

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4487 of 2024

=====

Bihar Rajya Matsyajibi Sahkari Sangh Ltd. (Co-Operative Fisheries Federation) in short (COFFED), 1st Floor, Meen Bhawan, West Boaring Canal Road, P.S.- S.K. Puri, Patna 23 through its Managing Director, Rishikesh Kashyap @ Rishikash Kashyap Nishad, aged about 49 Years, Son of Sri Jibachh Prasad Sahni, Resident of Mohalla Shivajee Nagar, P.S.- Town, District Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Minor Water Resources Department, Government of Bihar, Patna.
2. The Special Secretary, Minor Water Development Department, Government of Bihar, Patna.
3. Engineer in Chief, Minor Water Resources Development Department, Government of Bihar Patna.
4. The Chief Engineer, Minor Water Resources Development Department, Govt. of Bihar, Patna.
5. The Executive Engineer, Minor Irrigation Division, Darbhanga.
6. The Executive Engineer, Minor Irrigation Division, Madhubani.
7. The Superintending Engineer, Minor Irrigation Division, Darbhanga.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Krishna Kumar, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC-9
		Mr. Sushant Praveer, AC to SC-9

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 20-03-2024

We have heard the learned counsel for the petitioner and the learned Government Advocate.

2. The petitioner, a Cooperative Society, registered as 1st Class Contractor under Minor Water Resources Department, Bihar, Patna, has invoked the prerogative writ jurisdiction under Article 226 of the Constitution of India,



seeking quashing of the letters no. 13, 14 and 15 all dated 05.01.2024, issued by the Technical Bid Committee (Annexures- 3 Series to the writ petition) whereby the Technical bid submitted by the petitioner has not been found valid and thus the petitioner has been disqualified for the tender.

3. A tender was floated by the Minor Water Resources Department, inviting tender notice (NIT) vide NIT No. 09/2023-24 under “Jal Jeevan Hariyali Abhiyan / Har Khet Tak Sinchai Ka Pani” under village Panchayat of Madhubani district. The petitioner, a registered contractor in response to the aforementioned tender submitted technical bid along with all the required documents and fees within the stipulated time for project no. 2, 3 and 4 of the tender. The meeting of the tender committee was held on 05.01.2024 for due verification of technical bid submitted by the petitioner and other candidates. However, the technical bid of the petitioner was not found valid, leading to the disqualification of the petitioner for the said project.

4. Learned Counsel for the petitioner vigorously contended that the technical bid of the petitioner for the said project has been declared not valid only on the ground that the petitioner is registered as 1st Class Contractor and as such he



could not participate in the tender of lower class. Referring to the letter dated 22.01.2008, produced as Annexure-4 to the writ petition, submission has been made across the bar that in terms of Clause 2 of Bihar Contractor Registration Rules, 2007, the contractor registered under Class-I and 2 shall be entitled to submit his bid in the class lower to his registration. In other words, the registered contractor in higher class is able to participate in the tender of lower class. Thus, in view of the clarificatory letter issued by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, the rejection of technical bid is not sustainable in law as well as on facts.

5. A counter affidavit has been filed on behalf of respondent nos. 4 to 7.

6. Learned Government Advocate, primarily, referring to the impugned order submitted that while passing the impugned order, objections were invited from the bidder, of which he could file on or before 12.01.2024. However, the petitioner did not respond to the order. Learned Government Advocate further has taken this Court to the Bihar Contractor Registration Rules, 2007 (hereinafter referred to as 'the Rules, 2007'), especially Rules 2 and 4 (d) thereof. On the strength of the aforesaid Rules, it is submitted that admittedly the petitioner



is a contractor registered in Class-I and the tender, which was floated was for the estimated cost of Rs.43,45,117.00 and, as such, only Class-III contractor was eligible to tender for construction work. He further submits that it is categorically stipulated under Rule 4(d) of the Rules, 2007 that contractors registered in Class-I and II may submit tender respectively in one class below only.

7. Having heard the rival submissions and after careful consideration of the Rules, 2007, indubitably it appears that Rule, 2 of Rules, 2007 clearly specifies the classes of contractors for construction work of Roads and Bridges to be allotted to a registered contractor. Class-1 contractors shall be eligible for construction work of any amount. Class -2 contractors shall be eligible for tendering construction work valued up to Rs.3.50 crore whereas Class 3 contractor shall be eligible for tendering for construction work valued upto Rs.70.00 lakh. Further, Rule 4(d) clarifies that contractors registered in Class I and II may submit tender respectively in one class below.

8. On a conjoint reading of both the Rules, this Court, *prima facie*, is of the view that the contractors registered in Class-I may be eligible for tendering for construction work in



one class below, i.e. Class-II, but not in any case eligible to tender for construction valued up to Rs.70 lakh, which is meant for Class-III contractor.

9. So far the reliance of the petitioner on the letter dated 22.01.2008 (Annexure-4 to the writ petition) is concerned, the same has been issued by the Road Construction Department, Bihar. However, in any event, the said letter cannot re-frame the provisions of Rules, 2007 and prescribe inconsistent interpretation dehors the Rule. This Court has also been informed that the process of tender has already been finalized and the work order has been issued in favour of successful bidder, who has not even been arrayed as party herein.

10. In view of the discussions made hereinabove, this Court does not find any merit in the present writ petition, accordingly, the same stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.03.2024
Transmission Date	NA

