

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.404 of 2024

M/s Astitva Advertisement Private Limited through its Director Om Prakash Tiwari, Aged about - 61 years, Male, S/o Muneshwar Tiwari, R/o Shreya Ward No. 1, Gopalganj, Manikpur, Gopalganj, Bihar- 841428 and presently resides at 501, Deep Leela Complex, Vindhyawashni Street Kadam Kuan, Patna, Bihar- 800003.

... .. Petitioner/s

Versus

1. The Bihar Urban Infrastructure Development Corporation Ltd. through its Managing Director, Rajapur Pool, West Boring Canal Road, Patna.
2. The Chief General Manager, Bihar Urban Infrastructure Development Corporation Ltd. Rajapur Pool, West Boring Canal Road, Patna.
3. The General Manager Finance, Bihar Urban Infrastructure Development Corporation Ltd. Rajapur Pool, West Boring Canal Road, Patna.
4. The Project Director (BQS), Bihar Urban Infrastructure Development Corporation Ltd. Rajapur Pool, West Boring Canal Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashhar Mustafa, Advocate Mr. Ranjan Kumar Srivastava, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Advocate Mr. Rabindra Kumar Priyadarshi, Advocate Mr. Kanishka Shankar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-07-2024

The petitioner, a contractor who had been entrusted with a work, challenge the Notice Inviting Tender (NIT) issued by the respondent authority, the Bihar Urban Infrastructure Development Corporation Ltd., ('BUIDCO' for short) to award the same work but for a different period.



2. The period of contract of the petitioner is over, however, the petitioner's challenge is based on the recommendation granted by the Bid Evaluation Committee to allow extension of the petitioner's contract for two years since its operation remained suspended during the pandemic period. It is also an admitted position that the petitioner has invoked the arbitration clause in the agreement.

3. We have heard Mr. Ashar Mustafa learned Counsel appearing on behalf of the petitioner and Mr. Lalit Kishore, learned Senior Counsel appearing on behalf of the respondent- BUIDCO.

4. The petitioner was granted the contract as per Annexure-P/2 for the period 2017-22. The petitioner, according to the submission made, has also paid the entire premium amounts due as per the contract; despite the petitioner having not been able to operate it during the pandemic period. The work awarded to the petitioner for the five-year period was the operation and maintenance of bus queue shelters and displaying advertisements on such shelters within Patna. It is pointed out from the agreement that the authorization period can be extended as per Clause-



1.2 for *Force Majeure* situations and the dispute resolution procedure as delineated in Clause-12.3 requires that the performance of the contract not be hampered when the dispute resolution process is pending. The learned Counsel for the petitioner has also produced a translation of the documents produced along with the counter affidavit, across the bar.

5. Annexure-R/1 indicates that the contract was awarded to the petitioner and one another agency and an agreement was signed on 14.02.2017. The period of the contract expired on 14.02.2022 and the Executive Engineer, Bus Queue Shelter, Patna based on Clause-1.2(b) of the agreement recommended extension of agreement for five years till 14.02.2027 on the condition of 5% increase in the amount of the present premium. There were complaints received by the BUIDCO from Patna Municipal Corporation regarding the advertisements displayed having not complied with the stipulations in the tender and also having been carried out in flagrant violation of the terms and conditions, resulting in huge loss of revenue.

6. Be that as it may, the Technical Bid Evaluation



Committee had recommended the award of work from 15.02.2022 to 14.02.2024. The final decision however was to extend the period from 15.02.2022 to 31.12.2023 at a penalty of 2% on the amount of premium. The extended period also has expired and we are of the opinion that there is no cause to challenge the issuance of fresh NIT; which is the prerogative of the respondent-BUIDCO and the Patna Municipal Corporation. Whatever claim the petitioner has on the ground of the petitioner having been prevented from running the contract during the period of pandemic has to be urged in the arbitration proceeding; which, in the circumstance of the newly floated NIT cannot be for extension of the period of contract.

7. We have looked at the specific provisions regarding the extension as provided in Clause-1.2 of the agreement. Clause-1.2 has the nominal heading of authorization period and sub-clause (b) speaks of extension on mutual agreement at such terms and conditions as may be mutually agreed. It is also stipulated by Clause-1.2(c) that authorization period could be extended due to *Force Majeure* conditions. The words employed does not impose



an obligation on the Awarder to extend the period and admittedly there is neither mutual agreement nor did the Awarder deem it appropriate to extend the period beyond that extended already on the condition of 2% penalty on premium.

8. The petitioner cannot as a matter of right claim extension and if there is any claim of refund of premium paid when the contract was not operational, it has to be agitated in the arbitration proceedings already initiated. We make it clear that we have not spoken on the merits of the claim of the petitioner before the Arbitral Tribunal, the facts of which having not been placed before us.

9. Further contention raised by the petitioner is insofar as Clause-12.3.3 regarding performance during dispute resolution, which is extracted here under:-

“12.3.3 Performance during Dispute Resolution

Pending the submission of a dispute, controversy or claim for arbitration and thereafter until the final decision of the arbitration, the Parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final adjustment in accordance with such decision.”

10. The clear words used in the above clause is that



“the parties shall continue to perform all of their obligations under the said agreement” which makes it crystal clear that the said clause would have application only during the period of the validity of agreement. The validity of the agreement expired in 2022 and was extended till 31.12.2023, after which the fresh NIT was floated by the respondent-BUIDCO. There cannot be any continuation of work beyond the period of validity of the contract merely on a dispute being raised as to the execution or implementation of the contract, before any forum.

11. On the above reasoning, we are of the opinion that there is absolutely no reason to interfere with the fresh tender issued and the petitioner’s claim for extension cannot at all be sustained. We cannot but observe that the BUIDCO, the Awarder which takes the final decision is not obliged to comply with the recommendations of the Technical Bid Evaluation Committee. It is also to be observed that the petitioner had willingly accepted the extension upto 31.03.2023 and sought for further extension, only when a fresh NIT was published after the expiry of the extended period, on which ground the writ petition was also



filed.

12. We find no reason to entertain the writ petition and dismiss the same leaving the contention raised in the arbitration proceedings to be considered independently; but also making it clear that if any claim of continuation is raised before the Arbitral Tribunal, then necessarily the Tribunal would be bound, on what we have found with respect to that claim. All other contentions are left open to be agitated in the arbitration proceeding.

13. The writ petition stands dismissed leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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CAV DATE	NA
Uploading Date	
Transmission Date	NA

