

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10983 of 2023

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Ram Naresh Ray S/o Sri Maheshwar Ray, R/o - Ward No. - 1, Jathmalpur,
Post - Jathmalpur Tira, P.S. - Kalyanpur, Dist - Samstipur - 847301.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Bihar State Rural work department, Bishweshraiya Bhavan, Bailey road, Patna.
2. The Engineer in chief, Bihar State Rural work department, Bishweshraiya Bhavan, Bailey road, Patna.
3. The Chief Engineer-3, RWD, Patna.
4. The Superintending Engineer, RWD, Work Circle, Darbhanga.
5. The Executive Engineer, RWD, work division- Phulparas, Dist - Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate Mr. Shashi Bhushan Singh, Advocate Mr. Chandan Kumar, Advocate Mr. Ansh Prasad, Advocate
For the Respondent/s	:	Mr. Archana Meenakshee (GP-6)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-01-2024

The petitioner is aggrieved with the cancellation of his tender by an order dated 17.04.2023 produced as Annexure-6.

2. The petitioner participated in the tender with requisite documents on 16.08.2022 and got the bid acknowledgment on 18.09.2022. The Tender related to the construction of bridge on 'Panchi Nadi' in the road from



Mathaur Goth to Kodihar Laukhai under the RWD Work Division-Phulparas. The petitioner is said to have quoted 26.11% below the tender value of Rs.4,28,07,000/-, for which he deposited EMD of Rs.8,45,000/-. The petitioner's technical bids along with others were found to be qualified and financial bids were also opened. The lowest, was of the petitioner among the eleven bidders, based on which the committee demanded a rate justification on 01.02.2023 as per Annexure-4. The same is said to have been recommended by Annexure-5 which was sent to the Chief Engineer for approval. However, tender committee held on 17.04.2023 found that there is no justification for accepting rates quoted by the petitioner and directed re-tendering of the work.

3. The learned counsel would take us to Clause 27.4 produced along with supplementary counter affidavit of the respondent to contend that the only exercise possible on inconsistency being found in the prices quoted is to increase the performance security to a level sufficient to protect the employer. There is, hence, no reason for the tender to be cancelled.

4. We specifically notice clause 27.4 and 27.5, as pointed out by the learned counsel from the Standard Bidding



Document for Procurement of Civil Works issued by the Government of Bihar for all Works Department, which is given below:-

27.4 – If the Bid of the successful Bidder is seriously unbalanced in relation to the Engineer's estimate of the cost of work to be performed under the contract, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, the Employer may require that the amount of the performance security set forth in Clause 31 be increased at the expense of the successful Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

27.5 – A bid, in the opinion of employee which contains several items in the Bill of Quantities which are unrealistically priced low and which cannot be substantiated satisfactorily by the bidder, may be rejected as non-responsive.

5. True, 27.4 speaks of enhancement of performance security in the event of inconsistency in the prices quoted. However, it has to be noted that clause 27.5 specifically empowers the awarder to reject a tender, which is unrealistically priced low. We do not find any reason to accept the contention of the petitioner that reference in clause 27.5 to the 'employee' and not the 'employer' is relevant. In fact, reading of the entire document would indicate that the awarder is referred to as



‘employer’ and awardee is referred to as ‘the bidder’ and there is no context in which reference to an ‘employee’ has to be made. The word ‘employee’ is a typographical error and it has to be read as ‘employer’.

6. The committee has in its proceedings enclosed with Annexure 6 stated the percentage below which the petitioner has quoted and also observed that the petitioner had not attached the rate analysis description along with the rate justification submitted. Rate justification is specifically sought when there is a lower bid, far lower to the estimated cost, making it unrealistic and impractical of the work undertaken being completed for the bid amount. This was what prompted the Committee to interfere with the tendering process and direct a re-tender. We find the same to be perfectly in order, insofar the power being conferred on the Committee as per the provision referred above.

7. We would, however, not look at whether the quote is un-realistic since we have no technical expertise. We rely on *Union of India v Kushala Shetty (2011) 12 SCC 69* wherein the Hon’ble Supreme Court has held that this Court would not interfere in matters where expertise is required. The subject matter of cancellation is a purely technical matter.



Judicial review as is trite (*Federation of Railway Officers Association v. Union Of India (2003) 4 SCC 289*) is a review of the decision-making process and not an examination or review of the decision taken.

8. The writ petition, hence, would stand dismissed.

(K. Vinod Chandran, CJ)

Rajiv Roy, J.

(Rajiv Roy, J)

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AFR/NAFR	
CAV DATE	12.12.2023
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