

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19160 of 2018

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M/s Malti Infrastructure Pvt. Ltd. S/o Sri Shashi Bhushan Singh, R/o Malti Niwas, Jai Hind Colony, New Ranipur, P.O. P.S.- Phulwarisharif, Dist.- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Building Construction Department, Bihar, Bishweasraiya Bhawan, Bailey Road, Patna.
2. The chief Engineer North, Building Construction Department, Bihar, Bishweasraiya Bhavan, Bailey Road, Patna.
3. The Superintendent Engineer, Building Construction Department, Building Circle, Motihari.
4. The Executive Engineer, Building Division, Sheohar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Usha Kumari, Advocate Mr. Shashi Bhushan Singh, Advocate
For the Respondent/s	:	Mr. Manoj Kr.Ambastha, SC-26 Mr. Subodh Kumar, AC to SC-26 Mr. Santosh Kumar Mishra, AC to SC-26

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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 : 13-04-2023

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

“i. For quashing the Re-tender NIT No-07 of 2018-19 for Construction of Boundary Wall and Main Gate of Government Polytechnic, Sheohar, District-Sheohar for the year 2018-19 issued by Executive Engineer, Building Division, Sheohar on the direction of the chief engineer(North) Cum Chairman of Tender evaluation



committee, B.C.D, Bihar, Patna which bids submission last date is 24.09.2018 though the NIT No-04 of 2018-19 for above same work issued earlier which tender process is still pending in which four bidder's bids found qualified and showing not cancelled on the website of BELTRON. The petitioner company has submitted tender papers of NIT No-04 of 2018-19 for above work and found qualified technically by tender committee which shows on website till to date despite that the re-tender NIT 07 of 18-19 for same work was issued without cancel of previous NIT no-04 of 2018-19. The petitioner company along with other bidders are waiting for opening of financial bids. Without cancelation of previous NIT 04 of 18-19, the retender notice for same is bad in law and violation of Natural justice, and hence it is not tenable in the eye of law and NIT provision.

ii. Further for staying the retender NIT no-07 of 2018-09 and direction may be given to open the financial bids of above named work of NIT no-04 of 2018-09 of all qualified bidders in the public interest. Without cancel the tender, the re-tender for same work is illegal.

iii. For issuance of writ of mandamus for directing the respondents concerned to open the financial bid of the petitioner bidder along with other bidders and to award the tender in favour of lowest bidder and till pendency of this writ application and after hearing the petitioner be further pleased to direct the respondents concerned to open the



financial bid holding the technical bid of the bidders under mala fide intention. They are just to award the tender of their choice contractor and for this drama of re-tender issued during the technical evaluation of previous tender of same work is illegal.

iv. For declaring the action of the respondent to be illegal and bad as without following mandates of the principle of natural justice as well as departmental letter no. 12876 (S) dt. 17.11.2006 which speaks that before disqualifying the technical bid of the bidders & /cancelling the tender without reason assigned must be noticed and heard, but nothing has been done in the present case.

v. For granting any other relief/s for which the petitioner be found entitled in the eye of law.”

02. Petitioner is a Class-II contractor as well as Class-III contractor with the different Departments, namely, Class-II contractor in Road Construction Department (RCD) and Class-III contractor in Building Construction Department (BCD). He participated in the process of tender notification for construction of boundary wall and main gate of Government Polytechnic, District-Sheohar, which was notified on 10.07.2018. The process of tender proceeded up to the stage of opening of technical bid, thereafter, the official respondents noticed that the petitioner was not fulfilling the eligibility like Class-II



contractor in Building Construction Department. Thereafter, official respondents noticed that there was only one bidder, therefore, they proceeded to cancel and re-tender the matter on 13.08.2018. In this backdrop, the present petition is presented by the petitioner.

03. Learned counsel for the petitioner submitted that in the tender notification, there is no prescription that Class-II contractor must be registered with Building Construction Department. In the absence of any specific condition imposed in the tender notification to the extent that bidder must be Class-II contractor with Building Construction Department rejection of petitioner's claim is incorrect. Further, it was pointed out that there was no indication in the tender to the extent that Bihar Contractors Registration Rules, 2007 (for short 'Rules 2007') is applicable. It is further submitted that no doubt the respondents have every right to cancel or withdraw the tender notification in terms of Clause-25 of the Tender Notification. At the same time, if reasons are taken into consideration for rejection of petitioner's technical bid on the sole ground that he was not registered as a Class-II contractor with the Building Construction Department. Such reasoning are contrary to conditions imposed in the tender notification dated 10.07.2018.



04. *Per-contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that the petitioner was required to register as a Class-II contractor with the Building Construction Department. Further, it is submitted that after rejection of the petitioner's bid at the technical bid stage, only one bidder was remained. In such an event, the tender is required to be re-notified in terms of Tenders' Circular/Notification No. 7806 dated 30.09.2016 issued by the Finance Department. Therefore, there is no infirmity.

05. Heard the learned counsel for the respective parties.

06. The subject matter is relating to construction of boundary wall and main gate of Government Polytechnic, District-Sheohar, pursuant to the first tender notification dated 10.07.2018. Rejection of petitioner's technical bid with reference to the fact that he was not registered as a Class-II contractor with the Building Construction Department, would not be a hurdle, for the reasons that in the tender notification dated 10.07.2018, there is no condition that Class-II contractor must have registered with the Building Construction Department. On the other hand, it simply indicated that 'Registered Class-II Contractor'.



07. Perusal of the documents, it is evident that petitioner is a Class-III contractor with the Building Construction Department and Class-II contractor with the Road Construction Department. In the absence of stipulation of that Class-III contractor from Building Construction Department, the official respondents cannot reject the petitioner's claim under Class-II category. He is already holder of the Class-II contractor registered with the Road Construction Department. Therefore, rejection of the petitioner's technical bid is contrary to tender notice dated 10.07.2018.

08. Rules 2007, has been taken note of by the official respondents, without informing the bidder with reference to tender notice dated 10.07.2018 to the extent that they would follow the term and conditions imposed in Rules 2007. In the absence of such stipulation to the extent that Rules 2007 would be empowered for the purpose of completion and process of tender notice dated 10.07.2018, Rules, 2007 is not applicable..

09. In view of these facts and circumstances, the petitioner has made out a *prima facie* case. Accordingly, re-tender notice dated 31.08.2018 stands set-aside.

10. The concerned-respondent is hereby directed to proceed with the first tender notification dated 10.07.2018 and



complete the same within a period of three months. The
aforementioned direction would not have been granted by this
Court in the absence of any interim order. On the other hand, in
the present case interim order is operating from 24.09.2018.

11. Accordingly, the writ petition stands allowed.

12. Interlocutory Application, if any, also stands
disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/Daya/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.04.2023
Transmission Date	NA

