

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9098 of 2022

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Tariyani Engicon and Royal Engineers (JV) through Mr. Sanjay Kuamr Singh, aged about 47 Years (Male), who is power of attorney holder on behalf of Petitioner, Son of Sri Chandrika Prasad Singh, Resident of Village- Pachara Gote, Post- Hiramma, P.S.- Tariyani, District- Sheohar, Bihar- 843329.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna- 15.
2. The Additional Chief Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna- 15.
3. The Engineer-in- Chief (Karya Prabandhan), Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna- 15.
4. The Internal Financial Advisor, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna- 15.
5. The Chief Engineer (North Bihar Wing), Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna- 15.
6. The Secretary (Technical) to the Chief Engineer, North Bihar Wing, Road Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Patna- 15.
7. The Superintending Engineer, Road Construction Department, North Bihar Road Circle, Muzaffarpur- 842001.
8. The Executive Engineer, Road Construction Department, Road Division, Sitamarhi.
9. M/s Kabbu Khirhar, a partnership firm through one of its partner namely Sri Pankaj Kumar Agrawal, son of Sri Shiv Kumar Prasad, Resident of Mohalla- Ward No. 1, Shankar Chowk, P.S. and P.O.- Dumra, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajendra Narayan, Sr. Advocate Mr.Manish Sahay, Advocate Mr.Anil Kr. Singh, Advocate Mr.Sidharth Aditya, Advocate
For the Respondent/s	:	Mr.Manoj Kr. Ambastha (Sc26) Mr.Santosh Kr. Mishra, AC to SC26

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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 : 24-03-2023



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

“(I) For quashing of decision dated 25.04.2022 of Technical Bid Evaluation Committee headed by the Chief Engineer (North Bihar Wing), Road Construction Department, Bihar Patna, issued vide Memo No. 954 Patna dated 25.04.2022 under signature of Chief Engineer (North), RCD, Bihar, Patna (i.e. Respondent No. 5), as contained in Annexure-P-6, whereby and where under the said committee has rejected the Technical Bid of the petitioner in most arbitrary manner and on flimsy ground, which is not acceptable in law.

(II) For direction upon the concerned respondent to produce the decision dated 24.05.2022 of Technical Bid Evaluation Committee headed by the Chief Engineer (North Bihar Wing), Road Construction Department, Bihar, Patna, (i.e. Respondent No. 5) before this Hon’ble Court and quash the same because said committee has declared the Technical Bid of the petitioner as “Unsuccessful” again on several grounds after rejecting their objection furnished by the petitioner vide their letter No. TEPL/26/22-23 dated 26.04.2022.

(III) For further quashing of decision dated 01.06.2022 of Departmental Tender Committee headed by the Additional Chief Secretary, Road Construction Department, Bihar Patna, issued vide Memo No. 2833(E) Patna dated 06.06.2022 under signature of Engineer-In-Chief (Karya Prabandhan), RCD, Bihar, Patna (i.e. Respondent No. 3), as contained in Annexure-P-8, whereby and where under the said committee has affirmed the decision of the Technical Bid Evaluation Committee



which was passed in most arbitrary manner and on flimsy ground.

(IV) For further direction upon the concerned authority to reconsider the tender of the petitioner in accordance with law for allotment of said work in their favour because their tender rates is lower than the L-1 bidder i.e. Respondent No. 09 whose financial bid has been opened and found that his quoted rate is @ 10.59% below on Estimated Cost on the other hand the petitioner has quoted their rate @ 12.33% before on estimated cost, much lesser than the respondent no. 09.

(V) For declaration that the actions of said Technical Bid Evaluation Committee as well as Departmental Tender Committee are arbitrariness, malafide, malicious, colourable exercise of powers as well as against the law.

(VI) For restraining the respondents to enter into agreement with the respondent no. 09 and for issuance of work order in his favour during the pendency of instant writ application because respondents are going to allot the said work in favour of said Respondent-09 being as L-1 in the said tender.

(VII) For passing such an Order or Orders for which the petitioner is entitled under the law in the facts and circumstances of this case.”

2. Brief facts of the case are that Executive Engineer, Road Construction Department, Road Division, Sitamarhi issued Notice for Inviting Tender (in short ‘NIT’) No. 01/2021-22 which has been published on 31.12.2021. The tender work is “Widening and Strengthening Work for Runnisaidpur-Belsand-Parsauni Road (Single Lane to Intermediate Lane) from CH-13+040 to 21+800



(Total Length-8.760 km.) and Construction of H.L RCC Bridge 4x14m at CH14+040, 1/12 m at CH-14+190 and 2x12m at CH-15+300 in RCD Road Division, Sitamarhi for the year 2021-22.”

