

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15919 of 2023

Ram Kripal Singh Construction Pvt. Ltd. having its Registered Office at Sri Krishna Nagar, Deep Shikha Road, Begusarai through its authorized Signatory Munna Kumar, aged about 46 years, Male, Son of Sri Vijay Singh, resident of village Ahiyapur, P.S. Bikram, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Building Construction Department, Government of Bihar, Patna.
2. The Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Engineer in Chief cum Commissioner cum Special Secretary, Building Construction Department, Government of Bihar, Patna cum Member Departmental Tender Committee.
4. The Chief Engineer (Patna) Building Construction Department, Patna cum Member Departmental Tender Committee.
5. The Executive Engineer, Building Construction Department, Construction Division No. 2, Patna.
6. Shanti BBCPL (JV), Shanti Bhawan, near Bihar Motor Works, Bahadurpur Main Road, Kankarbagh, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate
For the Respondent/s	:	Mr. P. K. Verma, AAG-3
		Mr. Sanjay Kumar Ghosarvey, AC to AAG- 3
For the Respondent No.6:		Mr. Rajendra Narain, Sr. Advocate
		Mr. Manish Sahay, Advocate
		Mr. Anil Kumar Sinha, Advocate
		Mr. Siddarth Aditya, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 27-06-2024

Heard Mr. Prabhat Ranjan, learned Advocate for the petitioner and the learned Government Advocate for the State. Private Respondent No.6 is represented through learned Senior Advocate Mr. Rajendra Narain.



2. At the outset, learned counsel for the petitioner submits that earlier he had moved before this Court for identical reliefs in C.W.J.C. No. 10851 of 2023, however, on account of some technical defects in the pleading, the same came to be dismissed vide order dated 13.10.2023 reserving liberty to file a fresh writ petition with proper pleading. Thus on the liberty granted by this Court, the present writ petition is filed.

3. The petitioner is aggrieved by the decision of the Departmental Tender Committee dated 12.07.2023 contained in Memo No. 1354 to the extent whereby the prayer of private respondent no.6 seeking withdrawal from the tender process has been rejected misapplying the provisions of Clause 16.6 of the SBD. The petitioner also sought quashing of the decision of the Departmental Tender Committee whereby the private respondent no.6 has been declared responsive and further consequential decision dated 01.08.2023, as contained in Memo No. 1538 dated 01.08.2023 by which the objection filed by the petitioner against the decision of the Departmental Tender Committee dated 12.07.2023 has been rejected. The petitioner also sought quashing of the letter of acceptance as well as consequential work order issued in favour of private respondent no.6.



4. The petitioner, a registered Class-I Contractor under Bihar Contractors Registration Rules, 2005, engaged in construction and other civil works in response to the Notice Inviting Tender (NIT) as Standard Bidding Document (SBD) No. 06/2022-23 dated 25.02.2023 submitted his tender in connection with the completion of remaining work of Vidhayak Awasan MLA and MLC Parisar, Patna for an estimated cost of Rs.378,08,90,272/-. In terms of the NIT, the petitioner along with two other bidders, including private respondent no.6, Shanti BBCPL (JV), participated in the tender process.

5. Learned Advocate for the petitioner contended that without any corrigendum, the Technical Bid Evaluation Committee deferred the Technical Bid Evaluation and evaluated the Technical Bid of all the three bidders and recommendation was made to the Departmental Tender Committee on 16.05.2023. No decision of the Departmental Tender Committee was received, yet the Technical Bid Evaluation Committee without any provision reconvened its meeting on 10.07.2023 and made fresh recommendation after re-evaluating the technical bid. The respondent no.6, in the meantime, even before the proceedings of the Technical Bid Evaluation, tendered its application for withdrawal from the tender process



for the reason of difficulty in the working of JV and requested permission for withdrawal without any penal consequences and coercive action vide application dated 15.06.2023. However, the Departmental Tender Committee by misapplying the terms of Clause 16.6 of the SBD rejected the prayer of respondent no.6 on 12.07.2023 is the contention of the petitioner. Simultaneously, on 12.07.2023, the respondent authority opened the technical bid declaring all the three bidders technically qualified and responsive; having notified the decision of the Departmental Technical Committee on the website, objection was also invited within a period of five days.

6. In response to the aforesaid notice, the petitioner submitted a detailed objection to the Chief Engineer, Building Construction Department, Patna vide its letter dated 18.07.2023. The objection of the petitioner has been brought on record by way of Annexure-P/6. On 01.08.2022, the Departmental Tender Committee convened its meeting. However, it is the contention of the petitioner that his objection was rejected in totality by misinterpreting, misconstruing the terms and conditions of the tender document and by relaxing the essential conditions of the NIT and bid documents. Photo copy of the proceedings dated 01.08.2023, impugned herein, has been placed on record as



Annexure-P/7.

7. Adverting to the aforesaid facts, learned Advocate for the petitioner contended that the decision of the Technical Bid Evaluation Committee dated 12.07.2023 by which the application of respondent no.6 seeking permission for withdrawal from the tender process has been rejected by applying Clause 16.6 of the instructions to bidders of the SBD is wholly unsustainable, as it relates to only forfeiture of earnest money in case any prospective bidder withdrawing from the tender after opening of the bid, during the bid validity period. Learned Advocate would thus submit that the Technical Bid was opened on 15.06.2023, on which date the application for withdrawal from the tender process by respondent no.6 was already there and, therefore, there was no occasion for the respondents to have ignored such request and have opened the technical bid of respondent no.6.

8. Further, while assailing the decision of the Departmental Evaluation Committee dated 01.08.2023 (Annexure-P/7), learned Advocate for the petitioner vigorously contended that respondent no.6 has not submitted the bid, as per the requirement of the tender document and thus the declaration of technical bid of respondent no.6 as responsive and all other



consequential actions could not be sustained in law.

