

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7395 of 2023

M/s S.N. Sons, a Partnership Firm incorporated under the Provisions of the Partnership Act 1932 having its registered office at Jeevan Sadan Road, Gulzarbagh, Ward No. 20, Madhepura-852113 (Bihar) through one of its Partner Mr. Rohit Dahlan, S/o Shri Shambhu Kumar Dahlan R/o Dahlan House, Dahlan Chowk, Saharsa, Bihar-852201.

... .. Petitioner

Versus

1. The State of Bihar through its Secretary, Disaster Management Department, Block-C, Sardar Patel Bhawan, Jawaharlal Nehru Marge (Bailey Road), Patna-800023.
2. The Bihar State Disaster Management Authority through its Vice Chairman, 2nd Floor, Pant Bhawan, Bailey Road, Patna, Bihar-800001.
3. The Additional Collector, District Disaster Management Wing, Hindi Bhawan, Chajjubagh, Collectorate Campus, Patna through District Magistrate, Patna.
4. The District Purchase Committee, Hindi Bhawan, Chajjubagh, Collectorate Campus, Patna, through District Magistrate, Patna.
5. The District Magistrate, Patna, Hindi Bhawan, Chajjubagh, Collectorate Campus, Patna.
6. M/s 1st Innings Expression, Shop N. B-3, M.S. Smriti Complex, Ashiana Digha Road, Patna-800025.
7. M/s Paras Enterprises Jagdish Lok Apartment, West Boring Canal Road, Patna-800001.
8. M/s M.K. Traders House No. -68, P.P. Colony, Patna-800013.
9. M/s Maa Sharda Agency Patna Kankarbagh Main Road, Patna-800020.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Abhishek Singh, Advocate Neeraj Kumar, Advocate
For the Respondent/s	:	Mr. S.D. Yadav, AAG-9 Mr. Braj Bhushan Mishra, AC to AAG-9
For the Pvt. Resp No.8	:	Mr. Shambhu Sharan Singh, Advocate Mr. Utkarsh Bhushan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 25-06-2024

Heard learned Advocate for the petitioner and the



learned Government Advocate for the State.

2. The petitioner is aggrieved by the orders no. 2216, 2217, 2218, 2219 and 2220 all dated 01.07.2022 and order no. 3512 dated 05.12.2022 issued by the Additional Collector, District Disaster Management Wing, Patna (respondent no.3). It is the contention of the petitioner that the work orders have been illegally and unfairly given to other non-successful bidders despite the petitioner having been declared lowest bidder and hence the present writ petition seeking quashing of the same.

3. The short facts which led to the filing of the writ petition are that the District Disaster Management Wing, Patna invited Notice Inviting Tender (NIT) No. 02/2022-23 on 18.04.2022 for purchase and distribution of polyethylene sheets to the flood affected areas. The petitioner was engaged in supply of black polyethylene sheets and other identical materials across the State of Bihar. On being found eligible, the petitioner submitted its tender and finally, it has been declared lowest bidder in response to the short term tender and accordingly an agreement was executed with the petitioner on 01.06.2022.

4. The learned Advocate for the petitioner contended that despite the petitioner being categorized as L-1 bidder and the rate submitted by the petitioner @ Rs. 218.88 Kg., on



opening of the bid by the District Purchase Committee, District Disaster Management Wing, Patna, the rate was unilaterally reduced to Rs. 207 per kg. without even taking any consent, in complete breach of Clause (xii) of Rule 131R of the Bihar Finance (Amendment) Rules, 2005” (for brevity “the Rules, 2005”). Under such compelling circumstances, the petitioner had accorded consent by entering into an agreement at reduced price rate; but, surprisingly, the said tender has further been allocated to five different bidders vide orders no. 2216, 2217, 2218, 2219, 2220 all dated 01.07.2022 and order no. 3512 dated 05.12.2022; and thereby distributed the purchase order among the other non-successful bidders. It is the contention of the petitioner that the aforesaid work order is in complete defiance of Clause 6 of the other conditions of the tender document, inasmuch as the respondent authorities avoiding the petitioner, who was L-1 bidder, distributed the purchase order among others in a most arbitrary manner.

5. The learned Advocate for the petitioner further contended that the petitioner’s firm having capacity to meet out the demand of more than 50,000/- polyethylene sheets, it has not been accorded ample work order and thus causing huge loss of profits owing to the lower price quoted by the petitioner in



expectation of getting huge quantity of purchase order. Clause 6 of the tender document lays down that it would be the lowest bidder who shall be given the contract. Thus, the contract in entirety ought to have been given to the petitioner's firm and any deviation from the conditions of the tender document is in complete violation of Article 14 of the Constitution of India being arbitrary and untenable in the eyes of law, is the contention of the learned Advocate for the petitioner.

6. In the aforesaid premise, the petitioner also seeks for compensation in terms of Section 73 of the Contract Act, as the respondents have breached the terms of the contract by distributing the work order to the other bidders, who were not even selected.

