

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4676 of 2024

Rinki Devi Wife of Sri Badri Bhagat, Resident of Village- Belaspur, P.O.- Ghordihan, P.S.- Kargahar, District- Rohtas, Bihar.

... .. 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-1, Rural Works Department, Bihar, Patna.
5. The Superintendent Engineer, Work Zone, Sasaram, Rural Works Department, Government of Bihar, Patna.
6. The Technical Secretary to the Engineer in Chief, Rural Works Department, Bihar, Patna.
7. The Nodal Officer, State Scheme, Rural Works Department, Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 4580 of 2024

Rinki Devi Wife of Sri Badri Bhagat, resident of Village-Belaspur, P.O.- Ghordihan, P.S.-Kargahar, District-Rohtas, Bihar.

... .. 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-1, Rural Works Department, Bihar, Patna.
5. The Superintending Engineer, Work Zone, Sasaram, Rural Works Department, Government of Bihar, Patna.
6. The Technical Secretary to the Engineer in Chief, Rural Works Department, Bihar, Patna.
7. The Nodal Officer, State Scheme, Rural Works Department, Bihar, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 4676 of 2024)

For the Petitioner/s : Mr. Ashish Giri, Advocate

For the Respondent/s : Mr. P.K. Shahi, Advocate General

(In Civil Writ Jurisdiction Case No. 4580 of 2024)



For the Petitioner/s : Mr. Ashish Giri, Advocate
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 MR. JUSTICE HARISH KUMAR)
Date : 28-03-2024

We have heard Mr. Ashish Giri, learned Advocate for the petitioner and the learned Advocate General for the State in both the writ petitions. Considering the identical issue based upon similar facts between the same parties, with the permission of the respective counsel both the matters are being heard together and disposed of by this common order.

2. The petitioner, a registered Class 1 contractor under the Rural Works Department, Government of Bihar, Patna in response to a Notice Inviting Tender (No.-RWD/STATE SCHEME (NABARD) /HQ/ET/1/2023-24) has submitted his bid for work advertised at Sl No. 1 of the NIT i.e. construction of bridge on Gehuwanwa River in Keshari Chand Durgawati Path (Amaw) to Bahuara Road and further at Sl No. 29 of the NIT i.e., construction of RCC HL bridge over Dumohanwa River at Gram Kolhawa under Adhaura Block in the District of Kaimur at Bhabhua.

3. Mr. Giri, learned Advocate contended that after submission of the bid alongwith all the necessary required documents and certificates in terms and conditions of the



aforesaid NIT and SBD, the petitioner's bid ID was generated, but to the utter dismay, the petitioner was declared disqualified in the technical bid in respect of both the tenders.

4. Referring to the impugned memo no. 552 dated 05.02.2024 and further memo no. 553 dated 05.02.2024 issued under the signature of Engineer-in-Chief, Rural Works Department, Govt. of Bihar, it is submitted that the petitioner was disqualified in the technical bid for two reasons, that the audit report submitted by the petitioner alongwith his bid for the assessment year 2018-19, the turn-over of the financial year 2017-18 is Rs. 5,94,85,683/- whereas according to the audit report of assessment year 2019-20 the turn-over of financial year 2017-18 is shown as NA (not applicable). Secondly, no document was uploaded for Piling Machine. Therefore, in the light of clause 4.8 of the ITB (Instruction To Bidder) of the SBD and Clause 25(1) of the NIT, the technical bid of the petitioner is declared disqualified.

5. Aggrieved by the decision noted hereinabove, the petitioner immediately made a representation on 08.02.2024 with a clarification that 'NA' used in the audit report does not mean that no audit took place and as it is not necessary to show any amount there, the petitioner also annexed the certificate



issued by the auditor which included annual turn-over statement.

6. It is further clarified that the petitioner has uploaded the documents of all the machines and he has also submitted an affidavit, stating that any other required machine will be arranged by the petitioner at its own cost and no delay will be caused in the work. In the light of the representation presented by the petitioner in respect to both the bids, the respondent authorities accepted the contention of the petitioner in relation to first ground of disqualification regarding non-submission of information in the audit report.

7. However, the petitioner was still held to be disqualified in the technical bid on the ground that as per clause 25(1) of the NIT, no evidence of ownership of the desired Piling Machine or any documents regarding the said machine being on rent/lease has been uploaded and hence in the light of clause 4.3(d) of the ITB of the SBD, the decision of disqualifying the petitioner from the technical bid vide earlier memo no. 552 and 553, both dated 05.02.2024 remains unchanged vide order contained in memo no. 1150 and 1151 dated 05.03.2024.

8. The petitioner being aggrieved challenged both the afore-noted order dated 05.02.2024 and 05.03.2024



respectively in relation to both the tenders by filing separate writ petitions.

