

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18388 of 2022

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Bibekanand Gupta Son of Late Ganga Prasad Sah, Resident of Shermari Bazar, P.S. and P.O. Pirpanti, District- Bhagalpur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer-4 cum Nodal Officer, 3054, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer -2, Rural Works Department, Government of Bihar, Patna.
5. The Superintending Engineer, Works Circle, Bhagalpur, Rural Works Department, District Bhagalpur, Bihar.
6. The Executive Engineer, Rural Works Department, Works Division, Kahargaon, District- Bhagalpur, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prabhat Ranjan, Advocate Mr.Chandak Kumar, Advocate
For the Respondent/s	:	Mr.Kumar Alok (Sc7) Mr.Satyeshwar Prasad, AC to SC7

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

Date : 05-04-2023

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

“(i) Quashing of the exparte decision of the Technical Bid Evaluation Committee dated 12.12.2022 (Annexure 4) contained in Memo No. 2800 by which, without seeking any explanation, and



without assigning any specific reason, the Committee has reviewed its earlier decision dated 18.10.2022 contained in Memo No. 2072 and on the basis of uncommunicated complaint, the Technical Bid of the petitioner which was earlier held to be responsive has been subsequently rejected and held to be non responsive without assigning any specific reasons;

(ii) Direction upon the respondents to consider and open the financial bid of the petitioner and take other consequential action pursuant to the opening of the financial bid; and

(iii) Restraining the Respondents from finalizing the tender and creating a third party right during the pendency of the instance writ application and/ or without the leave of this Hon'bledd Court."

2. Brief facts of the case are that petitioner is one of the applicant pursuant to NIT No. MR-3054-14/2022-23 dated 30.05.2022 issued by the Engineer-in-Chief for Rural Roads maintenance. It is learnt that petitioner is Class I registered contractor and he has undertaken number of government works. He has been made ineligible insofar as NIT dated 30.05.2022 on the score that he failed to fulfill 4.4 B(b)(ii) of MBD. 4.4 B(b)(ii) reads as under:-

“The Bidder must demonstrate
(undertaking/consent letter Signature of the
Personnel) that it has the personnel for the



key position that meet the following requirements:

Position	No.	Educational Qualification	Total Work Experience in Road Works (Years)
Road Manager	1	Graduate in Civil Engineer	2
Maintenance Engineer	3	Diploma in Civil	3
Work Supervisor	5	Matric or Equivalent	3

3. Learned counsel for the petitioner submitted that requirement of Road Manager, Maintenance Engineer and Work Supervisor as indicated in MBD is not essential and it all depends upon quantum of work. Further, he has not been provided opportunity to explain and overcome the requirement of man power like Road Manager, Maintenance Engineer and Work Supervisor as indicated in 4.4 B(b)(ii) of MBD. It is also submitted that in identical NIT the official respondent Engineer-in-Chief has granted relaxation insofar as 4.4 B(b)(ii). It is also submitted that there is a proposal to award contract to such of those persons who are ineligible as they do not have registration certificate and bid capacity.



4. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that 4.4 B(b)(ii) of MBD does not stipulate for quantum of work so as to provide relaxation. However, petitioner does not fulfill the aforementioned criteria insofar as indicating Road Manager, Maintenance Engineer and Work Supervisor (numbers). It is further submitted that question of providing opportunity in the light of circular dated 31.07.2014 is not warranted for the reasons that at this belated stage they cannot improve the material information provided by the petitioner insofar as 4.4 B(b)(ii) of MBD. It is further submitted that relaxation of providing Road Manager, Maintenance Engineer and Work Supervisor in an earlier NIT does not enure benefit to the petitioner for the reason that MBD stipulate particular man power insofar as providing Road Manager, Maintenance Engineer and Work Supervisor and that cannot be relaxed in the absence of any provision of law.

5. Therefore, even applying principle of natural justice, the petitioner cannot fulfill the requisite and essentials of 4.4 B(b) (ii) of MBD. Insofar as awarding of contract to such of those persons who are stated to be ineligible is pre-mature argument on behalf of the petitioner.



6. In the light of these facts and circumstances the petitioner has not made out a case.

7. Heard the learned counsel for the respective parties.

8. Undisputed facts are that petitioner's is applicant pursuant to NIT dated 30.05.2022. His application has been rejected on the score that he failed to fulfill criteria mentioned 4.4 B(b)(ii) of MBD. Even if an opportunity is given pursuant to circular dated 31.07.2014 he cannot improve the application form in rewriting the number of staffs like Road Manager, Maintenance Engineer and Work Supervisor in order to overcome the criteria mentioned in the MBD. Therefore, the petitioner has not made out a case further insofar as extending any relaxation in earlier NIT that does not enure to the benefit of the petitioner, for the reasons that in the event of any error committed in earlier NIT, the same shall not enure to the benefit of the petitioner. Illegal benefit cannot be perpetuated.

9. No equality in matter of illegality principle is reiterated by the Apex Court in a recent decision in the case of **Sunil Kumar Soni vs. State of Rajasthan & Ors** reported in **2023 LiveLaw (SC) 271**. Insofar as award of contract to such of those in eligible persons contention by the learned counsel for the



petitioner’s in this regard concerned official is hereby directed to
take note of before award of contract to such of those persons.

10. With the above observation, the present writ petition
stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.04.2023
Transmission Date	NA

