IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16345 of 2024

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Narendra Kumar Vidyarthi S/o Deoki Nandan Prasad, R/o.-Subhash Nagar, Lane No.-2, Khemnichak, Patna, Bihar-800027.

... ... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Old Secretariat, Patna, Bihar.
2. The Additional Chief Secretary, Rural Works Department, Govt. of Bihar, Vishweshwarai Bhawan, Bailey Road, Patna, Bihar.
3. The Additional Secretary, Rural Works Department, Govt. of Bihar, Vishweshwarai Bhawan, Bailey Road, Patna, Bihar.
4. The Engineer in Chief, Rural Works Department, Govt. of Bihar, Vishweshwarai Bhawan, Bailey Road, Patna, Bihar.
5. The Chief Engineer -1, Rural Works Department, Govt. of Bihar, Old Secretariat, Bihar Vidhan Sabha Campus, Patna, Bihar.
6. The Technical Secretary to ENC, Rural Works Department, Govt. of Bihar, Vishweshwarai Bhawan, Bailey Road, Patna, Bihar.
7. The S.E. Works Circle Nalanda, Rural Works Department, Govt. of Bihar, Nalanda, Bihar.
8. The Project Director, MMGSY (NDB) Rural Works Department, Govt. of Bihar, Vishweshwarai Bhawan, Bailey Road, Patna, Bihar.
9. The Executive Engineer, Rural Works Department, Govt. of Bihar, Hilsa, Vishweshwarai Bhawan, Bailey Road, Patna, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate
		Mr. Abhishek Kumar Pandey, Advocate
		Mr. S. Kumar, Advocate
		Mrs. Annapurna Singh, Advocate
		Mr.Harsh Kaushal
For the Respondent/s	:	Mr.Government Advocate (5)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-10-2024

The writ petitioner is aggrieved with the fact that the petitioner was disqualified in the technical bid without noticing the correct facts.

2. The contention raised at the initial stage is with reference to Annexure-P/3 and Annexure-P/5. The disqualification as per Annexure-P/3 was on account of the petitioner having disclosed wrong turnover in 2020-21, which according to the respondent-Authority was declared as Rs.511.99814 lakhs, but according to Online verification it was only Rs.155.69377 lakhs.

3. The learned Senior Counsel appearing for the petitioner had also pointed out from Annexure-P/5 that there was a confusion with respect to the assessment year under the In-come Tax Act and the financial year. Rs.155.69377 lakhs was the turnover for the financial year 2019-20 and the Authority had noticed that Rs. 511.99814 lakhs was the turnover for the financial year 2020-21. We had also granted stay of the further proceedings despite the successful tenderer having not been impleaded.

4. Mr. Ajay, the learned Counsel appearing for the Government based on the short counter affidavit filed, would concede that earlier the Authority had committed a mistake. However, it is pointed out from Annexure-P/3 itself that there was a representation/complaint as against the decision

of the Technical Bid Committee. The petitioner's complaint was considered and the earlier decision verified, but again a disqualification was made as per Annexure-P/10 which indicated that the UDIN for the year 2020-21 was not disclosed in the certificate uploaded which is also produced along with the short counter affidavit as Annexure-R-3/P. The petitioner also did not satisfy 60% turnover for the years 2019-20, 2021-22, 2022-23 and 2023-24.

5. Learned Senior Counsel asserts that at least in two years i.e. 2018-19 and 2020-21, the petitioner satisfies 60% of the amount put to bid as stipulated Clause 4.4A of the NIT. We extract here under Clause 4.2F and 4.4A of the NIT which are relevant for consideration.

> "***4.2(f)*** *Reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five years duly with UDIN as applicable.*
>
> ***4.4A*** *To qualify for award of the Contract, each bidder should have in the last five years (5 years immediately preceding the year, in which the bids are invited, year means financial year);*
>
> *(a)Achieved in any one year a minimum annual financial turnover of 60% of amount put to bid (as certified by chartered accountant, and atleast 50% of which is from civil engineering construction works).*
>
> *(b) Turnover will be indexed at the rate of*

8% per year.
(c) Satisfactorily completed, as prime contractor or Sub-contractor at least one similar work of value not less than 30% (Thirty Percent) of estimated value of contract."

6. A reading of the above Clause which comes under the nominal heading of 'qualification criteria'; indicate that every tender has to submit the profit and loss statement and auditors report for the past 5 years duly with UDIN as applicable. This is also ensure that the quality of award of the contract for the earlier 5 years and also to ensure that in any one year, a minimum actual financial turnover of 60% of amount put to bid, as certified by Charted Accountant; of which at least 50% is from civil engineering construction work. This is an essential qualification criteria, as per the tender document.

7. The total amount put to bid comes to 662.7095 lakhs, 60% of which will come to 397.62500. Even as per the documents submitted by the petitioner in the interlocutory application bearing I.A. No. 1 of 2024, as per Annexure-P/11, the turnover of the financial years are as follows:-

Financial Year-2018-19-Rs.42734995.00

2019-20-Rs.15569377.00

2020-21-Rs.50492438.00

2021-22-Rs.20101944.00

2022-23-Rs.15503607.00

8. The contention of the petitioner is that for the year 2018-19 and 2020-21, the total turnover is above the 60% limit, as specified in the NIT.

9. In this context, we have to notice that Annexure-R3-B, as produced in the short counter affidavit filed by the respondent-Authorities indicate that there is no UDIN Number for the profit and loss account and auditor's report produced for the year 2020-2021. We also notice that even the date is missing from the aforesaid document produced as Annexure-R/3-B, which has not been controverted by the petitioner. Hence, the turnover of the petitioner for the financial year 2020-21 cannot be reckoned for consideration of the qualification criteria.

10. Even then the petitioner satisfies the qualification criteria for the year 2018-19, is the submission. However, we have to reckon the fact that NIT was issued in March and the last date for submission was on April 2024, in which circumstance in considering the 5 years, the financial year 2018-19 will have to be ignored, since the 5 Financial years will be 2018-19, 2019-2020, 2020-21, 2021-22, 2022-23, 2023-24. Further Annexure-R/3D, produced alongwith the short

counter affidavit which contain the Profit and Loss Account and Balance Sheet for the year 2018-19 also does not have the UDIN number.

11. We also notice that the successful bidder has not been impleaded in the writ petition.

12. In the above circumstances, we do not think that the disqualification was bad in any circumstance. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Harsh/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	21.11.2024
Transmission Date	