9. Adverting to the aforesaid fact, learned Advocate for the petitioner submitted that the impugned decision of the respondent is not in conformity with clause 25(1) of the NIT as well as clause 4.3(d) of the ITB of the SBD. Referring to clause 25, he further submits that it only talks about tools/ plants/ equipment required in addition to those mentioned in clause 4.5(B)(a), Annexure 1 of ITB. However, clause 4.5 (B) (a) of the ITB is not applicable in the case of the petitioner, as the said clause is to be applicable for bids valued over Rs. 5 crore. In the present case, the petitioner has submitted the bid for work less than Rs. 5 crore.

10. It was further argued that clause 25(1) of the NIT provides that one of the machines required is Piling Machine. However, no format is prescribed in the said clause as to how or what the contractor has to submit for showing arrangement/possessions/availability of Piling Machine. In the aforesaid premise the petitioner in compliance with clause 25(1) has submitted an affidavit alongwith its bids, wherein it is stated that any other required machine by the department will be arranged by the petitioner at its own basis and own cost and no



delay in work will be caused due to lack of machine. In the aforesaid facts, he submits, the disqualification of the technical bid of the petitioner on the ground of clause 25(1) of the NIT is arbitrary, malafide and perverse.

11. It was also argued that clause 4.3(d) provides for two options, either to submit information regarding major items of construction equipment proposed to carry out the contract or evidence of arrangement of possessing them on hire/lease/buying. In the present case, the petitioner has opted for the first option and submitted an affidavit in respect to giving and hiring the tools and plants and heavy machines on hire.

12. Per contra learned Advocate General while refuting the contention of the petitioner has submitted that no paper of ownership of Piling Machine nor any evidence of showing lease/hire/rent of the required machines has been uploaded and in such circumstances, the respondent authorities has rightly disqualified the petitioner in technical bid.

13. We have carefully heard the learned Advocates for the respective parties and also perused the materials available on record. Before parting with the final outcome it would be pertinent to quote the relevant clause 25 of



NIT for adjudication of the matter:-

“Clause 25 of the NIT says that in bridges having pile foundation following Tools/Plants/Equipment will also be required in addition to those mentioned in clause 4.5(B)(a) Annexure 1 of ITB.

(1)Piling Machine

(2)Shuttering/Formwork/Staging Materials

(3)Vibrator with Sufficient needles

(4)Compression Testing machine

(5)Concrete Mixer with Integral Automatic Weigh Batching facility

(6)Transit Mixer.”

14. Further clause 4.3(d) says that major items of construction equipment required to carry out the contract or evidence of arrangement; of possessing them on hire/lease/buying as defined therein.

15. From reading of both the clauses stipulated in the NIT and the ITB of the SBD for the purposes of construction of bridges, for which the petitioner has submitted his bids, Clause 25 clearly speaks about the requirement of the Tools/Plants/Equipments. Simultaneously clause 4.3(d) requires the evidence of arrangement of possessing major items of construction equipment on hire/lease/buying.

16. Thus, in the opinion of this Court indubitably, it was incumbent upon the petitioner to furnish the the document in relationship to ownership of Piling Machine or



necessary evidence suggesting that the required machines have been taken on hire/lease.

17. Now coming to the affidavit submitted by the petitioner in respect to both the bids the relevant paragraphs of the affidavit only says:-

“10. THAT IF THE MACHINE I.E. H.M. PLANT, ROLLERS, COMPACTOR, VIB. ROLLERS, COMPRESSOR, EXCAVATORS, WMM PLANT, PAVER, GRADER, DOZER, PUMP CURRING, LIFT MACHINE, ELEVATOR, MONKEY MACHINE, STEEL CUTTING/ BINDING MACHINE AND OTHER REQUIRED TOOLS MACHINE WHICH ARE REQUIRED BY THE DEPARTMENT AT THE WORK SITE, I AM ABLE TO ARRANGE AT MY OWN BASIS AND OWN COST, AND THERE IS NO ANY WORK DELAYED/STOPPED AGAINST LAC OF MACHINE/PLANT SHORTAGE OR UN-AVAILABILITY.”

18. The affidavit is only an undertaking that required machines/ tools and other equipments shall be made available as and when required by the department at the work site. It does not indicate either the ownership of the required machines or any evidence that the required machines have been taken on lease/hire/rent.

19. It would be worth observing that the possession of the machines/tools or other equipments; where the basic requirement is to carry out the work/ construction of



bridges is the prescription of the NIT. The very absence of the ownership/ possession of such machines/ equipments does not entitle a bidder to be qualified in technical bid and it only leads to disqualification of the bidder, which has been done in the present case.

20. In view of the clear stipulations in the NIT and the ITB of SBD, non-filing of the document of ownership/ possession of essentially required machines/tools/equipments or at least an evidence showing possession thereof obviously entails disqualification under clause 4.8 of the ITB to Standard Bidding Document.

21. In the light of material facts and the discussions made herein, this Court does not find any merit in the writ petitions. Accordingly both the writ petitions stand dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.04.2024
Transmission Date	NA

