

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11068 of 2024

=====

Adam Media and Recreation Private Limited a Company incorporated under the Companies Act, having its registered office at 304 A Jeet Enclave, Shivpuri, Patna 800023 through its Director, Sanjeev Kumar, aged about 49 years (male), Son of Anil Kumar Shrivastava, resident of Near Mamta Apartment, 304A Jeet Enclave, Shivpuri, P.S. Shastrinagar, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, 1st floor, Vikas Bhawan, New Secretariat, Patna 800015.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, 1st Floor, Vikas Bhawan, New Secretariat, Patna 800015.
3. Bihar Urban Infrastructure Development Corporation Limited, through its Managing Director, Near Rajapur Pul, West Boring Canal Road, Patna 800001.
4. The Managing Director, Bihar Urban Infrastructure Development Corporation Limited, Bihar Urban Infrastructure Development Corporation Limited, Near Rajapur Pul, West Boring Canal Road, Patna 800001.
5. The Project Director (BQS), Bihar Urban Infrastructure Development Corporation Limited, Near Rajapur Pul, West Boring Canal Road, Patna 800001.
6. The Executive Engineer, (BQS), Bihar Urban Infrastructure Development Corporation Limited, Near Rajapur Pul, West Boring Canal Road, Patna 800001.
7. M/s Magadh Advertising Bureau, having its office at 2nd Floor, Flat no. 201, R.P. Tower, Frazer Road, Off Jagat Trade Centre, Dak Bungalow Chauraha, P.S. Kotwali, Patna- 800001.
8. PI System Pvt. Ltd. Patna through its Managing Director, Neeraj Kumar Srivastava, Patna.

... .. Respondent/s

=====



Appearance :

For the Petitioner/s : Mr.Avinash Shekhar, Advocate
For the Respondent/s : Mr.Lalit Kishore, Sr. SC
Mr.R.K.Priyadarshi, Advocate
Mr.Siddhartha Prasad, Advocate
Mr.Ayush Kumar, Advocate
Mr.Kanishka Shankar, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-09-2024

The writ petitioner, a bidder in a tender floated by the official respondents, has challenged the qualification of the 7th respondent; who was earlier disqualified as per the Tender Committee Meeting on 26.06.2024 evident from Annexure-R7/C.

2. We heard learned Counsel Mr. Avinash Shekhar for the writ petitioner, learned Senior Counsel Mr. Lalit Kishore instructed by Mr. R.K. Priyadarshi for the official respondents; the tendering authority, Mr. Siddhartha Prasad, learned Counsel for the 7th respondent and Mrs. Kalpana, learned Counsel for the additional 8th respondent who is impleaded through the intervening application filed.

3. The learned Counsel for the petitioner after



reference to Annexure-P6 in which the 7th respondent was clearly disqualified, refers to Annexure-P8, which is a print out of the website of the Government of Bihar, which indicates the subject tender issued by the Bihar Urban Infrastructure Development Corporation Limited (for brevity 'BUIDCO') to be pending as on 11.07.2024 whereas the Letter of Acceptance (for brevity 'LOA') has been issued on 05.07.2024 and the agreement signed on 25.07.2024. Further, a reference is made to the e-mails received by the petitioner produced along with the rejoinder filed, which too indicates that even as on 27.07.2024, the communication was that the evaluation cover-2 has been completed and the petitioner has qualified.

4. Responding to the submission made in the counter affidavit, it is pointed out that the Annexure P1, Request for Proposal (RFP) required the bidder to submit certified payment certificate of experience; which was not submitted by the 7th respondent leading to his disqualification, in the technical bid. The counter affidavit indicates that the documents were submitted while objecting to the disqualification, which is not permissible as per Clause 2.13.2. The factum of the disqualified bidder having been qualified in the technical bid was never informed to the other successful bidders, coupled with the stage



of the tender shown on the website and the e-mails received; a subterfuge employed to clearly outwit the other qualified bidders. There is definitely collusion between the respondent-authorities and the 7th respondent in awarding the tender; asserts learned Counsel.

