

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7421 of 2017

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M/s Malti Infrastructure Pvt. Ltd., Ground Floor, Malti Niwas, Jai Hind Colony, New Ranipur, Phulwarisharif, Patna-801505 through its Shwetabh Kumar, Director.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development 7 Housing Department, Bihar, Patna.
2. The Chief Engineer, Urban Development and Housing Department, Bihar, Patna.
3. The Superintending Engineer, Urban Development and Housing Department, Bihar, Patna.
4. The Ex. Engineer, DUDA, Muzaffarpur.
5. The Executive Officer, Nagar Panchayat, Motipur, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Usha Kumari, Advocate
For the Respondent/s	:	Mr. Abbas Haider- SC6
		Mr. Ravish Chandra, AC to SC6
For the Respondent No.5:		Mr. Harshvardhan Shivsundram, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 05-05-2023

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed claiming the following reliefs :-



“i. For quashing the impugned order dated 23.11.2016 passed in the light of Letter no. 3186 (3) dated 09.05.2016 staying the NIT no.- 4 of 16-17 dated 08.12.2016 for re-tender and respondents be directed to open the financial bid of the petitioner company and award the tender in the favor of the petitioner company for which the petitioner company is entitled but without any notice/disposal of the petition dated 05.12.2016, the respondent Superintending Engineer, Bihar urban development authority, Urban development & Housing Department, Patna has canceled the tender and directed to Executive Officer, Nagar Parishad, Motipur to publish for re-tendering of the same work moreover if the work is not awarded to the petitioner company only may be met with loss of business but the state will also met with loss of Govt. exchequer, but under the reason best, the respondents are adamant not to award the work in favor of the petitioner, and direction issued for fresh NIT on much enhanced rate, which is unfortunate, and thus an appropriate order may be passed directing the respondents to award the work in favor of the petitioner, instead of execute the fresh NIT, which may be in the interest of Govt. revenue/public interest, because the work for Rs. 94,83,690/- has been already enhanced and also to fix the responsibility on the respondent



concerned for this enhanced cost.

ii. Further for restraining the respondents from finalizing and awarding the re-tender and work order pursuant to impugned fresh NIT issued for construction of above work till disposal of the writ.

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

3. The short facts, according to the petitioner, are that fourth time NIT No-2 of 2015-16 was issued by the Executive Officer, Nagar Panchayat, Motipur, Muzaffarpur for construction of Administrative Building of Nagar Panchayat, Motipur in which the petitioner participated as a bidder and after final evaluation of the technical bid, it was declared qualified. Thereafter, the Superintending Engineer issued letter to Executive Engineer, DUDA, Muzaffarpur for tools & plants verification of the petitioner company. The petitioner had been waiting for opening of the financial bid, but all of sudden, the Superintending Engineer cancelled the tender vide his letter no. 1837 dated 23.11.2016 in the light of letter no.3186 (3) dated 09.05.2016 and directed the Executive Officer, Nagar Panchayat, Motipur to re-tender the bid and, accordingly, re-tender was invited vide NIT No. 04/2016-17 on 08.12.2016 for



the said work. Being aggrieved by the aforesaid decision dated 23.11.2016, the petitioner filed the present Writ.

4. The learned counsel for the petitioner submitted that the petitioner is aggrieved by the action of the respondents in rejecting the tender solely on the ground that there was a single tenderer after the technical bid. The learned counsel further submitted that even after inviting tender for fourth time, only the petitioner remained in contention as single tenderer. In such a situation, there was no logic in re-tendering the matter. Moreover, even the notification No. 3162 (s) dated 09.05.2016 of the Road Construction Department provides for award of contract to single tenderer. Thus, the learned counsel submitted that even the single tenderer can be awarded the contract and the same has been held by this Court as well. In support of this contention, the learned counsel has placed reliance on the order dated 21.07.2016 passed by this Court in CWJC No.8869 of 2016 and its analogous cases.

5. On the other hand, the learned counsel for the respondents while justifying the action of the respondents submitted that as per the tender guidelines contained in Notification No.3162 (s) dated 09.05.2016 issued by the Road Construction Department, Govt. of Bihar, it has specifically



been mentioned in para 2 that after evaluation of the technical bids, if only one tenderer remains for evaluation of financial bid the re-tender be invited immediately. The learned counsel further submitted that as no exceptional situation existed to consider the single bid, therefore, the aforesaid NIT No.02/2015-16 was rightly cancelled by the respondent no.3 vide letter dated 23.11.2016 with a direction to the authorities for re-tendering in the matter in the light of aforesaid notification dated 09.05.2016. Thus, in the facts and circumstances stated hereinabove, the learned counsel submitted that as the petitioner remained single tenderer in the aforesaid technical bid, so in the light of the aforesaid notification dated 09.05.2016, re-tender was invited, but the petitioner did not participate in the fresh tender. Hence, no interference is required by this Court in this matter.

6. Having considered the material available on record and further considering the rival submission, it appears that the aforesaid NIT No.02/2015-16 was cancelled by the respondent no.3 vide letter dated 23.11.2016 in the light of Clause (2) of the notification of the Road Construction Department, Government of Bihar dated 09.05.2016, which prescribes that after evaluation of the technical bid, if only one tenderer remains for



evaluation of financial bid, the re-tender be invited immediately and, accordingly, re-tender was invited vide NIT No. 04/2016-17 on 08.12.2016 for the work in question.