9. In order to show the infirmities in the tender of respondent no.6, learned Advocate for the petitioner referred each and every objections raised in its complaint, qua the requirement under the provisions in the NIT. It is precisely contended that in terms of the NIT, a firm has to submit partnership deed, however, one of the partner had retired in the year 2022 itself, which affects the credentials of the firm and it also does not have 10 years experience. Further, the affidavit required to be submitted under Form-G relating to joint venture is not in conformity with the requirement of the valid document, as prescribed in Form-G, inasmuch as the word PSU/Undertaking is missing in para.2 of the affidavit. The Power of Attorney in favour of Pawan Kumar, son of Late Satyadeo Prasad submitted by the petitioner's firm could not be sustained, as it does not mention the purpose of execution of Power of Attorney, apart from other infirmities. Various other discrepancies have been shown before this Court, as referred to in the objection filed by the writ petitioner.

10. It is the contention of the writ petitioner that the rejection of the objection/complaint by the committee is arbitrary and discriminatory for the simple reason that the same



Departmental Tender Committee on the same date for the same defect in another NIT has declared the technical bid of the defaulting bidder as non-responsive. In substance, the ground for rejection is wholly misconceived and fit to be quashed and cancelled, is the contention of the learned Advocate for the petitioner.

11. Refuting the contention of the petitioner, learned Advocate for the State as well as learned Senior Advocate for private respondent no.6 submitted that as per the NIT, in question, the bid was valid for 120 days and it has expired on 15.09.2023. It is further submitted that on 17.05.2023, technical bids of all three bidders were opened and on being found the withdrawal application of private respondent no.6, as a conditional withdrawal of his bid subject to not taking any coercive step against him and for refund of entire earnest money and thus not worth taking account in terms of Clause 16.6 of the ITB, the same was rightly rejected.

12. It is further contended that the objection received by the petitioner was duly considered by the Technical Bid Evaluation Committee and it was found that all the objections made against respondent no.6 were baseless and incorrect and accordingly the same was rejected. It is also



informed to this Court that the decision of the Departmental Tender Committee dated 01.08.2023 had also been examined from legal perspective and after having found that the Technical Evaluation Committee has applied its mind with reference to the materials discussed therein by ascribing cogent and valid reasons. After following principles of fair play and transparency, finally the Financial Bid of all the bidders were opened on 04.08.2023. The respondent no.6 was declared L1 in the said tender and vide letter no. 1176 dated 04.08.2023 Letter of Acceptance was issued in favour of respondent no.6. It is also contended that the work order has also been issued on 24.08.2023 and it is reliably learnt that more than 50% work has been completed.

13. We have heard the learned Advocates for the respective parties and also perused the materials on record.

14. Having carefully gone through the impugned decision as contained in Annexure-P/7 whereby the objection of the petitioner has been found to be unsustainable, this Court finds that each and every objection of the petitioner has been dealt with elaborately by assigning reasons for its rejection. It would also be worthy to note that though the petitioner has emphasized that the affidavit submitted by the petitioner under



Form-G is not in conformity with the requirement of the contents of the valid affidavit and some of the words including PSU/Undertaking are missing; it is not the case of the petitioner that the respondent no.6 has ever been debarred or blacklisted or has abandoned any work in connection to PSU/Undertaking. Hence in the opinion of this Court it cannot be said to be a case of suppression of fact or filing of wrong or misleading affidavit in order to get undue benefit.

15. Similarly, the contention of the petitioner regarding the Power of Attorney being unenforceable, also found no merit as it authorizes Power of Attorney Holder to sign, alter or amend contracts, purchase tender documents and make necessary filing procedures, prepare and submit documents on behalf of the Company and other connected matters, including to raise bills and make payment on behalf of the company.

16. Likewise, other objections have also been dealt with by the Technical Bid Evaluation Committee, which has also got approval from the Department and after due consideration by the Departmental Tender Committee, recommendations have been made for opening of the financial bid.



17. Admittedly, the petitioner is aggrieved by the non-acceptance of his objection and selection of private respondent no.6. There is neither any allegation of procedural defect nor any materials making out a case of malafides or arbitrariness on the part of the official respondents.

18. Well settled it is that judicial review is meant to ensure that the person affected must receive fair treatment and not to ensure that the conclusion, which the authority reaches is necessarily correct in view of the Court or the Tribunal.

19. In **Jagdish Mandal Vs. State of Orissa**, reported in **(2007) 14 SCC 517**, the Hon'ble Supreme Court while describing the scope of Judicial review has held that "Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind.

20. Further the Hon'ble Supreme Court also observed that "Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to



make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold.

21. Recently, the Hon'ble Supreme Court in the case of **R. K. Industries (Unit-II) LLP Vs. H.R. Commercial Private Limited & Ors.** reported in **(2024) 4 SCC 166** while reiterating the well settled principle that the scope of judicial review is fairly limited and the Court ought to refrain from substituting its decision for that of the tendering agency, has taken notice of earlier decision rendered in the case of **Montecarlo Ltd. Vs. NTPC Ltd.**, reported in **(2016) 15 SCC 272** which held as follows: "that exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or



comparison by the court would be impermissible."

22. It is trite that the Court does not sit as a court of appeal, but merely review the manner in which the decision is made; if a review of the decision, as such, is permitted it will be substituting its own decision, without having expertise, which is not sustainable in law.

23. In view of the aforesaid facts, circumstances and the position obtaining in law, this Court finds no merit in the writ petition and accordingly, the same stands dismissed.

24. The parties shall bear their respective costs.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.07.2024
Transmission Date	NA