5. The learned Senior Counsel appearing for the BUIDCO, referring to the counter affidavit, would argue that there were no new documents submitted by the 7th respondent. When the 7th respondent was disqualified, an objection was filed which was directed to be verified by the Project Director. The Project Director on verifying the same found that the certified payment certificate of experience was available in the uploaded tender of the 7th respondent, but the hard copy submitted earlier was not legible. It was hence the 7th respondent was qualified.

6. The learned Counsel for the 7th respondent also vigorously argued that in the objection raised by the 7th respondent, it was specifically pointed out that the certificates which were said to be absent, were available in the tender document. Hard copies were produced along with the objection also; which on verification was found to be available in the tender document by reason of which the 7th respondent was qualified. Both the BUIDCO and the 7th respondent argued that



the quote of the 7th respondent was far above the quote of the petitioner. Learned Counsel for the 8th respondent contented that they were the second highest tenderer and when the 7th respondent is disqualified, the tender has to be awarded to the 8th respondent.

7. We have anxiously considered the rival contentions based on the principles laid down by the Hon'ble Supreme Court in *Tata Motors Limited vs. The Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others* reported in *2023 LiveLaw (SC) 467*; relied on by BUIDCO. The Hon'ble Supreme Court has declared that no judicial review in commercial matters can be carried out, unless a case of arbitrariness, mala fide, bias or irrationality is made out. There can be no adjudication of technical issues by Judges who do not have any such domain expertise and restraint should be practiced in technical commercial matters which would incur loss to the Public Exchequer. Interference in matters of tender with directions to re-tender, as far as possible should be refrained from unless something very gross or palpable is pointed out, since it involves further toll on the exchequer.

8. With the above principle in the background, we have to look at the facts as coming out in the present case.



Annexure-P6 is the decision of the Technical Bid Evaluation Committee dated 21.05.2024 in which the 7th respondent was disqualified for not having submitted certified payments certificate of experience. In the counter affidavit of the BUIDCO Annexure R7/C is produced which is dated 26.06.2024 which has the following recitals.; as translated from the hindi version:

Technically unsuccessful tenderer M/s Magadh Advertising Bureau has submitted a complaint vide letter no.-161, dated-25.05.2024 in which they have requested for reconsideration by attaching a copy of the record related to the conditions of the tender such as para-4,7 and 9.

In this regard, the Project Director, Bus Queue Shelters informed the committee that the hard copy stored in the file was illegible and hence the matching could not be done. After receiving the complaint, the document was downloaded again from e-Proc and it was possible to match the certificate attached with the complaint, with the soft copy. Along with this, the committee was also informed by him that the authenticity of the certificate was also verified from the Employer IOCL and they have declared it to be genuine.

9. Obviously, this was done behind the back of the other bidders who were qualified and they were never informed of the same. The counter affidavit of the Respondent Nos. 3 to 6 admits that only three persons including the writ petitioner and the 8th respondent qualified initially. An objection was submitted by the writ petitioner against the 8th respondent and the 7th respondent had also objected to their disqualification. The



objection of the writ petitioner against the 8th respondent was rejected. The counter affidavit also indicates that insofar as the 7th respondent is concerned, the documents annexed along with the letter were the legitimate and readable copies of the documents which had already been annexed/uploaded along with the bid. There is no explanation as to why the said documents were not found in the initial scrutiny before cancellation of the 7th respondent's bid was carried out as per Annexure-P6.

10. The above aspect has to be considered on the basis of the issuance of the LOA which is indicated to be issued on 05.07.2024, produced as Annexure R-3/1 along with the counter affidavit of the 3rd respondent. While the LOA was admittedly issued on 05.07.2024, even on 11.07.2024 as is indicated at Annexure P8, the tender was notified as 'PENDING'. The explanation offered is that till the finalization of the tender by execution of agreement, the tender could be shown as 'PENDING' since, if the highest tenderer does not execute the agreement, necessarily it has to go to the next highest bidder.

