

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1596 of 2024

M/s Shiv Shakti Construction (a duly registered Class-IA Contractor and company under the Company Act), having registered office at A-142, OMEX NRI City, Near Pari Chowk, Greater Noida, at P.O. and P.S.- Greater Noida, District- Gautam Budha Nagar (U.P.) PIN- 201308, through its authorized signatory namely Yugesh Kumar, male, aged about 34 years, Son of Budhu Yadav Resident of Road No. 9, Shashtri Nagar, P.S.- Rampur, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Sinchai Bhawan, Patna, Bihar.
2. The Principal Secretary, Water Resources Department, Govt. of Bihar Sinchai Bhawan, Patna, Bihar.
3. The Engineer-in-Chief, Water Resources Department, Govt. of Bihar, Sinchai Bhawan, Patna, Bihar.
4. The Chief Engineer, Water Resources Department, Govt. of Bihar, Sinchai Bhawan, Patna, Bihar.
5. The Executive Engineer, Sone High Level Canal Division, Aurangabad P.O. and P.S. and District- Aurangabad, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Parijat Saurav, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, AAG-4
		Mr. Shailendra Kumar, AC to AAG-4
		Mr. Alok Kumar Rahi, AC to AAG-4
		Mr. Utkarsh Bhushan, AC to AAG-4

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 31-01-2024

The petitioner, who submitted a tender in pursuance of Notice Inviting Tender No. 01SBD/2023-24 is aggrieved with the disqualification of his tender in the Technical Bid Evaluation carried out by the Tender Technical



Committee.

2. The learned counsel for the petitioner pointed out from the NIT that the bidders were required to give the details of the personnel with adequate experience as per Annexure-II. The petitioner had submitted the experience of the persons as per Annexure-II, in the format as required in the NIT, which format is pointed out from Annexure-P6. Therein all the Site Engineers in the employment of the petitioner available for the work were shown to have experience far beyond that required in Annexure-II. The learned counsel would also refer to Annexure-P-3, which was the disqualification in the technical evaluation communicated to him. The e-mail speaks of the proceedings of the Technical Tender Committee attached to it, which was never attached. The petitioner sought a clarification as per Annexure-P-4 and in response to which Annexure-P5 was received. Only from Annexure-P-5, the petitioner was informed that the certificate establishing the requirement of 3 years' experience in irrigation work for the post of Site Engineer was not attached. The petitioner specifically refers to Annexure-P-7 series of certificates which more than establishes the experience of the personnel in irrigation works.



3. The learned AAG-4, on the other hand, argues that there was no substantiation of specification as required in Annexure-P-II. The document does not establish the experience of the Site Engineer in irrigation works.

4. Annexure-P-1 is the NIT and clause 4.5B(b) requires the availability of personnel with adequate experience as specified in Annexure-II. Annexure-II specifies the experience of key personnel to be deployed on contract work from which the Site Engineer (Civil) has to have the following:- B.E. Civil + 07 years' experience (3 years' experience of irrigation works) or retired A.E. Hence, any Site Engineer should have an overall experience of 07 years and an experience of irrigation works of 3 years. Annexure-P-6 is the affidavit submitted by the petitioner wherein 4 site engineers have been shown, all with B. Tech (Civil) qualification. Their year of experience, generally and particularly in the '*proposed position*', as is available from the format, are shown identically ranging from 13 years to 29 years.

5. The certificates of the respective Officers are also produced along with Annexure-P-6 series. The affidavit of the concerned Officers are identical in all the four cases



and it reads as follows:-

1. That I am a Civil Engineer, having Degree in Civil Engineering.
2. That I am engaged full time with M/s Shiv Shakti Constructions having its registered office at A142, Omaxe NRI City, Near Pari Chowk, District Gautam Buddh Nagar, Greater Noida (UP) 201308 to look after the Civil Contracts site of the firm.
3. That I am currently not engaged with any other firm.

We cannot but say that this does not declare any experience in the specified irrigation work for 3 years, which is the 'proposed position', if the tender is awarded to the petitioner.

6. Now, we come to Annexure-P-7 series which are the experience certificate relied on by the petitioner. The experience certificate indicates the petitioner herein, the firm which bid under the NIT, having experience in irrigation works between 2015-16 to 2021-22. There is nothing in the said certificates to show the personnel for the 'proposed position', having been deployed by the petitioner in such irrigation works. It is also pertinent that there is not even a declaration that the petitioner is engaged in only irrigation works or the exact period in which the personnel 'proposed' were employed with the petitioner. The declarations in the affidavit as extracted by us hereinabove, only indicates that currently the said personnel are working with the petitioner



firm and they are not engaged in any other firm, which is superfluous insofar as the specific declaration required as per Annexure-P-II.

7. The learned counsel for the petitioner has also produced a translated copy of Annexure-P9 and pointed out that the guidelines issued by the Water Resource Department read with clause 22.4 (ii) enables the respondent authority to call for clarifications and the bidder to rectify any mistakes.

The guidelines in clause 22.4 (ii) reads as under: -

(ii) After receipt of confirmation of the bid security, the bidder will be asked in writing (usually within 10 days of opening of the Technical Bid) to clarify or modify his technical bid, if necessary, with respect to any rectifiable defects.

8. We have to notice that the clarification and the modification of the technical bid as spoken of in the NIT is only with respect to rectifiable defects. Read with the guidelines, it has to be emphasized that the opportunity given to the tenderers for clarification and modification is regarding the eligibility criteria, which can be based only on those documents or records before the date of receipt of the tender bid. The petitioner does not plead of any document before the tender bid which clearly specify the experience in irrigation works of the four proposed Site Engineers.



9. We find absolutely no reason to interfere with the tender process on this ground also and dismiss the writ petition *in limine*.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	06.02.2024
Transmission Date	

