Accordingly, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16.08.2023
Transmission Date	N.A.