11. Considering the said explanation, we also have to look at the e-mails received by the petitioner as produced in the rejoinder to the counter affidavit. The e-mails produced as



Annexure-P9 indicate that even on 27.07.2024 when the agreement was executed, the communication was that the evaluation cover-2 has been completed and the petitioner has been qualified during such evaluation. This has to be considered juxtaposed with the contention of the respondent, in the counter-affidavit, that at each stage of the tender process an automatic e-mail is generated to the bidders; which makes the instant e-mail very suspicious.

12. A supplementary counter affidavit has been filed by the BUIDCO in which it has been contended that the committee proceedings dated 26.06.2024 was uploaded and an automatic e-mail was generated to the petitioner on 28.06.2024. The details of the various e-mails generated are also produced along with the supplementary counter affidavit. The e-mail generated on 28.06.2024 only indicates that the petitioner has qualified during the evaluation of Cover-1; Cover-1 relating to the technical bid evaluation which had been carried out as early as on 21.05.2024.

13. What disturbs us is the fact that the qualification of a disqualified bidder on 28.06.2024 was never informed to the three successful bidders, who qualified as per the decision of the Technical Evaluation Committee on 21.05.2024. Only three



bidders qualified on 21.05.2024, including the writ petitioner as also the 8th respondent and the 7th respondent was specifically disqualified. In this context, we specifically extract Clause 2.13.2 from the RFP:

Any alteration/modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

14. If the documents in the hard-copy, which is also supplied by the 7th respondent were illegible, then only if a clarification was sought by the authority, could there be information supplied by the disqualified bidder. The contention of the BUIDCO is that in the objection of the petitioner, the petitioners produced certain documents which was verified with the uploaded tender documents and the certified payment certificate of experience was found to be available. It is curious that in the first evaluation, the committee failed to notice the said documents. If what was downloaded from the uploaded documents was illegible, definitely there should have been a clarification sought and on failure so to do, the only conclusion is of absolute laxity in examination of the tender documents. Further, if the tender documents contained the certificates; the absence of which led to the disqualification, it was incumbent on



the authority to invite the qualified bidders and apprise them of the fact that the disqualified bidder is being qualified. A tender process, especially in the award of a public work has to be imbued with transparency and fairness, especially when it is competitive and the financial bids are opened only after the technical bids are finalised. The bidders have first to be qualified in the technical evaluation; which is the threshold stage.

15. In the instant tender, we find a gross and palpable infirmity insofar as the tendering authority having accepted documents after the disqualification of the bidder and having termed such documents to be already available in the tender documents; which was evaluated at the first instance before the disqualification was carried out. We are unable to accept the contention that the documents uploaded or that of the hard copy, were illegible and if the said contention is accepted; as we found, there is absolute levity in the process of tender evaluation.

16. The contention of the BUIDCO is also that the quote of the 7th respondent was a lot higher than that of the other bidders. The contention that the 7th respondent quoted far higher than the others is of no import to sustain the tender proceedings, especially when we have found the proceedings to be arbitrary,



irrational and unfair, giving rise to an apprehension of bias; which would vitiate the process, even if the qualification made of a disqualified tender is on the purported reason of the financial gain being far more. We have to notice that the present tender is one generating revenue and if the financial bids were not upto the expectation of the authority, there is no mandate to accept it. The fact that it is a revenue augmenting tender also persuades us to interfere with the tender process; which demonstrably, according to us, was tainted, as held above.

17. In the above circumstances, we interfere with the LOA granted on 05.07.2024 produced along with the counter affidavit, which has been challenged by the writ petitioner by way of I.A. No. 02 of 2024; seeking incorporation of a further relief for a writ order or direction to quash the LOA issued as Memo No. 553 dated 05.07.2025. We do not make any observation with respect to the 8th respondent's eligibility to be awarded the tender, since that is a matter to be considered by the BUIDCO. Financial feasibility can always be looked into by the tendering authority to not award a tender, on the quotes made and proceed for a re-tender. With the above liberty left to the BUIDCO, we set aside the LOA granted to the 7th respondent, enabling all the bidders to participate; unless disqualified on



allegation of fraud, concealment or false statement, if there is a
re-tender.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	10.09.2024
Uploading Date	
Transmission Date	