7. It is relevant to quote the Notification dated 09.05.2016 for ready reference.

पथ निर्माण विभाग

बिहार सरकार

अधिसूचना

संख्या- प्र 07/नियम 03 / 2016 3162(s) पटना दिनांक-09/05/16

भारतीय संविधान के अनुच्छेद 283(2) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए बिहार के राज्यपाल बिहार लोक निर्माण विभाग सहिता के नियम 163 को निम्नलिखित द्वारा तुरन्त के प्रभाव से प्रतिस्थापित करते हैं:-

“163 (1). ऐसे मामले जहाँ मूल्यांकन हेतु एक से अधिक वित्तीय बोली (Financial Bid) शेष हो तो न्यूनतम दर अनुमोदित किए जाएंगे। एक से अधिक निविदादाता का दर समान रहने की स्थिति में संबंधित निविदादाताओं की उपस्थिति में लॉटरी के माध्यम से निविदादाता का चयन होगा।

(2). तकनीकी बोली (Technical Bid) के मूल्यांकन के पश्चात् वित्तीय बोली (Financial Bid) के मूल्यांकन हेतु मात्र एक निविदा शेष हो तो तुरन्त दोबारा निविदा आमंत्रित की जाएगी।

परन्तु आपवादिक परिस्थिति में ऐसी एकल वित्तीय बोली वाली निविदा पर प्रधान सचिव/सचिव की अध्यक्षता वाली विभागीय निविदा समिति द्वारा निर्णय लिया जा सकता है बशर्ते कि ऐसे कार्यों के लिए विभागीय मंत्री का इस आशय का पूर्व अनुमोदन प्राप्त हो कि प्रासंगिक परिस्थिति प्राकृतिक आपदा अथवा अन्य आपातकालीन प्रकृति की स्थिति जैसे सार्वजनिक व्यवस्था, राष्ट्रीय सुरक्षा, पड़ोसी देशों से हितकारी संबंधों इत्यादि के कारण है। संबंधित कार्य के निविदा आमंत्रण के पूर्व ही विभागीय मंत्री का उक्त अनुमोदन प्राप्त करना अनिवार्य होगा।

(3) पुनर्निविदा आमंत्रण के पश्चात् भी यदि तकनीकी बोली के मूल्यांकन के उपरान्त वित्तीय बोली के मूल्यांकन हेतु मात्र एक निविदा शेष रह जाती है तो ऐसे मामले का निपटारा सक्षम प्राधिकार से एक स्तर के उपर के प्राधिकार द्वारा किया जाएगा।

परन्तु ऐसी निविदाएँ जिसके निष्पादन हेतु प्रधान सचिव / सचिव की अध्यक्षता वाली विभागीय निविदा समिति सक्षम प्राधिकार है तो इस समिति का निर्णय



अंतिम होता ऐसे मामलों को विभागीय मंत्री के समक्ष प्रस्तुत करने की आवश्यकता नहीं होगी।

बिहार राज्यपाल के आदेश से

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(राजेन्द्र प्रसाद गुप्ता)

सरकार के संयुक्त सचिव

पथ निर्माण विभाग, बिहार पटना।

8. From the plain reading of the aforesaid notification, it is clear from clause 2 that if after evaluation of technical bid, if only one bidder remains, then the bid would be re-tendered. However, liberty has been given to the higher authorities to consider even the single bid in case of certain emergency. But from the material facts of this case, the petitioner has not been able to show any such emergency.

9. With regard to applicability of the said notification dated 09.05.2016, we find that the tender in question was issued on 16.06.2016, whereas, the said Notification No.3163 (s) issued by the Road Construction Department with regard to tender guideline is operative from 09.05.2016 prior to issuance of aforesaid tender, as such, the case of the petitioner is guided by the aforesaid notification and tender in question has rightly been rejected on account of single bidder.

10. It is well established principle that the tenders are to be evaluated on the basis of rules prevailing on the date the NIT was issued and not on the basis of any subsequent



amendment in the Rules and procedure to be followed. Therefore, in the facts and circumstances of the case, the aforesaid decision cited by the petitioner is not applicable in the case at hand. On this aspect of the matter, the case of the petitioner is distinguishable from the case cited by the petitioner *supra*.

11. From the above discussions, it appears that the petitioner has not made out a *prima facie* case so as to interfere with the order dated 23.11.2016 passed by the Superintending Engineer, respondent no.3.

12. It is well settled principle of law that the constitutional courts are expected to exercise restraint in interfering with the administrative decisions and they ought not to substitute their views substituting that of the administrative authority.

13. In the light of aforementioned facts and circumstances of the case, in our opinion, no illegality or irregularity has been committed by the respondents in passing the impugned order canceling the tender and the reasons assigned for the same are well justified, which do not require interference by this Court.

14. Accordingly, this writ petition stands dismissed.



15. Pending application, if any, stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	26.04.2023
Uploading Date	05.05.2023
Transmission Date	NA

