

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14497 of 2023

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Avinash Kumar S/o Sri Ashok Kumar Singh, R/o- Village, Post and P.S. -
Bikram, Dist- Patna, PIN- 801104, Aadhar No. - 812743699041.

... .. Petitioner/s

Versus

1. The State of Bihar through the Add. Chief Secretary, Minor Water Resources department, Vikas Bhavan, Bailey Road, Patna- 1.
2. The Chief Engineer, Minor Water Resources department, Muzaffarpur.
3. The internal financial advisor, Minor Water Resources department, Vikas Bhavan, Bailey road, Patna - 1.
4. The Superintending Engineer, (Anusrawan) Minor Water Resources Depat, Vikas Bhavan, Bailey Road, Patna - 1.
5. The Ex. Engineer, Minor Irrigation division- Hajipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shashi Bhushan Singh, Advocate
For the Respondent/s : Mr.Sarvesh Kumar Singh, AAG 13

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-12-2023

The petitioner is aggrieved with the cancellation of a tender issued by the respondents and now re-notified.

2. The petitioner participated in the tender, NIT No. 1/2022-23 dated 30.11.2022, with appropriate bid and requisite documents, as on 27.12.2022 which was acknowledged on the very same day. The tender was for the construction of buildings to house Divisional and Sub-divisional Office at Hajipur. The petitioner quoted 10.21% below the tender value of



Rs. 1,99,41,300/- and deposited the earnest money deposit (EMD) of Rs. 3,99,000/- and also additional performance guarantee. The petitioner was found qualified in the technical bid along with the other bids in the proceedings dated 21.01.2023, produced as Annexure-3. The financial bids were opened on 09.02.2023 and the petitioner was found to be the lowest bidder (L1), which is evident from Annexure-4, produced along with the writ petition. Later on, when an objection was filed by one of the bidders; based on an interim order dated 06.07.2023 in CWJC No. 9941 of 2022 the tender was cancelled.

3. The petitioner contends that the objection itself was time barred and there was no valid reason to cancel the tender based on the interim order passed. The petitioner issued a legal notice through his Advocate, produced as Annexure-6, without consideration of which, a re-tender was issued as NIT No. 3/2023-24 dated 08.08.2023, produced as Annexure-7. The re-tender was without any justification is the contention.

4. A counter affidavit has been filed wherein it has been accepted that there was an objection filed by one of the bidders pointing out the order dated 21.12.2022 passed in



CWJC No. 9941 of 2022. The subject tender was one which clearly fell within the interim order passed by this Court, is the contention. It is also admitted that the Executive Engineer, Minor Irrigation Division, Hajipur has specifically informed the Chief Engineer that the tender evaluation committee has considered the objection raised and allowed the re-tender. The Committee, headed by the Additional Chief Secretary, Minor Water Resources Department, decided to cancel the tender issued vide NIT No. 1/2022-23 and instructed for re-tendering of the same in the light of interim order passed by this Court.

5. The interim order passed was in a writ petition challenging the decision taken by the Principal Secretary, Road Construction Department to remove the minimum rate limit in percentage rate tenders with effect from 16.01.2020. It is true that by order dated 21.12.2022, there was a stay of operation of the impugned notification dated 16.01.2020. It was also clarified in the interim order that it would operate only for such of those tenders, for which bids are yet required to be submitted.

6. The petitioner had already submitted the tender, but, however, the last date of submission of tender was on 27.12.2022, as is revealed from Annexure-2. The respondents do not state whether the bids evaluated were submitted before



the interim order or not. In any event, even the writ petition filed was dismissed as is seen from the judgment dated 06.07.2023 produced along with this writ petition. We see from the judgment that even the decision challenged was not produced in the writ petition. The writ petition stood dismissed leaving liberty to challenge the decision if required at the time when a cause of action arises, by any fresh tender floated. Obviously, no such challenge has been made.

7. The re-tender has been made by the State as per Annexure-7. The date of notification is 08.08.2023 after the writ petition stood dismissed. The contention of the petitioner is that re-tender notification is exactly identical to the earlier tender. The petitioner is prejudiced insofar as the bid is in the public domain and the other bidders would quote lesser.

8. We have considered the matter and we are of the opinion that no prejudice would be caused to the State by awarding the work to the petitioner. The sole reason for cancellation of the earlier tender was the interim order passed by this Court, which writ petition stood dismissed later on; even before the re-tender was notified. The conditions of tender including the tender value is identical. In the interregnum, almost a year has passed and there could be an escalation of



price. It would be beneficial for the State, if the earlier tender is accepted and hence, we directed the petitioner to file an affidavit undertaking to carry out the work as per the quote earlier made.

9. An affidavit has been placed on record today undertaking that the work would be carried out as per the earlier tender submitted and all the tender conditions would be abided and the rates quoted or submitted at the rate of 10.21% below the estimated cost, scrupulously complied with.

10. We hence set aside Annexure-5 and Annexure-7, the cancellation of the earlier tender and the re-tender issued by the State. We direct the work order to be issued to the petitioner, if the petitioner is otherwise qualified.

11. The writ petition would stand allowed, leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	20.12.2023
Transmission Date	

