

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1688 of 2024

=====

Himani Refrigeration and Co. through its proprietor, Assim Kumar, Male, aged about 53 years, Son of Late Jagda Nand Prasad, Resident of 73-K, Harish Chandra Nagar, Sheikhpura, Dhelwan, Police Station- Beur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Engineer in Chief-cum- Additional Commissioner cum Special Secretary, Building Construction Department, Government of Bihar, Patna.
4. The Chief Electrical Engineer, Building Construction Department, Government of Bihar, Patna.
5. The Electrical Superintendent Engineer, Electrical Works Circle, South Bihar, Patna.
6. The Electrical Executive Engineer, Energy Works Division-I, Patna.
7. The Managing Director, Bihar State Electronics Development Corporation Ltd. (Beltron), Patna.
8. The 3-Member Circle Tender Committee, represented by Electrical Superintendent Engineer, Electrical Works Circle, South Bihar, Patna.
9. The Estimator, Electrical Works Circle, South Bihar, Patna.
10. The Estimating Officer, Electrical Works Circle, South Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Advocate
		Mrs. Aastha Ananya, Advocate
For the Respondent/s	:	Mr. Mithilesh Kumar, AC to GP-3
For the Beltron	:	Mr. Girijish Kumar, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 28-03-2024

Heard learned counsel for the petitioner as well as



learned counsel representing the respondents.

2. The petitioner, a Class-III contractor, registered with Building Construction Department, has filed the present writ petition seeking a direction upon the respondents to issue work order in respect of SITC of VRV/VRF & Cassette Air Conditioning System in Labour Resources Department, A-Block and B-Block at 2nd Floor, Niyojan Bhawan, Bailey Road, Patna. The Divisional Tender Committee has recommended the lowest rate of bid offered by the petitioner in its meeting dated 26.10.2023. Further prayer has been made for issuance of status quo or restrain the respondent no.6 from taking any coercive steps during the pendency of the writ petition.

3. The short facts as gleaned from the records are that the petitioner was found eligible in response to the Extra Emergency Notice Inviting Tender (hereinafter referred to as 'the NIT') No. 22 of 2023-24 dated 21.09.2023 for the work in respect of SITC of VRV/VRF & Cassette Air Conditioning System in Labour Resources Department, A-Block and B-Block at 2nd Floor, in Niyojan Bhawan, Bailey Road, Patna wherein it has submitted tender.

4. The NIT stipulated the date for downloading the bid document in between 29.09.2023 to 10.10.2023 and the last



date for uploading the document was 10.10.2023 and the date for pre-bid meeting was fixed on 03.10.2023 in the office of the respondent no.5. The date of opening of the Tender document was fixed on 12.10.2023.

5. It is contended on behalf of the petitioner that the Technical and Financial Bid were opened on 16.10.2023 by the Divisional Tender Committee and after having found the petitioner as L1 bidder, the Divisional Tender Committee recommended the name of the petitioner's firm for Award of contract to the Circle Tender Committee. Subsequent thereupon, Circle Tender Committee in its proceeding dated 26.10.2023 approved the aforementioned recommendation and on finding petitioner's firm tender to be responsive, directed the respondent no.6 to issue work order in favour of the petitioner's firm. The copy of the proceeding dated 26.10.2023 is produced as Annexure-P/2.

6. Adverting to the aforesaid facts, Mr. Sanjeev Ranjan, learned Advocate further submitted that while considering the bid of the petitioner, the Circle Tender Committee in its proceeding dated 26.10.2023 has clearly stated that the character certificate of the petitioner is valid up to 26.09.2023 and the petitioner has filed certified copy of



application dated 09.10.2023 for issuance of fresh character certificate from the office of the Superintendent of Police, which was pending at that point of time. Learned counsel for the petitioner has also placed reliance on letter no. 1094 dated 17.02.2022 issued by the Building Construction Department prescribing the list of documents, which are required to be uploaded mandatorily in respect of tender documents involving contract of an amount of less than Rs.2,00,00,000/- (Two crores). Referring to the aforesaid letter, he submits that the character certificate is not an essential document, which was required to be filed by a bidder for the bid to be found responsive.

7. Reliance has also been placed on a decision rendered by the Apex Court in the case of **Rashmi Metaliks Ltd. & Anr. Vs. Kolkata Metropolitan Development Authority & Ors., reported in (2013) 10 SCC 95.**

8. In response to the averments made in the writ petition, a counter affidavit has been filed on behalf of respondent nos. 4, 5 and 6.

9. The facts narrated hereinabove on behalf of the petitioner to the extent that the bid submitted by the petitioner was found to be lowest and accordingly the work order was



issued in favour of the petitioner vide letter no. 2140 dated 26.10.2023, has been admitted by the respondent. But it is further contended that soon after issuance of the aforementioned letter, an objection was filed from Shreyas Enterprises and Upendra Kumar Sinha for verification of the tender documents, as the character certificate submitted by the petitioner was valid only up to 26.09.2023 and under Clause 27 of the NIT, the petitioner failed to upload a valid character certificate. Taking note of the objection received from the other contesting bidders, a request was made by the Electrical Executive Engineer vide its letter no. 2079 dated 11.11.2023 to the Superintending Engineer, Electric Work Circle, South Bihar to reconsider the comparative reports/statements and do needful in accordance with law.

