

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4284 of 2023

Pratosh Kumar @ Partosh Kumar Son of Prasad Singh, Resident of Village-
Ramdauli, Post- Biddupur PS- Biddupur, Vaishali, Class one (Individual)
contractor, registered under Bihar Police Bhawan Nirman Nigam, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar (deleted vide order dt. 24.03.2023) through the Principal Secretary, Home Department, Govt. of Bihar.
2. The Director General of Police, Cum-Chairman-Cum-Director, Bihar Police Bhawan Nirman Nigam, Patna.
3. Secretary, Bihar Police Bhawan Nirman Nigam, Patna.
4. The Chief Engineer, Bihar Police Bhawan Nirman Nigam, Patna.
5. Technical Advisor, Work Circle- 2, Bihar Police Bhawan Nirman Nigam, Patna.
6. Executive Engineer, Work Circle- 2, Bihar Police Bhawan Nirman Nigam, Patna.
7. Financial advisor, Work Circle- 2, Bihar Police Bhawan Nirman Nigam, Patna.
8. Assistant Engineer, Work Circle- 2, Bihar Police Bhawan Nirman Nigam, Patna.
9. Gurudev Engicon Pvt. Ltd, Olapur, Pirpaiti, Kahalgaon, Bhagalpur, PIN-813209.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Advocate Mr. Bijay Shankar Choubey, Advocate
For the BPBCC	:	Mr. Prasoon Sinha, Advocate Mr. Amarnath Kumar, Advocate
For the Respondent No. 9	:	Mr. Prabhat Ranjan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-02-2024

The petitioner is aggrieved with the tender confirmed on the 9th respondent. Learned Counsel for the petitioner raises two contentions, one that when both the



petitioner and the 9th respondent were disqualified, there was no reason to consider the 9th respondent again. The next contention is that admittedly the 9th respondent had less than the specified turnover stipulation of Rs. 2,45,43,251/-.

2. Learned Counsel for the respondent-authority points out that Annexure 3, issued by the Technical Committee, was only in the nature of a recommendation. After that, in accordance with the conditions of the NIT, notice was issued asking the disqualified bidders, for rectification, especially since it was the aspect of financial reports that led to their disqualification. It is also submitted that the matter was considered again on the response made by the 9th respondent and then the contract was awarded to that respondent, finding the turnover to have been complied with, especially considering the escalation factor. The petitioner despite the e-mail having been issued to him, did not respond.

3. The NIT is produced as Annexure-2 which was on 07.06.2022 and the work tendered was the construction and electrification of buildings for the Police Department. The tenders were opened and there were three successful bidders after the technical bid. On the financial bid being examined, Annexure-3 order was passed by the Technical Committee. The



petitioner and the 9th respondent were disqualified for reason of the turnover condition not having been fulfilled and the tools being older than five years. Later, however, the 9th respondent was awarded the work as successful bidder by Annexure-4 dated 09.01.2023.

4. The respondent-authority has filed a detailed counter affidavit and the learned Government Advocate argued with reference to the same and the translated portions of the provisions, as per the NIT. Clause VI of the NIT was specifically pointed out where the appendix to instruction to bidders require the bidders to furnish details of the financial turnover for the last five years i.e. 2018 to 2021-22. Sub Clause 22.4 (ii) of Clause 20 indicates that after receipt of confirmation of the bid security, the bidder will be asked in writing to clarify or modify their bid, if necessary, with respect to any rectifiable defects. The recommendation at Annexure-3 made by the Technical Committee also speaks of the defects pointed out in so far as the petitioner and the 9th respondent and recommends disqualification as also a proper communication to be addressed to them.

5. Annexure R2/B produced alongwith the counter affidavit specifically indicated wherein all the three



bidders were addressed by an e-mail, they were asked to submit their claim/objection before 22.02.2022, it was also specifically indicated that the claims/objections received after 22.02.2022 will not be considered under any circumstance. The petitioner did not respond to it and only filed a representation for enquiry into the matter, as per Annexure -5 produced along with the writ petition, that too much after 22.02.2022. We specifically queried learned Counsel appearing for the petitioner whether he has any contention with respect to non-receipt of Annexure R2/B. There is no such contention raised in the rejoinder and learned Counsel was not able to apprise of such an averment made.

6. The terms of disqualification as evident from Annexure 3 was on two respects, one the turnover condition was not fulfilled and the other tools were older than five years. In so far as the turnover condition is concerned, by Annexure R2/B, respondent no. 9 replied specifically admitting that their turnover was below the turnover stipulated of Rs. 2,45,43,251/- by Rs. 65,207/-. The respondent-authority was of the opinion that Clause 19 of Appendix to Instruction to Bidders under Standard Bidding Document required escalation factor of 1.21 to be applied for the year 2020. Hence for determining experience of similar nature of work carried out in the year



2020, turnover has to be worked out with the escalation factor of 1.21. Such computation made with the escalation factor takes the turnover of the 9th respondent to Rs. 2,91,29,731/-; in excess of the required stipulation as per the bid document of Rs. 2,45,43,251/-.

7. In so far as the age of tools are concerned, paragraph 23 of the counter affidavit further states that during scrutiny of papers submitted by the 9th respondent, it was found that the bidder had submitted valid receipts of the machineries to be used by him for the tender and he had also undertaken that any other machineries, tools and plant required to complete the work will be hired/purchased by the bidder for timely completion of the work.

8. We cannot but observe that the challenge was made only on the 9th respondent being offered the work. Learned Counsel would submit that in fact in Annexure 3, there is a recommendation for pursuing a fresh tender and in such circumstance, he did not challenge it. However, Annexure 3 is only a recommendation and as per the stipulations in the NIT, the respondent-authority had informed all the bidders, with respect to the rectification required. The petitioner who was also issued with an e-mail did not respond to the same. The 9th



respondent filed a reply and being convinced of the same, the respondent-authority accepted it. In such circumstance, we find absolutely no reason to interfere with the award of the work.

9. The writ petition is dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Neha/Kiran-

AFR/NAFR	
CAV DATE	
Uploading Date	12.02.2024
Transmission Date	