3. The petitioner had downloaded the Tender Documents including the Standard Bidding Documents and proceeded to participate in the bid. In terms of Clause 4.4 on instructions to bidders of S.B.D that bids from Joint Venture are acceptable for projects costing of Rs. 10 crores or above, proceeded to enter into a Joint Venture agreement on 25.01.2022 between Tariyani Engicon Pvt. Ltd. through its Chairman-cum-M.D – Mr. Sanjay Kumar and M/s Royal Engineers through its proprietor Mr. Chandra Kishore Shahi both the parties were agreed with title of Joint Venture to be Tariyani Engicon and Royal Engineers (J.V) with a share of 70% and 30% respectively. Under the provision of Companies Act, 2013 three persons names were registered as Directors of the said company with Memorandum and Articles of Association with initially total 10,000 shares which were divided among them.

4. It is learnt that five bidders had taken part including the petitioner, Technical Bid Evolution Committee convened meeting and in the meeting they found that out of five bidders only three bidders have fulfilled requisite criteria of tender conditions



and they have been declared as successful technical bidders. Whereas petitioner's as well as 9th respondent were unsuccessful in the technical bids. The petitioner's technical bid was rejected due to non-compliance of Clause 4.5(A) and (a) of S.B.D.

5. The petitioner's technical bid was rejected with reference to Clause 4.5(a) initially for which petitioner had submitted his explanation to overcome that he fulfills the requisite condition stated in Clause 4.5(a). The petitioner's objection was rejected by the impugned action dated 06.06.2022.

6. Learned counsel for the petitioner submitted that petitioner has fulfilled the essentials stated in 4.5(a). It is submitted that in the decision dated 06.06.2022 the reference is to Clause 4.5(b) instead of Clause 4.5(a). It is also submitted that before invoking Clause 4.5(b) the petitioner has not been heard in the matter.

7. Learned counsel for the petitioner submitted that with reference to individual particulars read with the joint venture material information is taken into consideration in that event petitioner's fulfilled Clause 4.5(a) with reference to the fact that each bidder in its name should have in the last five years as referred in Appendix with reference to Clause 4.5(A). Merely because the parties have entered into joint venture in the year



2021, the respondents cannot prohibit them to participate in the process of tender with reference to Clause 4.5.

8. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that rejection of technical bid of the petitioner is with reference to Clause 4.5(a). Merely, quoting wrong provision under Clause 4.5(b) impugned action does not vitiate. It is submitted that contents of the documents is required to be taken note of. Reading of the contents it is with reference to Clause 4.5(a) and not Clause 4.5(b). Whatever the words incorporated in the document bid is required to be read as it is. Admittedly, joint venture in the petitioner do not fulfill the conditions stipulated in Clause 4.5(A) and (a).

9. Heard the learned counsels for the respective parties.

10. The petitioner feeling aggrieved and dissatisfied with the order rejecting the petitioner's technical bid is before us, on rejection of technical bid with reference to non-fulfilling the stipulated condition at Clause 4.5(A) and (a). No doubt, initially petitioner's technical bid was rejected with reference to Clause 4.5(a) and petitioner had submitted his objection and thereafter in the final decision the authorities have quoted Clause 4.5(b) instead of Clause 4.5(a). Reading of the contents of the final decision one



has to draw inference that rejection is with reference to Clause 4.5(a) and not Clause 4.5(b).

11. Merely, quoting wrong provision that does not vitiate decision. Recently, Apex Court in the case of ***CCE & Service Tax vs. Merino Panel Product Ltd.*** reported in ***(2023) 2 SCC 597*** held that quoting of wrong provision could not vitiate proceedings or decision.

12. Clause 4.5 reads as under:-

“(A) To qualify for award of the contract, each bidder in its name should have in the last five years as referred to in Appendix:-

(a) Achieved in any one year a minimum annual financial turnover (in all classes of civil engineering construction works only) volume of construction work of at least the amount equal to the 50% (fifty percent) estimated cost of works for which bid has been invited. The turn over will be indexed at the rate of 8% for a year.

(b) Satisfactorily completed as a prime contractor (or as a nominated subcontractor where the subcontract involved execution of all main items of work described in the bid document, provided further that all other qualification criteria are satisfied) at least one similar work of value not less than amount indicated in Appendix (usually not less than 10% (ten percent) of estimated value of contract.”

13. Reading of Clause 4.5(A) of the joint venture and there individual particulars cannot be appreciated in other words joint venture particulars were required to be taken note of with



reference to last five years. Learned counsel for the petitioner submitted that Clause 4.5(A) is required to be read with reference to individual particulars in a joint venture in the present case joint venture is stated to have been constituted in the year 2021. Therefore, the petitioner does not fulfill the requisite condition stated in Clause 4.5(A) and the same cannot be read in different manner as contended by the learned counsel for the petitioner.

14. In the light of these facts and circumstances the petitioner has not made out a case so as to interfere with the impugned action. Accordingly, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.04.2023
Transmission Date	NA

