

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16499 of 2024

M/s Kunal Construction a partnership firm having its registered office at Village-Babuhata, P.O.-Udant Rai Ke Bangra (Bihar), P.S.-Barhariya, District-Siwan-841428 Bihar through its authorized Partner Smt. Nitu Devi (female), aged about 34 years, wife of Sri Vivek Prasad, resident of Village-Babuhata, P.O.-Udant Rai Ke Bangra (Bihar), P.S.-Barhariya, District-Siwan-841428.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Commissioner cum-Special Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer-05, Rural Works Department, Government of Bihar, Patna.
5. The Superintending Engineer, Work Division Siwan, Rural Works Department, Government of Bihar, Patna.
6. The Technical Secretary to the Engiener in Chief, Rural Works Department, Government of Bihar, Patna.
7. The Executive Engineer, Nodal Officer, MMGSUY, Rural Works Department, Bihar, Patna.
8. The Executive Engineer, Work Division Siwan-01, Rural Works Department, Bihar, Patna.
9. M/s Deopura Infra Cons Pvt. Ltd. having its office at Gandhi Nagar, Road No. 4B, Plot No. 17, Near Patliputra Railway Station, Patna, Bihar-800025, through its Managing Director namely Shri Subhash Kumar Shahi, son of Late Shardha Nand Shahi, resident of Village and P.O.-Deopura, P.S. Rasulpur, District Siwan, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Ms. Riya Giri, Advocate Mr. Sumit Kumar Jha, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-10-2024



The petitioner is concerned with a disqualification on the ground that two bids already submitted were not disclosed by the petitioner; one of which the petitioner submits was closed even before the tender was submitted and the other was inadvertently omitted. It is also the submission of the learned Counsel for the petitioner that the provision for submission of details of bid already submitted is only directory and it cannot lead to any advantage, having been attempted to be taken by the tenderer. The petitioner also relies on **C.W.J.C. No. 12254 of 2024** titled **M/s Jay Mata Di Enterprises & Anr. v. The State of Bihar & Ors.** dated 04.10.2024.

2. The learned Advocate General specifically points out that the disqualification was on the ground of two bids having been not submitted. The petitioner cannot wriggle out of the responsibility to submit the details of the bid 'already submitted', merely on the ground that one of the bid had closed and he had not qualified. The admission that two bids were not submitted clearly amounts to a suppression, and Clause 4.2(n) is an essential qualification criteria which cannot be deemed to be a directory condition and not mandatory.

3. The petitioner was disqualified once, and finding that the ground of disqualification was not existing, in a writ



petition filed, we granted a stay as is seen from Annexure-P/12. Subsequently, the respondent themselves qualified the petitioner, and the writ petition was withdrawn. Later, a further complaint was made with respect to the present grounds on which qualification has been made, which has led to the filing of the above writ petition.

4. The objection was made by the 9th respondent, another bidder.

5. Admittedly, the omission occurred with respect to Clause- 4.2(n) which is as below:

(n) Bidder must submit details of bid already submitted in prescribed format as described in qualification criteria

And this is with respect to a qualification criteria, which cannot be brushed aside as directory.

6. The decision in **M/s Jay Mata Di Enterprise** (supra) was with respect to submission of machinery, which even as per the notice inviting tender, the tenderer was obliged to submit only within thirty days of issuance of LOA, if the bidder proposes to lease or hire the machinery.

7. We are of the opinion that the said dictum does not apply on facts in the present case.

8. Herein, there is a mandatory condition for



disclosure of the details of bids already submitted in the prescribed format as described in the qualification criteria. The petitioner concedes that two bids already submitted, were not disclosed. The mere fact that one of the bids was closed does not absolve the petitioner from disclosing the same.

9. Considering the admission made of the essential criteria for qualification having not been satisfied we are of the opinion that the writ petition is not maintainable.

10. The writ petition stands dismissed *in limine*.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.10.2024.
Transmission Date	

