

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17539 of 2023**

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Alok Kumar Son of Shri Vinay Kumar Sinha, Resident of Mohalla- Vijay Nagar, House No. F/40, P.O.- Bahadurpur, P.S.- Patrakar Nagar, Patna-20, Email id- alokmuntun1@gmail.com.

... .. Petitioner/s

Versus

1. The State of Bihar through its Secretary, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road (Nehru Path), Patna- 15.
2. The Secretary, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road (Nehru Path), Patna- 15.
3. The Engineer-In-Chief, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road (Nehru Path), Patna- 15.
4. The Chief Engineer-2, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road (Nehru Path), Patna- 15.
5. The Superintending Engieer, Rural Works Department, Works Circle Munger- 811201.
6. The Executive Engineer, Rural Works Department, Works Division, Jhajha (Jamui)- 811308.
7. M/S/ Sunny Contractor and Engineering Private Limited

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s             | : | Mr. Rajendra Narain, Sr. Advocate<br>Mr. Manish Sahay, Advocate<br>Mr. Mukesh Kumar Yadav, Advocate<br>Mr. Siddharth Aditya, Advocate<br>Mr. Anil Kumar Sinha, Advocate |
| For the State                    | : | Mr. P.K. Shahi, Advocate General<br>Mr. Vikash Kumar, Advocate                                                                                                          |
| For the private respondent no. 7 | : | Mr. Mrigank Mauli, Senior Advocate<br>Mr. Kumar Ravish, Advocate<br>Mr. Sanket, Advocate<br>Ms. Siddhi Aashana, Advocate                                                |

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**CORAM: HONOURABLE THE CHIEF JUSTICE  
and  
HONOURABLE MR. JUSTICE HARISH KUMAR  
ORAL JUDGMENT  
(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 12-02-2024**

We have heard Mr. Rajendra Narain, learned Senior Counsel appearing on behalf of the petitioner, Mr. P.K. Shahi, learned Advocate General for the State and Mr. Mrigank Mauli learned Senior Counsel for private respondent no. 7.

2. The petitioner is before this Court challenging the refusal of the petitioner's bid under the Notice Inviting Tender, which is produced as Annexure-P1. The petitioner contends that initially the refusal was on the ground of the demand draft submitted as earnest money deposit (EMD), having not been signed. The petitioner objected to the same and also subsequently produced the certificate of the bank indicating that despite the absence of the signature of the bank official, the demand draft was encashed. Later to that, the existing ground was substituted with another ground of the petitioner having not submitted the hot mix plant according to the specification of the NIT; which is also not sustainable, going by the specification required for the work which the petitioner bid for.

3. Learned counsel for the petitioner asserts that the present case falls in the teeth of **Mohinder Singh Gill and**



**another v. The Chief Election Commissioner, New Delhi and others; AIR 1978 Supreme Court 851.**

4. The petitioner has applied under the notice inviting tender (NIT) which is produced as Annexure-P1. The petitioner applied for the work under Item No. 4, as seen from the NIT which indicates the work of “construction of High Level Bridge over Mangechapri Sukhnar River in between Babudih PMGSY via Niruddih (Tender ID-128037)”. The petitioner submitted the tender documents and also the EMD deposit by way of Annexure P3. Annexure-P3 indicates that it is not signed by the authorized signatory of the bank. The petitioner’s bid was rejected as per Annexure-P4 pointing out that the demand draft did not have the signature of the bank. The petitioner filed a protest at Annexure-P5 indicating that it was not the fault of the petitioner and for the negligence of the bank officials, the petitioner’s tender cannot be rejected.

5. We are not convinced that it is reasonable to allege negligence on the bank officials alone. In fact the petitioner who was issued with the draft should have ensured that the signature was there, before producing it as EMD along with the tender.

6. In any event, the petitioner subsequently produced the certificate of the bank at Annexure-P6 dated 25.10.2023.



Annexure-P6 confirmed the payment of Annexure-P3 (Demand Draft) as on 03.10.2023 itself.

7. In the above circumstance, based on the petitioner's representation; as is indicated from Annexure-B produced along with a counter affidavit filed on behalf of respondent nos. 1 to 6, the petitioner's tender was considered afresh along with the other two tenderers. It was found that the petitioner had not uploaded the documents as specified in the tender. The defect noticed was that the power capacity of the hot mix plant required as per the NIT, for the work bid by the petitioner, was 80 to 100 TPH while the petitioner had only submitted hot mix plant of 60 TPH. The learned Advocate General also points to Annexure-C indicating that the work for which the petitioner bid was above Rs. 5 Crores.

8. The learned Senior Counsel, counters that the work for which the petitioner bid, was a bridge construction and the road portion would not take in 5 crores as indicated in the NIT.

9. We are not convinced that, on the basis of the valuation of the road construction alone, the petitioner's tender could be accepted. There is no separate ton per hour capacity for a bridge construction stipulated in the NIT. It is hence Annexure-C has been relied on, which is a part of the NIT. In



such circumstance, the petitioner ought to have uploaded the hot mix plant of the required capacity for the bid to be considered.

10. **Mohinder Singh Gill (supra)** categorically held that what has not been stated in the impugned order, cannot be substituted by a counter affidavit; which defect we do not find in the facts lending to the above writ petition. The tendering authority had first rejected the claim of the petitioner, on the ground that there was no signature of the authorized official of the bank. In that circumstance, definitely the tender would not have been examined at all by the authority. On the petitioner pointing out the defect having been committed by the bank and also indicating that, all the same, the draft was encashed, the tendering authority took up the tenders again and reconsidered the issue. It is on such reconsideration, that it was found that the petitioner had not uploaded the hot mix plant as per the required specification in the NIT. This is not a case coming in the teeth of **Mohinder Singh Gill (supra)** since it is not on counter affidavit that the ground for rejection has been raised, but in an order issued subsequently, after noticing that the rejection initially made was not proper.

11. We find absolutely no reason to interfere with the tender awarded to the party respondent, on the ground stated in



the writ petition. The writ petition is, accordingly, dismissed.

**(K. Vinod Chandran, CJ)**

**(Harish Kumar, J)**

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

