

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13790 of 2022

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M/s Umang Infrastructure Awadhesh Rai (JV) through Anil Kumar Singh, proprietor of leading partner, Umang Infrastructure, having its office and residence at 48/371, Teachers Colony, Bhatta Bazar, P.S.- Purnia, District-Purnia.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Urban Development and Housing, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing, Govt. of Bihar, Patna.
3. The Managing Director, Bihar Urban Infrastructure Development Corporation Ltd. (Buidco)-Cum-Chairman of Tender Committee.
4. The Chief Engineer, Design, Planning and Monitoring, Buidco, Patna-cum-Chairman of Technical Bid Evaluation Committee.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satyam Shivam Sundaram, Adv.
For the BUIDCO	:	Mr. Lalit Kishore, Sr. Adv.
		Mr. Ravindra Kumar Priyadarshi, Adv.
For the State	:	Mr. Subhash Pd. Singh (GA3)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 24-01-2023

Heard Mr. Satyam Shivam Sundaram, learned counsel for the petitioner and Mr. Lalit Kishore, Senior Advocate assisted by Mr. Ravindra Kumar Priyadarshi for the BUIDCO.



The petitioner has challenged the decision taken by the Tender Committee of Bihar Urban Infrastructure Development Corporation Limited (hereinafter called "BUIDCO") whereby the tender process, which was initiated for the work of Design and Construction of Drinking Water Supply Scheme for Aurangabad Nagar Parishad under "AMRUT" and State Plan Scheme (Phase-II), was shelved on the ground that none of the bidders, including the petitioner, were found to be technically responsive.

A decision thereafter was taken for issuance of re-tender on the revised rate.

The petitioner is a Joint Venture, the proprietor of whom is the petitioner. The Notice Inviting Tender (in short "NIT") for Drinking Water Supply Scheme for Aurangabad Nagar Parishad was issued on 31.12.2021 by BUIDCO.

Be it noted that in the earlier tender process with respect to the same scheme, there were no technically responsive bidder, compelling the BUIDCO to issue a re-tender. The petitioner had applied in the earlier tender



process also. In the instant tender, he has been found to be technically unresponsive on four counts.

However, before that, Mr. Sundram has pointed out that on 11.02.2022, when the technical bid was opened for the first time, the petitioner and two others were found to be technically responsive. This information is based on the recommendation made by the Technical Bid Evaluation Committee on 04.04.2022. However, the Tender Committee, before which the report of the Technical Bid Evaluation Committee was placed on 05.08.2022, did not find the petitioner's bid to be responsive to some of the conditions under the S.B.D.

The Tender Committee therefore took a decision holding that all the bidders, including the petitioner, were technically non-responsive. Since the Technical Evaluation Tender Committee had earlier, as referred above, found some of the bidders to be responsive, a re-evaluation was made by it on 30.07.2022 which took note of the evaluation of the Tender Committee in the first instance



and reiterated that none of the bidders were responsive, which included the petitioner's bid as well.

A question has been raised as to the necessity of re-evaluation by the Technical Bid Evaluation Committee. Was it for the purposes of giving technical justification for issuance of a re-tender or was it, in reality, an assessment of the responsive nature of the bids offered.

Be that as it may, the Technical Bid Evaluation Committee, according to the NIT requirement, asked for objections on such issues on which the petitioner and others were held to be non-responsive, which was submitted by the petitioner but the decision of the Tender Committee was affirmed.

The counsel for the petitioner asserts that the explanations offered by the petitioner were good enough for the Tender Evaluation Committee to reconsider their decision regarding the petitioner being technically unresponsive. Four of the conditions of the SBD which the Technical Evaluation Committee did not find to have been



satisfied from the bid documents furnished by the petitioner were that (i) the profit and loss statement for the last five years, audited by a Chartered Accountant, had not been given; (ii) the bid document was not signed on all pages and signature were put only on the first and the last pages. (iii) The bid document was not certified by a 1st Class Executive Magistrate but by a Notary Public. And lastly (iv) that the experience certificate of high-yield tubewell was not in accordance with the requirement under the NIT.

With respect to the documents not being signed on each of the pages of the bid, the justification offered by the petitioner was that the bid was submitted online under e-Proc process where a license is generated for individual bidders. The purpose for signing each page of the document is to avoid any tampering. With e-Proc token, it is given that the online bid is by the concerned bidder only. The petitioner has come up with another reply that according to the NIT, the signature on all pages of the bid was required



only under the circumstance if there was any correction made in any one of the papers.

With respect to the second objection that the documents furnished by the petitioner were are not certified by Class-I Executive Magistrate, it was urged that such was not the requirement in the NIT.