10. In response thereto, it was directed to submit a comparative report with recommendation after making proper enquiry. The entire facts was again placed before the Superintending Engineer, Electric Work Circle, South Bihar and taking note of the said irregularity, the Superintending Engineer, Electric Work Circle, South Bihar vide its letter 2555 dated 12.12.2023 was pleased to cancel the previous work order no. 2140 dated 26.10.2023 issued in favour of the petitioner and a fresh work order was issued in favour of Sri Upendra Kumar



Sinha.

11. Learned Government Advocate further contended that in view of the letter dated 12.12.2023, a fresh agreement stands executed with Sri Upendra Kumar Sinha on 19.12.2023 and now the work is almost at the verge of completion.

12. Having heard the learned Advocate for the respective parties and after careful perusal of the materials, *prima facie*, this Court finds that the counter affidavit was duly sworn and filed on 21.02.2024 stating all the facts that the work order in favour of one Upendra Kumar Sinha was already issued after executing a fresh agreement in his favour on 12.12.2023 itself.

13. After receipt of the copy of the counter affidavit two interlocutory applications, bearing I.A. No. 1 of 2024 and I.A. No. 2 of 2024, have been filed seeking quashing of the order dated 11.11.2023 issued under the signature of respondent no.8 whereby the Tender Committee on reconsideration of comparative statements of the tender document submitted by the petitioner had found the tender of the petitioner to be non-responsive, as the petitioner had failed to upload the valid character certificate with the tender document. The petitioner



further sought quashing of letter dated 12.12.2023 whereby the work order issued to the petitioner had been cancelled and simultaneously, the work, in question, has been allotted to one Upendra Kumar Sinha; in such circumstances, the petitioner also prayed to implead Sri Upendra Kumar Sinha as party respondent in the present writ petition.

14. Now coming to the merit of the case in hand, Clause 27 of the NIT clearly stipulates that a bidder will have to produce Electrical License, up-to-date GST certificate, Pan Card, valid Character Certificate, self attested valid Character Certificate along with the bid documents.

15. Admittedly, the Character certificate submitted by the petitioner was valid up to 26.09.2023, thus, the date on which the bid document was uploaded i.e. in between 29.09.2023 to 10.10.2023, as also the date fixed for pre-bid meeting i.e. on 03.10.2023 and the date of opening of tender document fixed on 12.10.2023, the character certificate submitted by the petitioner was not a valid one, which fact is uncontroverted. Corresponding to such circumstances, the NIT, especially Clause 32 and 33 thereof clearly prescribes that during verification, if any document is found to be incorrect, the department shall be at liberty to take action and the competent



authority shall be at liberty to reject and cancel the tender.

16. Further the petitioner's case is that he had applied for a fresh character certificate on 09.10.2023. In addition to the fact that no such fresh certificate has been produced, the application was just one day before 10.10.2023; which was the closure date of tender submission.

17. It is trite that, where on the admitted or undisputed facts, only one conclusion is possible and under the law only one consequence is permissible, then opportunity to show cause is not necessary, where facts are undisputed and the affected person could not put forth any valid defence even when opportunity is given by the Court/authority. In such circumstances, the Court may not insist on the observance of the principles of natural justice because it would be futile to order their observance and will be reduced to an empty formality

18. So far the reliance placed by the petitioner on a letter issued by the Building Construction Department that the character certificate shall not fall under the category of mandatory documents and filing of the same is not essential; it is wholly misplaced, as the NIT has been issued by the Electric Works Division No.1, Patna and moreover the terms of the NIT especially Clause 27 has never been questioned by the writ



petitioner. All the more, character certificate of a bidder has always been treated as vital document.

19. Now we come to the decision cited by the petitioner in the case of **Rashmi Metaliks** (supra) whereby the Hon'ble Supreme Court has held that the disqualification of the Appellant-company on the ground of it having failed to submit its latest Income Tax Return along with its bid is not sufficient reason for disregarding its offer/bid. The Hon'ble Supreme Court while considering the aforesaid issue found that in the Income Tax Return for the Assessment Year 2011-2012, the gross income of the Appellant-company was Rs.15,34,05,627, although, for the succeeding Assessment Year 2012-2013, the income tax was NIL, but substantial tax had been deposited. The Hon'ble Supreme Court further observed that the Income Tax Return would have assumed the character of an essential term if one of the qualifications was either the gross income or the net income on which tax was attracted. In many cases this is a salutary stipulation, since it is indicative of the commercial standing and reliability of the tendering entity. However, the feature being absent, the Apex Court found that the filing of the latest Income Tax Return was a collateral term, and accordingly the Tendering Authority ought to have brought this discrepancy



to the notice of the Appellant- company and if even thereafter no rectification had been carried out, the position may have been appreciably different. In view of the aforesaid premise, the Apex Court set aside the impugned judgment.

20. It would be worth noting here that in the present case Clause 27 of the NIT clearly stipulates the requirement of filing of valid character certificate and its consequence. Moreover, as we noticed, there is no character certificate produced even at this stage, despite an application said to have been made on 09.10.2023 which, even if produced would be inconsequential since in tendering the last date is sacrosanct due to the competition between the various tenderers.

21. In the aforesaid facts, circumstances and the position obtaining in law, the writ petition sans any merit, is fit to be dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.04.2024
Transmission Date	NA

