

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23096 of 2018

=====

M/s Coeshive Infrastructure Developers Private Limited Son of Birendra Kumar R/o 303, Manav Enclave Apartment, Vivekanand Park Lane, Alpana Market, Patliputra

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer-in-Chief-cum-Additional Commissioner-Special Secretary, Rural Works Department, Govern
3. The Chief Engineer-3, Rural Works Department, Government of Bihar, Patna
4. The Superintending Engineer, Siwan Circle, District-Siwan
5. The Executive Engineer, Rural Works Department, Works Division, Gopalganj-2, Government of Bihar,
6. M/S SRM Construction, through its Managing Director,Village- Rampur Sadauwa, P.O. Sadauwa, P.S. Sidhwaliya, District- Gopalganj, Bihar Pin- 841405

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Kunal Tiwary
For State : Mr. Manish Kumar, Adv. AC to AAG-5 (In-charge)

=====

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

Date : 25-07-2023

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

“(i) That the present writ application is being filed for issuance of a writ in the nature of certiorari for setting aside the order dated 25.10.2018 issued under the signature of the Chief Engineer-3, Patna (Respondent No. 3) whereby and where under the technical bid of the petitioner firm has been rejected by the Technical Bid



Committee on account of the reason that the petitioner firm has been found to have not deposited the E.M.D. amount and accordingly the petitioner firm has been declared to be technically ineligible in light of Clause-3.1.2 of the letter dated 14.11.2014 issued by the Engineer-in-Chief-cum Additional Commissioner-Special Secretary.

(ii) For issuance of writ in the nature of mandamus directing and commanding the respondent authority not to technically disqualify the petitioner firm on account of the same reason as they have taken by the order dated 25.10.2018 and rejected the tender submitted by the Petitioner pursuant to the notice inviting tender dated 19.05.2018 for construction of "Siwan Sarafara Road to Mathiya Harijan Toli Hote Hua Kapil Deo Manjhi Ke Bathan" mentioned at serial no. 180 in Gopalganj - 2 Division.

(iii) For issuance of writ in the nature of mandamus directing and commanding the respondent authorities not to proceed ahead with the tender process by opening financial bid till the disposal of the instant writ application.

(iv) For any other relief/reliefs for which the petitioner is entitled to."

2. Core issue involved in the present lis, is whether the petitioner being a MSME is entitled to exemption from EMD payment with reference to NIT dated 19.05.2018 or not? Clause 7 of the NIT reads as under:-

"Tender documents consisting of plans, specification, the schedule of quantities of the various classes of work to be done and the set of terms & conditions of contract to be complied with by the contractor whose



tender may be accepted and other necessary documents can be seen in the office of the concerned Executive Engineer between hours of 11.00 A.M & 03:00 PM from 25.07.2018 to 06.08.2018 everyday except on Sunday and Public Holidays. All these documents can be downloaded from the website: <http://pmgsytendersbih.gov.in> directly.”

3. Perusal of complete NIT, there is no clause relating to providing exemption in remitting EMD to such of those MSME certificate holders. The same is disputed issue for the reasons that the respondents reiterated their stand that they have not exempted MSME certificate holders from EMD payment. Merely in a document with reference to website <http://pmgsytendersbih.gov.in> that there is reference, does not amount to exemption of EMD amount. Having regard to the fact that NIT does not stipulate exemption from EMD payment to such of those certificate holders of MSME, the petitioner is not entitled to seek a direction.

4. Learned counsel for the petitioner submits that State Government have evolved a policy decision insofar as exemption from EMD payment to such of those MSME certificate holders. If it is so, the petitioner should have assailed the NIT or in the alternative requested the concerned authority to take note of State Government policy and circular and impose clause in the NIT that such of those MSME certificate holders



are entitled to exemption from EMD payment. The petitioner has not made any such prayer so as to entertain the petitioner’s grievance.

5. In the light of these facts and circumstances, the petitioner has not made out any case.

6. The writ petition stands dismissed, reserving liberty to the petitioner to agitate his grievance before appropriate forum, if it is available to him.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

Amrendra/
ashishkr/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	31.07.2023
Transmission Date	

