

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8280 of 2023

ANIMA PKS (JV) through its Director Manoj Kumar Flat No.201, Shyam Kishori Homes, Behind Jagat Trade Centre, Dakbanglow Fraser Road, Patna-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Tourism, Government of Bihar, Old Secretariat Patna-800015.
2. The Principal Secretary, Department of Tourism, Government of Bihar, Old Secretariat Patna-800015.
3. The Bihar State Tourism Development Corporation Ltd. through its Managing Director, Beerchand Patel Path, Patna-800001.
4. The Managing Director Bihar State Tourism, Development Corporation Ltd. Beerchand Patel Path, Patna-800001.
5. The Chief Engineer, Bihar State Tourism, Development Corporation Ltd. Beerchand Patel Path, Patna-800001.
6. The General Manager, Bihar State Tourism, Development Corporation Ltd. Beerchand Patel Path, Patna-800001.
7. The Dy. General Manager (Finance and Accounts), Bihar State Tourism, Development Corporation Ltd. Beerchand Patel Path, Patna-800001.
8. The Executive Engineer-II, Bihar State Tourism, Development Corporation Ltd. Beerchand Patel Path, Patna-800001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mrigank Mauli, Sr. Advocate Mr. Prince Kumar Mishra, Advocate
For the State	:	Mr. Amish Kumar, AC to AG
For the Corporation	:	Ms. Anukriti Jaipuriyar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 14-07-2023

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

i.) For issuance of a writ in the nature of certiorari for quashing the communication contained in Memo No 20/Engg/2023/414/Engr/2023/ dated 17.05.2023 issued under the signature of Chief Engineer whereby the Respondent Chief Engineer has rejected the successful executed tender where letter of acceptance has already been issued in favour of the petitioner with regard to Bid Tender No.- 27 / E-Tender / BSTDC/ SBD / 2022-23, Group No.-1 dated 14.03.2023 for the execution of Thawe Temple Precinct at Gopalganj, Bihar for the contract price of Rs. 24,16,59,000/= in view of the revised scrutiny of the complaints and error found that the petitioner has deposited the amount of EMD through the Lead Partner which is in contravention to the clause 1.8 of the SBD tender; And/or

ii) To declare and hold that cancellation of tender process after issuance of letter of acceptance to the petitioner when the contract between the parties had already been concluded is arbitrary, unfair and unreasonable. And/ or

iii) For further issuance of a direction or order of ex-parte stay on further bid process with respect to execution of Thawe Temple Precinct at Gopalganj , Bihar for the contract estimated price of Rs.



26,85,10,000/= earlier letter of acceptance has already been issued in favour of the petitioner and restraining the respondents no 5 to further process the invited bid in lieu of the re-tender no 3/E-Tender / BSTDC/ SBD/2023-24 contained in File No -20/415/Engr?2023 dated 17.05.2023 and further restrain the respondents corporation to finalize the said work with another contractor. And/or

iv) For further issuance of a direction or order restraining the respondents from taking any coercive action against the petitioner during the pendency of the present writ and to issue further appropriate writ, order Or direction commanding the Respondents to not create any hindrance in the smooth Execution of the work in terms of the Agreement during its complete Tenure and allow the Petitioner to complete the work as per the work order given to the petitioner by the Respondent. And/or;

v) To issue further appropriate writ, order Or direction commanding the Respondents to allow the petitioner to complete the above work entrusted to the Petitioner considering the fact that in terms of the decision taken by the Respondent Corporation issuing work order, Agreement already executed between the parties and the Petitioner be allowed to resume his contract work. And/or

vi) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.”

2. The petitioner's contract has been cancelled on the



sole ground that the petitioner has failed to comply Clause 1.8 of the SBD stated to have been issued by the Road Construction Department.

3. Gist of the matter is that the NIT was issued on 04.02.2023, financial bid was opened on 24.03.2023, letter of acceptance was issued on 06.04.2023, the petitioner had deposited E.M.D of ₹1.39 Crores on 30th of April, 2023 and on the same day, the commencement of work was issued.

4. Learned counsel for the petitioner submitted that the cancellation of contract with reference to Clause 1.8 of the SBD issued by the Road Construction Department is not attracted in the present case. The authorities, while issuing NIT, have not indicated or informed the bidders that they were following the certain conditions imposed in the SBD of the Road Construction Department. It is further submitted that in the light of Clause 30.2 of the tender document, once the EMD amount is remitted that suffice to commence the work. Therefore, impugned action is liable to be set aside.

5. Per contra, learned counsel for the respondent resisted the contentions and submitted that SBD issued by the Road Construction Department is applicable to the Respondent-Corporation also and it is further submitted that the



Respondent-Corporation intends to go for a fresh tender. Other than their contentions, no other contention has been urged by the respondent.

6. Heard the learned counsel for the respective parties. The petitioner was a successful bidder pursuant to NIT dated 04.02.2023. In this regard, he had remitted EMD amount of ₹1.39 crores on 30th of April, 2023. Thereafter, Clause 30.2 of SBD of the Corporation has been given effect to. In this backdrop, whether the concerned respondent can invoke Clause 1.8 of SBD issued by Road Construction Department to the tenders issued by the Corporation or not? Perusal of the records, nowhere Respondents-Corporation have indicated that they have adopted Road Construction SBD conditions so as to invoke such conditions. In the absence of providing notice or informing the bidders that Respondent-Corporation have adopted SBD issued by the Road Construction Department and abruptly taking note of some clauses from SBD of the Road Construction Department like clause 1.8, insofar as deposit of EMD is highly arbitrary and illegal.

7. On this short ground, the petitioner has made out a case. Hence, the Memo No. 20/Engg/2023/414/Engr/2023 (Annexure-P/7) dated 17.05.2023, issued under the signature of



Chief Engineer stands set aside.

8. Writ petition is allowed.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.07.2023
Transmission Date	