However, Mr. Lalit Kishore appearing for BUIDCO has pointed out from one of the S.B.D. clauses that with respect to this requirement, the decision of the Road Construction Department would made applicable which requires verification by Class-I Executive Magistrate.

Mr. Sundram however, in response, submitted that this was not the major issue and it was capable of being waived as it did not form part of the core eligibility condition.

The profit and loss statement audited by the Chartered Accountant was filed for four years, whereas for the fifth year, since the financial year had not ended, therefore no specific statement of profit and loss could be



deduced. However, the documents furnished by the petitioner clearly indicates the financial strength of the petitioner till the last financial year.

With respect to the basic eligibility criterion of a bidder having experience in high-yield tubewell, a certificate was furnished which was issued by another Government department that the petitioner has an experience of conducting ten such works of high-yield tubewell. The objection in this regard of the Technical Evaluation Committee was that the experience certificate furnished by the petitioner was with respect to deep tubewell and not high-yield tubewell which are essentially different.

The aforementioned assessment of the technical committee has been questioned by Mr. Sundram on various grounds; one being that for a deep tubewell, the specifications are the same as the requirements in a high-yield tubewell and a deep tubewell, in all circumstances, is a high yield tubewell.



Another ground in defence of the petitioner's bid being held technically responsive was that when such certificate was being evaluated by the Technical Evaluation Committee, a clarification was sought from the Department which had issued the certificate, which was replied affirming the requisite experience of the petitioner/bidder.

Mr. Lalit Kishore, however, submits that the evaluation was made on face of it and not by probing deep into the issues.

It may however be stated here that when clarification was sought from the concerned Department with respect to correctness of the certificate of experience, a specific poser was put whether such certificate was with respect to high-yield tubewell, to which the response of the concerned Department was in the positive.

At this stage, Mr. Lalit Kishore, learned Senior Advocate raised objection that such decision of the Technical Evaluation Committee and of the Tender Committee need not be evaluated by this Court in such a



manner so as to question the wisdom of the Committee. The Committee comprises technical experts whose opinion cannot be substituted by a Court of law. In support of the aforesaid argument, Mr. Kishore pointed out a few of the judgments of Supreme Court and of this Court which precluded a Court of law to substitute its opinion with respect to a bid being technically responsive, in derogation of the opinion of the Technical Committee.

There is no dispute about the position of law postulated by Sri Kishore. Nonetheless, two facts have weighed with us to hold that the Technical Evaluation Committee had, all this while, been nit-picking and was handling the matter in a captious manner without any justification. However, we stop short at this for the reason that the element of malafides could not be proved by the petitioner. We say so because all the other five bidders were also held to be technically unresponsive.

The other ground which has weighed with us to doubt the correctness of the Technical Evaluation



Committee, for the present, is that when on such minor issue, the entire tender process was shelved and a re-tender for the third and fourth time had been issued, the Department ought to have looked at the fiscal part of it as well. Well then, the department knows its financial strength and we have not been called upon to decide that.

We have straightaway, on these grounds, not proceeded to set aside the decision of the Tender Committee holding all the bids to be unresponsive, including that of the petitioner and direct for a re-tender for the sole reason that but for the petitioner, all other technically unresponsive bidders have not challenged such decision, leaving the petitioner only as the sole tenderer in the fray.

Mr. Lalit Kishore has rightly pointed out that assuming every defence of the petitioner regarding its bid being responsive is accepted, only the petitioner remains in the field for the Government to take a decision.

True it is, it has been argued on behalf of BUIDCO, on the response of the petitioner that in the past,



on many occasions, BUIDCO itself has accepted the tender of the sole tenderer, which cannot be a bar in a second, third or fourth re-tender, the decision has to be of the Government. The Department cannot be forced to accept a single tenderer, though if such a decision is taken, that may not be faulted under the circumstances.

Precisely, for this reason, we are not setting aside the decision of the Tender Evaluation Committee to hold everyone non-responsive and order for a re-tender but, under the circumstances, we direct that the petitioner be also allowed to participate in the re-tender for which he shall be given clear fourteen days (two weeks) to file his tender papers, online and offline, as is the requirement under the re-tender and his bid also shall be evaluated impartially along with the other bidders and a final decision shall be taken.

We are conscious of the fact that the work for which the re-tender is to be issued is for providing potable water, which is a very important work of the State falling



under its sovereign functions. There ought not to be any delay in executing such work for it impinges upon the basic amenities of citizens of the State.

We, therefore, give a time-frame for the Technical Evaluation Committee to consider the bid of the petitioner and others within a reasonable period of time preferably within a period of ninety days from the date of submission of all the bids of the prospective bidders.

Mr. Lalit Kishore for the BUIDCO, with initial hesitation, agreed for the same.

The writ petition is partially allowed and disposed in accordance with what has been said above.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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