

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15621 of 2023

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Alok Kumar Son of Shri Vinay Kumar Sinha, Resident of Mohalla- Vijay Nagar, House No. F/40, P.O.- Bahadurpur, P.S.- Patrakar Nagar, District- Patna- 20, Bihar, Email Id- alokmuntun1@gmail.com.

... .. Petitioner/s

Versus

1. Bihar Urban Infrastructure Development Corporation Ltd. (A Govt. of Bihar Undertaking) through its Managing Director-Cum-Chairman of Tender Committee, West Boring Canal Road, (Rajapur Pul), Patna, Bihar- 800001.
2. The Managing Director-Cum-Chairman of Tender Committee, Bihar Urban Infrastructure Development Corporation Ltd. (A Govt. of Bihar Undertaking), West Boring Canal Road, (Rajapur Pul), Patna, Bihar- 800001.
3. The Chief General Manager-Cum-Member of Tender Committee, Bihar Urban Infrastructure Development Corporation Ltd. (A Govt. of Bihar Undertaking), West Boring Canal Road, (Rajapur Pul), Patna, Bihar- 800001.
4. The General Manager-Cum-Member of Tender Committee, Bihar Urban Infrastructure Development Corporation Ltd. (A Govt. of Bihar Undertaking), North Bihar Wing, West Boring Canal Road, (Rajapur Pul), Patna, Bihar- 800001.
5. The Internal Financial Advisor-Cum-Member of Tender Committee, Urban Development and Housing Department, Old Secretariat, Bihar, Patna-15.
6. Rajeev Ranjan and Aurick Construxive (JV) Village and Post-Persa Bazar, Kurthaul, District Patna, Bihar 804453.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Manish Sahay, Advocate Mr. Anil Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Advocate Mr. Rabindra Priyadarshi, Advocate Mr. Kanishka Shankar, Advocate
For Respondent No.6	:	Mr. Sachin Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-01-2024

The writ petition is filed against the award of



contract to the 6th respondent. The petitioner and the 6th respondent applied pursuant to the Notice Inviting Tender (NIT) dated 18.08.2023 produced at Annexure-P-1. The construction work which were tendered were that of storm water drainage system in the districts of Samastipur, Madhepura and Ara. The instant writ petition is with respect to the work awarded at Samastipur; which was to the 6th respondent and the petitioner's tender was rejected on the technical bid.

2. We heard Sri Rajendra Narayan, learned Senior Counsel for the petitioner and Sri Lalit Kishore, learned Senior Counsel for the respondent. We also heard the Government Advocate.

3. The petitioner's contention is that the 6th respondent does not satisfy the conditions in Annexure-P-4, which is the standard bidding document applicable to joint ventures. The bid document pursuant to Annexure-P-1 (NIT) specifically made the standard bidding document dated 24.07.2012 applicable to joint ventures applicable to the NIT. As is evident from clause 4.4 of Annexure-P-2, it is the submission of the petitioner that as per the standard bid document, a joint venture could be of 3 partners including a lead partner, of which the lead partner should meet 50% of the qualification criteria of



specific clauses mentioned as per clause 5.1 and each of the remaining partner should meet not less than 25% of the qualification criteria as per clause 5.2. Clause 5.3 also provides that in case one of the partners of the joint venture, who is proposed to be included primarily for financial strength, a commitment so as to provide liquidity support to the extent of 10% of the value of the contract should be furnished. Insofar as the lead partner, the 50% is satisfied but the second partner does not fulfill 25% of the qualification criteria. This makes the 6th respondent ineligible, which also has been found by a judgment of this Court in another NIT of the same year, which judgment dated 04.08.2023 is produced at Annexure-P-5.

4. The 6th respondent, however, submits that the judgment in C.W.J.C. No.7687 of 2023 requires reconsideration. Clause 5.1, 5.2 and 5.3 have to be considered together and not in isolation. The lead partner definitely would have to meet not less than 50% of the qualification criteria. Insofar as the other partners of the joint venture, if they are 3, then the 2 partners other than the lead partner would have to meet at least 25% of the qualifying criteria. By the use of the word 'however' in clause 5.3, a joint venture partner proposed to be included, primarily to provide financial strength, requires only to commit



to provide liquidity support to the project to the extent of 10% and not satisfy the 25%. It is also submitted that the petitioner was not qualified in the technical bid since he did not have a Drainage Pumping Station (DPS), which was one of the qualifications for the purpose of the instant contract in Samastipur District.

5. We are not inclined to reconsider the judgment in C.W.J.C. No.7687 of 2023 dated 04.08.2023 at Annexure-P/5, which is by a Co-ordinate Bench. We cannot, but also notice that if the provisions under clause 5 of the standard bid document are to be considered together; clause 5.4 indicates that the joint venture should collectively satisfy the qualification criteria, i.e. 100%. We would not definitely hold on the same especially since we find that the petitioner had failed in the technical bid.

6. The petitioner has challenged the rejection of the technical bid in the writ petition. However, the petitioner does not aver in the writ petition that he has a drainage pumping station. In fact, the specific averment in paragraph 14 is that the petitioner had submitted tenders for all the 3 works under the NIT. Since under Group No.2; i.e. the construction work at Madhepura, clause 4.5A(d) relating to DPS was deleted. It is



also averred that from a perusal of the NIT it is clear that all the 3 works were similar in nature and the tender was submitted in Samastipur on the impression that in the other 2 works also, the said clause would be deleted. It is submitted in paragraph 14 that ‘the petitioner has not followed the said condition, under which the technical bid has been declared non-responsive’. Hence, the petitioner has no case against the rejection of his technical bid. In that circumstance, the petitioner cannot be found prejudiced, by the award of the contract to the 6th respondent. It is for the respondent authority to decide whether the 6th respondent’s joint venture is properly constituted and it is not for us to examine the same. We, hence, dismiss the writ petition finding the petitioner to have no locus to challenge the award of the tender, he being disqualified in the technical bid itself, not having followed the condition with respect to DPS.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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CAV DATE	
Uploading Date	22.01.2024.
Transmission Date	

