

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18180 of 2024

=====

M/s Himalaya Construction, having its Office at Arar More, Ward No. 26, Gopalganj, P.S.-Gopalganj, District-Gopalganj through its Managing Partner Ravindra Prasad Yadav, aged about 59 Years (Male), Son of Late Swaminath Chaudhary, Resident of Arar More, Ward No. 26, Gopalganj, P.S.-Gopalganj, District-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Rural Work Department, Government of Bihar, Patna.
2. The Engineer-in-Chief-Cum-Additional Commissioner-Cum-Special Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer-5, Rural Works Department, Government of Bihar, District-Muzaffarpur.
4. The Superintending Engineer, Rural Works Department, Siwan Work Circle, District-Siwan.
5. The Executive Engineer, Rural Works Department, Works Division Gopalganj-2, District-Gopalganj.
6. The Project Director, Makhya Mantri Gram Sampark Yojana (MMGSY), Rural Works Department, Government of Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Akshansh Ankit, Advocate Mr. Bhola Kumar, Advocate
For the Respondent/s	:	Mr. Standing Counsel (11)

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-12-2024

The petitioner is aggrieved with the disqualification made of the bid submitted by the petitioner against a Notice Inviting Tender (for brevity, NIT). The petitioner's specific contention with respect to the disqualification is that the petitioner while uploading the machinery/equipments required for the work



had uploaded three sets of documents, first; where the petitioner himself owned the equipments, the second; with respect to lease taken from one M/s J.K and Company and third, with respect to Anil Kumar. It is the petitioner's contention that even if the machinery and equipments owned by Anil Kumar is ignored, the petitioner would qualify. The disqualification has been made under Clause No. 4.4B(i) of the 'Instruction to Bidders' (ITB) which is available in the Standard Bidding Document (SBD).

2. One other contention raised by the petitioner is that there is absolute non-application of mind, since the specific clause in the ITB is Clause 4.4.B(b)(i) and not 4.4B(i), which we are not able to accept, since the petitioner was quite aware of the requirement as per the ITB. Mere mistake committed in quoting a provision cannot lead to the disqualification being set aside.

3. What is relevant, is the question of uploading of document with respect to the machinery owned or leased out by the bidder.

4. We have noticed Clause No. 4.4B(b)(i) which is a provision by which, even an undertaking can be furnished by the bidder, that the machinery, of which the documents are not uploaded; as owned or leased out, shall be produced within thirty days of the issuance of LOA, failing which the earnest money deposit would be forfeited and the LOA cancelled.



5. We cannot countenance the contention of the petitioner that the petitioner would have qualified, if the documents with respect to ownership and leased out machinery and equipments were examined by the tendering authority. The submission is that the documents of machinery and equipments owned by Anil Kumar were uploaded only as an abundant caution.

6. The tendering authority cannot ferret out the documents and examine the qualification based on only a part of the documents uploaded; when the petitioner himself has uploaded a number of documents relating to machinery and equipments belonging to a person, from whom there was no consent or lease obtained.

7. In the above circumstances, we find absolutely no reason to entertain the writ petition and the same stands dismissed.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.12.2024.
Transmission Date	

