

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3124 of 2024

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M/s R.K.S. Engicon Private Limited Having its registered office at 302 Adya Niwas, Kavi Raman Path, Boring Road, Patna-800001 through its authorised Director namely Sri Kunal Anand (male), aged about 30 years, Son of Sri Anil Kumar Singh, resident of ward no. 9 near Vypar Mandal, P.O.,P.S. and District-Supaul-852131.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer-2, Rural Works Department, Government of Bihar, Patna.
5. The Chief Engineer-4, Rural Works Department, Government of Bihar, Patna.
6. The Superintending Engineer, Rural Works Department, Government of Bihar, Madhepura.
7. The Executive Engineer, Rural Works Department, Government of Bihar, Supaul.
8. The Tender Selection Committee in relation to NIT No. RWD/State Scheme (NABARD)/ HQ/ET/04/2023-24 represented through the Engineer-in-Chief Rural Works Department, Government of Bihar, Patna.
9. The Nodal Officer, State Planning, Member of the Tender Selection Committee in relation to NIT No. RWD/State Scheme (NABARD)/ HQ/ET/04/2023-24, Rural Works Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :



For the Petitioner/s : Mr.Ashish Giri, Adovate
For the Respondent/s : Mr.P.K. Shahi, Advocate General

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-03-2024

The petitioner, a contractor who unsuccessfully submitted a tender to a Notice Inviting Tender (NIT) is aggrieved with the order blacklisting for four years on a totally erroneous assumption of fraud having been committed. The order impugned in the writ petition is Annexure -P10, a translated copy of which is produced before us.

2. We heard Shri Ashish Giri, learned counsel appearing for the petitioner and the learned Advocate General for the State.

3. The NIT is produced as Annexure-P3, wherein the petitioner had applied for the construction of RCC H.L. Bridge at 3 Km of Kamalpur to Kunauli Road coming within Supaul which had an estimated cost of Rs. 629.792. The essential eligibility for submitting a tender is available in the standard bidding document produced as Annexure-P4 under Clause 4.5 (b). Any eligible tenderer should have satisfactorily completed,



as a prime contractor or a nominated sub-contractor, at least one similar work of value not less than the amount indicated in the appendix. The appendix did not indicate any amount and in that circumstance what is shown in the brackets of Clause 4.5(b) applies i.e., 'usually not less than 25% of estimated value of contract'. The estimated value of contract being 629.729 lakhs, the eligibility would be, of having satisfactorily completed a work of 157.448 lakhs, which is 25% of the estimated value of contract.

4. The petitioner has produced Annexure-P5 which is a certificate of the Executive Engineer, RCD Road Division, Darbhanga wherein the work completed was above Rs. 32 crores. Annexure-P5 also contains another certificate issued by the Executive Engineer, RCD Road Division, Madhepura which speaks of an up to date payment of completed work of more than Rs. 88 crores. The petitioner had also produced a further certificate of the Executive Engineer, RCD Road Division, Benipur which indicates an up to date payment of almost Rs. 41 crores.

5. The tenderer was called upon to only specify one work with 25% of the estimated contract value. In the petitioner's anxiety, the petitioner submitted another certificate



Executive Engineer, Rural Works Department, Supaul dated 13.04.2023 of a total increment value of 264.29740 lakhs; which landed the petitioner in trouble.

6. The petitioner as is evident from Annexure P-10 was called upon to explain as to the uploaded work experience certificate of the Executive Engineer, Rural Works Department, Work Division, Supaul to be an 'ongoing' work while it is written as successfully completed. A reading of the certificate issued by the Executive Engineer, RWD, Works Division, Supaul dated 13.04.2023 indicates that the recital was 'successfully completed the work with following items'. In fact, the certification was made by the Executive Engineer of the Rural Works Department itself and if it was an 'ongoing' work, it should have been so specified. In any event, the certificate shows only the completed work and not the entire work having been satisfactorily completed.

7. We find from Annexure- P6 that the rejection of the petitioner's tender at the technical bid was also on the very same reasoning. The petitioner, however, does not challenge the same since a new tender has been issued. As far as the blacklisting order is concerned, we have to notice that the certificate was one issued by the RWD Department itself and the recitals therein



cannot be held against the petitioner. In any event, the petitioner had sufficient qualification by the other certificates produced. There cannot be any allegation of concealment of facts and in such circumstances, we find absolutely no reason to sustain the blacklisting order. We set aside Annexure- P10 order and allow the writ petition.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.04.2024
Transmission Date	

