

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12613 of 2023

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J. K. Engicon Private Limited, Having its head office at Hathua Chhawani, Chatardhari Bazar, P.S. Bhagwan Bazar, District - Chhapra, Bihar, duly represented by its Director Vikas Kumar Singh, aged about 35 years, Gender - Male, son of Jitendra Singh, Resident of Barwa Khurd, P.S. Daudpur, District - Saran, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief (Work Management), Road Construction Department, Government of Bihar, Patna.
4. The Committee for Evaluation of Technical Bid (RCD) Through the Chief Engineer (North), Road Construction Department, Government of Bihar, Patna.
5. The Chief Engineer (North), Road Construction Department Government of Bihar, Patna.
6. The Superintending Engineer, Road Construction Department, Saran Road Circle, Hajipur, Bihar.
7. The Executive Engineer, Road Construction Department. Road Division, Siwan, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Kumar, Advocate
For the Respondent/s : Mr. Ajay, GA-5

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL ORDER

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

5 08-11-2023 In the instant petition, the petitioner has prayed for the following reliefs:-

(i.) For issuance of an appropriate writ, order or direction in the nature of Certiorari



for quashing of and setting aside the decision of the Technical Bid Evaluation Committee dated 24.01.2023 (as contained in Annexure - 5) on the objection/explanation letter dated 23.12.2022 submitted by the Petitioner in relation to the technical bid submitted towards NIT No. 02/2022-23- RCD Road Division, Siwan whereby the Petitioner Company was technically disqualified from participating in the financial bid.

(ii.) For issuance of a direction that the Petitioner Company cannot be disqualified from participating in the financial bid on account of a typographical error in mentioning the father's name of a sub-contractor in the technical bid document submitted by the Petitioner since the said defect is purely inadvertent and corrigible in nature.

(iii.) For issuance of an appropriate writ, order or direction in the nature of Mandamus directing the Respondents concerned to consider the Petitioner's bid for the purpose of participation into the financial bid in relation to NIT No. 02/2022-23, RCD, Road Division, Siwan.

(iv.) For issuance of an appropriate writ, order or direction permitting the Petitioner to make correction of an inadvertent typographical error in mentioning the father's name of the proprietor/contractor holding the electrical license who has undertaken to complete the electrical works involved into the proposed tender.

(v.) For issuance of an appropriate writ, order or direction interdicting the Respondents



from holding the financial bid round in relation to NIT No. 02/2022-23, RCD, Road Division, Siwan during the pendency of the present writ application before this Hon'ble Court.

(vi.) For issuance of any other appropriate writ/ writes, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.

2. On 01.11.2023 the following order was passed:-

“The Executive Engineer, Road Construction Department, Road Division, Siwan is hereby directed to file his personal affidavit as to whether the Department intends to proceed for re-tender/fresh tender or not?

Today, learned counsel for the respondent, for the first time, raised an objection to the extent that the petitioner is not fulfilling the Clause-33 of the NIT read with Letter dated 25.09.2017 produced as Annexure-A to the counter affidavit. Clause 33 of the NIT reads as under:

‘33. Affidavit regarding Welfare stamp is mandatory as per Departmental letter no 3608 Dt. 22.05.2020 & Utility Shifting should be done in accordance with Departmental Letter 5446 (E) Dt. 25.09.2017.’

Criteria mentioned in the communication dated 25.09.2017 vide Annexure-A to the counter affidavit reads as under:-

‘Those contractors are allowed in this tender who either have license of Energy



(Electricity) Department in his own name or have prior agreement with a contractor having license of Energy (electricity) Department.'

The petitioner has furnished affidavit of his own as well as electrical license holder to the effect that in the event of petitioner allotted work and in respect of electrical work, if any, would be undertaken by the license holder of Energy (electricity department). In other words, agreement with a contractor having a license of Energy (electricity department) is not furnished by the petitioner.

No doubt, in terms of clause-33 read with criteria mentioned in Letter dated 25.09.2017 cited supra, the concerned authority has not rejected the petitioner's technical bid. In other words, from time to time, the respondents are improving the reasons for rejection of technical bid of the petitioner, which is, prima facie, not permissible.

At this stage, it is necessary to take note of Apex Court's decision in the case of ***Mohinder Singh Gill v. Chief Election Commr.***, reported in ***(1978) 1 SCC 405*** where the principle laid down is that the authority can not improve the reasoning by filing affidavit.

Faced with these facts and circumstances, the Executive Engineer has to apprise the stand of the Department to the extent whether they are going for fresh tender or not? This instruction shall be furnished to the State counsel by the concerned Executive Engineer before the



next date of hearing so as to take a decision in the present matter as to whether orders were required to be passed on merit or not?”

3. Learned counsel for the respondent filed personal affidavit on behalf of respondent no. 7 and the same is taken on record in para-6 of the personal affidavit. The official respondent have expressed for cancellation of bid tender Notification and re-tendering/fresh tender the same.

4. In the light of this development the present petition do not survive for consideration.

5. Accordingly, writ petition stands disposed off.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

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