

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17615 of 2024

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M/s Kumar Construction Through its Proprietor Mr. Suresh Kumar, Gender-Male, aged about 58 years, S/o Ram Prasad Singh, R/o Station Road, Hilsa, P.S.-Hilsa, District-Naland Bihar- 801302.

... .. Petitioner/s

Versus

1. The State of Bihar through its Additional Chief Secretary, Rural Works Department, Government of Bihar Patna, Bihar.
2. The Additional Chief Secretary, Rural Works Department, Government of Bihar, Vishweshwarai Bhawan, Patna, Bihar.
3. The Engineer in Chief, Rural Works Department, Government of Bihar, Vishweshwarai Bhawan, Patna, Bihar.
4. The Chief Engineer-1, Rural Works Department, Government of Bihar, Vishweshwarai Bhawan, Patna, Bihar.
5. The Technical Secretary to Engg-In-Chief, Rural Works Department, Government of Bihar, Vishweshwarai Bhawan, Patna, Bihar.
6. The S.E. Works Circle Nalanda, Rural Works Department, Government of Bihar, Nalanda, Bihar.
7. The Executive Engineer, Nodal Officer (MMGUSY), Rural Works Department, Government of Bihar, Vishweshwarai Bhawan, Patna, Bihar.
8. The Executive Engineer, Rural Works Department, Work Division Hilsa.
9. The Patliputra Infra Construction Private Ltd. (Bid ID- 580942)
10. S.B. Engicon Private Ltd. (Bid ID-581084)

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Alok Kumar Rahi, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-11-2024

The petitioner, a bidder under a Model Bidding Document (for short 'MBD'), is aggrieved with his disqualification.



2. Learned Senior Counsel Shri Rajendra Narayan, appearing for the petitioner, pointed out Serial No. 13 from Annexure-P/1, which is the work, the petitioner applied for; a combination of six items of construction of roads within the district of Nalanda. Out of 11 tenderers, only 4 were qualified, as is evident from Annexure-P/4. The petitioner was technically qualified on the basis of the check-list provided by the Regional Engineers. Later, complaints were received with respect to the qualification of the various responsive tenderers, which were considered by Annexure-P/9.

3. The petitioner is concerned with his disqualification, which was on two grounds; that he did not upload the documents of a Hot Mix Plant and Wet Mix Plant with respect to Key Equipments and that one of the technically qualified personnel projected had experience of 8 years only; from the year of his qualification, while that shown was 10 years.

4. The learned Senior Counsel would rely on Annexure-P/7 judgment to contend that the tenderer had the obligation only to provide the machinery later and that an affidavit to that extent would suffice. It is pointed out that the very disqualification, as directed in Annexure-P/9, extracted the



portion of the affidavit where such undertaking was given; on noticing of which no disqualification should have been ordered.

5. From the MBD it is also pointed out that the experience required is only of 3 years; while admittedly the personnel projected by the petitioner had 8 year's experience.

6. The learned Advocate General, who appeared for the respondents, however, pointed out that the affidavit said to have been filed by the petitioner is not produced, and in any event, it is not in compliance with the specification as noticed in the cited judgment. Further, it is also argued that the petitioner had made a false declaration of the technical personnel having 10 year's experience; while his technical qualification itself was only in the year 2016. Hence, there was a false declaration made by the petitioner, is the contention. Both of these aspects disqualify the petitioner, asserts the learned Advocate General.

7. The judgment, as cited by the learned Senior Counsel appearing for the petitioner, which is at Annexure-P/7, reckoned the fact that Clause 4.4 B (b)(i) of the Instruction to Bidders permits commission of such equipment or machinery within 30 days of issuance of LOA, and if there is failure to do so, the security amount would be forfeited and the award cancelled. Therein, an Ashphalt Drum Mix Plant DM-45 was



produced in lieu of a Hot Mix Plant and there was also an undertaking to produce the required Plant within 30 days of the invoice period.

8. The disqualification of the petitioner, as is seen from translation of Annexure-P/9, which was handed over to us by the learned Senior Counsel for the petitioner, indicates that in the affidavit submitted it was undertaken that, if the work is awarded then the plants and equipment mentioned in Annexure-P/1 with reference to Clause 4.5 B (a) of the Bidding document and as per the site conditions, the additional machinery prescribed by the Engineer In-charge shall be deployed at the work site. This is not the specific undertaking required as per the clause which requires production of the essential machinery within 30 days of issuance of LOA. The petitioner had only undertaken to supply the equipment at the work site, which is not in consonance with the provision, as noticed in Annexure-P/7.

9. In so far as the other ground of disqualification, it is clear from the MBD that the requirement is only of 3 years, but however, there is no explanation offered for the petitioner's declaration that the person who obtained the technical qualification in 2016 had an experience of 10 years. In any



event, even if that is found to be inconsequential, as not affecting the technical qualification, since the required equipments were not made available or undertaken to be produced within 30 days of issuance of LOA; the petitioner’s disqualification has to be upheld.

10. We find absolutely no reason to interfere in the writ petition and the same stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
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