

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10936 of 2023

Ram and Sons, a partnership firm, having its Head Office, House No. 144, Road no. 10. Sri Krishna Nagar, Kidwaipuri, Patna-800001, through its Partner, Sri Bir Bahadur Singh (male), aged about 49 years, Son of Ramlal Singh, Resident at House No. C-46, Police Colony, Anisabad, Patna, near Police Colony Park, Phulwari Patna, Bihar 800002.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Bihar Medical Services and Infrastructure Corporation Limited through its Managing Director, 2nd and 3 Floor, Swasthya Bhawan. Behind IGIMS, Seikhpura, Adjacent to State Health Society, Patna- 800014.
4. The Managing Director, Bihar Medical Services and Infrastructure Corporation Limited, 2 and 3 Floor, Swasthya Bhawan, Behind IGIMS, Seikhpura, Adjacent to State Health Society, Patna-800014.
5. The Development Commissioner, Government of Bihar, Patna.
6. The Additional Chief Secretary, Government of Bihar, Patna.
7. The Executive Director, State Health Society, Bihar.
8. The Director-in-Chief (Nursing), Health Department, Government of Bihar, Patna.
9. The CGM (Supply Chain), Bihar Medical Services and Infrastructure Corporation Limited, 2 and 3 Floor, Swasthya Bhawan, Behind IGIMS, Seikhpura, Adjacent to State Health Society, Patna-800014.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Mr. Sumit Kumar Jha, Advocate Ms. Riya Giri, Advocate
For the State	:	Mr. Sunil Kumar Mandal, SC-3 Mr. Bipin Kumar, AC to SC-3
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Advocate Mr. Vikash Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

3 22-08-2023 In the instant petition, petitioner has prayed for the following relief(s):-



“1. i. To issue writ/order or direction in the nature of Certiorari for quashing of the decision taken on Agenda No. 49/11 (M) by Board meeting of Bihar Medical Services and Infrastructure Corporation Ltd. (hereinafter referred as BMSICL) vide decision dated 30.06.2023 under the Chairmanship of Development Commissioner Govt. of Bihar Patna by which the Board of Directors of BMSICL decided and directed the corporation to re-publish the tender as the rate quoted by the L1 Bidder (petitioner) is 9 % above the BOQ rate i.e., Rs. 34,00,12, 013.40/- in relation to the work mentioned in group- 1 of re-tender NIT no. BMSICL /Infra /4/2023, dt. 31.01.2023.

ii. To hold and declare that the decision taken on Agenda No. 49/11 (M) by Board meeting of Bihar Medical Services and Infrastructure Corporation Ltd. vide its decision dated 30.06.2023 under the Chairmanship of Development Commissioner Govt. of Bihar Patna is contrary to the Rule 164 of Bihar PWD Code.

iii. To issue writ/order or direction in the nature of Mandamus commanding the respondent authorities to award the contract for the work mentioned in group-1 of re-tender NIT no. BMSICL /Infra /4/2023, dt. 31.01.2023, after considering the Financial Bid of the petitioner.

iv. To issue writ/order or direction in the nature of Certiorari for setting aside the tender bearing NIT No. BMSICL/Infra/22/2023 issued by the BMSICL Patna so far as the work mentioned under group No. 1 of the said NIT.

v. To pass interim/ad-interim relief staying the operation of decision dt. 30.06.2023 and/or for staying the tender bearing NIT No. BMSICL/Infra/22/2023 issued by the BMSICL Patna so far as the work mentioned under group No.1 of the said NIT and/or restrain the respondent from finalizing the tender process.

vi. To any other relief or reliefs for which the petitioners are found to be entitled in the facts and circumstances of the case.”

2. The respondents have floated tender for construction



of 15 Health Wellness Centre (HWC), 3 Primary Health Centre (PHC) and 2 Community Health Centre (CHC) at District-East Champaran, Bihar. The first tender was not finalized on account of single bidder. Similarly, is the situation for second, third, fourth & fifth tender. BOQ rate is Rs. 31,19,37,627/-whereas the sole qualified tenderer/petitioner has quoted Rs. 34,00,12,013.40/- Before going for 6th tender, the matter was placed before the Board. Board has taken a decision that they should go for re-tender.

3. At this juncture, petitioner is feeling aggrieved by the 6th re-tender and presented this petition with the aforementioned prayer.

4. Learned counsel for the petitioner submitted that the concerned respondent should have invoked Clause 164 of the Public Works Department Code (for short “PWD”) to the extent that the concerned respondent should have negotiated with reference to BOQ rate read with the petitioner’s tender bid rate. Consequently, re-tendering for 6th time is not permissible.

5. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that Clause 164 of PWD Code is not attracted in the present case, for the reasons that petitioner was a sole qualified tenderer. Further, the Board has taken a decision which is the next higher authority, therefore, there



is no infirmity.

6. Heard the learned counsel for the respective parties.

7. The one and only contention raised by the petitioner in support of the petitioner's prayer is that official respondent should have resorted to Clause 164 of the PWD Code insofar as negotiation with reference to the bid of the petitioner read with the BOQ rate. The aforementioned Clause is not attracted for the reasons that petitioner is the sole qualified tenderer whereas the language employed in Clause 164 of the PWD Code is with reference to lowest bidder. It is necessary to reproduce Clause 164 of PWD code, which reads as under:-

“164. Negotiation of rates should be done with the lowest tender only if his tender is considered to be too high.”

8. Having regard to the undisputed fact that the petitioner was a sole qualified tenderer for the 5th re-tendering, the Board has taken a decision to re-tender for the 6th time with reference to the factual aspects of the matter. Therefore, the petitioner has not made out a case.

9. Accordingly, the present petition stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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