7. On the other hand, the learned Government Advocate has contended that the rate of the polyethylene sheets for all the concerned districts was fixed by the District Purchase Committee by preparing a comparative chart and the rate of Rs. 207 per kg. was fixed and affirmed by the competent authorities. It is further contended that after execution of the agreement, the petitioner has been given work order vide Memo No. 2001 dated 17.06.2022 for supply of the polyethylene sheets within ten days, but it could not supply nor any information is given. In



such a situation, in order to cater to the demand of other districts in Patna Division, the other selected bidders were opted after getting their approval. In the aforesaid premise, the District Magistrate, Patna vide order dated 29.06.2022 had given the approval in view of the requisitions made with regard to the supply of polyethylene sheets in the district of Patna and accordingly the A.D.M., Disaster Management, Patna had issued different letters vide different memo numbers to three tenderers, namely, 1st Innings Expression, M/s Smriti Complex, Patna, M/s Paras Enterprises, Patna and M/s M.K. Traders with certain terms and conditions. Further in view of the requisitions made by the District Magistrate, Nalanda, vide letter no. 995 dated 11.05.2022 and the District Magistrate, Bhojpur vide letter no. 1055 dated 06.05.2022, the orders have been issued in favour of M/s M.K. Traders and M/s Maa Sharda Agency, Patna.

8. The learned Government Advocate, referring to the averments made in the counter affidavit further contended that the polyethylene sheets supplied by the petitioner was duly verified by the CIPET, Hajipur but it had been found to be not as per the specified standards. Accordingly, the District Magistrate, Bhojpur vide letter no. 80 dated 16.01.2023 had requested for withdrawal of the polyethylene sheets. The



petitioner was also issued a show-cause notice as to why action shall not be taken in accordance with law; the copies of which have been marked as Annexure-C series to the counter affidavit. In response to the show-cause, the petitioner submitted its explanation. However, the same was not found to be satisfactory and the petitioner had been held guilty of violating the terms of the agreement and supply order, leading to blacklisting of the petitioner's firm vide memo no. 1394 dated 05.06.2023.

9. Having carefully gone through the materials available on record and after having heard the parties, this Court finds that in response to the NIT, out of the ten bidders, five were found successful and the rest were declared unsuccessful, as they have failed to fulfill the terms and conditions published in the NIT. All the five successful bidders had agreed to work on the lowest bid of Rs. 207 and thus after making a comparative chart, the rate had been fixed unanimously as is evident from the averments made in the counter affidavit. Under Clause 6 and 9 of the "other conditions" of the Short Term NIT, it was made clear that all the successful bidders agreed to the lowest prescribed rate shall be obliged to execute an agreement and supply the item within time. In case of failure to comply the demand order, the tenderer shall be proceeded against and put to



black list. It is also to be noted that the complaint filed by the petitioner against the other bidders was rejected by the District Magistrate, Patna vide order dated 27.09.2022 (Annexure-4 to the counter affidavit).

10. The terms and conditions of the NIT also stipulates that the contractors were obliged to supply the polyethylene sheets not only below the rate prescribed but also as per the standard quality prescribed. It has also been made clear that all the payments shall be made after proper verification of the quality by the CIPET, Hajipur. In case the contractor failed to supply the demanded polyethylene sheets, the respondent authorities were empowered to take proper action, including putting the name of the contractor in blacklist. The contract has all along been emphasizing over the quality of the polyethylene sheets, which were to be distributed in the flood affected areas. Moreover, the NIT clearly says that it was applicable for the financial year 2022-2023 and 2023-2024 and its validity came to an end on 31.03.2024; now the period of two years has already expired.

11. The contention of the petitioner regarding violation of Clause (xii) and (xiv) of the Rules, 2005, is wholly misconceived, as it only brings out a guideline to be followed in



awarding a contract. Clause (xii) of the Rules, 2005 discourages the negotiation with other bidders after bid opening and further Clause (xiv) thereof, talks about contract should ordinarily be awarded to the lowest evaluated bidder whose bid has been found to be responsive and qualify to perform the contract satisfactorily; however, it further makes it clear that where the lowest bidder against the ad-hoc requirement is not in a position to supply the required quantity, the remaining quantity be ordered from the next higher bidder at the rate offered by the lowest bidder. The case in hand clearly suggests that five of the bidders have been selected in response to the Short Notice Inviting Tender and in the eventuality of the petitioner having failed to supply the demand, agreement has been executed with the other agencies for supplying of polyethylene sheets. The petitioner failed to supply the standard polyethylene sheets resulting into show-cause notice and on being found guilty of the charges, it has been blacklisted.

12. Once the period of the contract has expired and the petitioner has been blacklisted, all the questions put forth by him in the present writ petition has now become academic. So far the claim of the petitioner for compensation under Section 73 of the Contract Act is concerned, it is needless to observe



that the petitioner failed to make out any case for breach of contract leading to any damage.

13. In any view of the matter, the petitioner has failed to make out any case warranting interference by invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution.

14. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28-06-2024
Transmission Date	

