

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5248 of 2022

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M/s Amrit Raj Construction through its Proprietor -Dilip Kumar, Male, aged about 45 Yrs., Son of Basant Singh office and residence at Shantikunj Kurthoul, P.S. Parsa Bazar, District Patna and its head office House No. 955, Maurya Path, Khajpura, Near Pillar No. 15, Bailey Road, Patna - 14.

... .. Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Rural Works Department, Government of Bihar, Visheshwaraiya Bhawan, Bailey Road, Patna.
2. The Technical Bid Committee, through its Chairman, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Visheshwaraiya Bhawan, Bailey Road, Patna.
4. The Nodal Officer, State Scheme, Rural Works Department, Government of Bihar, Patna.
5. The Chief Engineer-3, Rural Works Department, Visheshwaraiya Bhawan, Bailey Road, Patna.
6. The Superintending Engineer, Rural Works Department, Works Circle, Darbhanga, District Darbhanga.
7. The Executive Engineer, Rural Works Department, Works Division, Darbhanga, District Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Dhananjay Kumar, Adv.
For the Respondents : Mr. Satya Vrat AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 17-05-2022

Before referring to the relief, which the petitioner, is seeking, in the present writ application, it is apt to briefly take note of the facts of the case.

2. A Notice Inviting Tender ('NIT' for short) was issued vide No. ET/RWD-DBG1/STATE SCHEME-06/2021-22 for construction of High Level RCC Bridge across *Bagmati* river between *Panchaya Ratanpur Ghat* and *Trimuhan Ghat* by the Executive Engineer, Rural Works Department. The petitioner had submitted his tender pursuant to the said notice. The petitioner's technical bid was found responsive initially. Subsequently, however, in a re-meeting of the Technical Bid Committee, held on 24-03-2022, based on a complaint filed by one of the unsuccessful bidders, the petitioner's technical bid was rejected on the ground of disqualification. The said rejection of technical bid by order dated 24-03-2022, is under challenge in the present writ application. Petitioner's technical bid was rejected with reference to Clause 4.8 of the Instructions To Bidders (ITB 'for brevity') of the Standard Bidding Document (SBD for brevity). Clause 4.8 of the ITB reads as under:-



“4.8 Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have:

made misleading or false representations in the forms, statements and attachments submitted in proof of the qualification requirements; and/or have record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history, or financial failures etc; and /or

participated in the previous bidding for the same work and had quoted unreasonable high bid prices and could not furnish rational justification to the employer.”

3. It is also the petitioner's case that soon after the said decision dated 24-03-2022 was issued, the petitioner had made a representation on 26-03-2022 against rejection of his technical bid. It is the petitioner's case that rejection of his technical bid is wholly arbitrary inasmuch as the petitioner was not given any opportunity of hearing before rejection of his technical bid which was earlier found responsive. It is also the petitioner's case that the petitioner was the sole bidder whose technical bid was found to be responsive out of six bidders. Rejection of technical bid of the petitioner, who was the sole bidder, whose



technical bid was found to be responsive, was apparently to thwart the entire tender process itself and to deny the petitioner award of the Contract learned counsel contends

4. Since the technical bid of all the bidders came to be rejected by the Technical Bid Committee, the NIT itself has been cancelled. Fresh NIT has been issued on 31-03-2022 for the project in question.

5. From the records, it appears that this writ application was filed online on 29-03-2022 and came to be registered on 05-04-2022. The petitioner has put to challenge the fresh NIT by seeking amendment through I.A. No. 1 of 2022.

6. It is not in dispute that the last date of submission of bids, pursuant to fresh NIT was 29-04-2022. It is an admitted fact that the petitioner has not participated, pursuant to the fresh NIT inasmuch as it has not submitted its bid.

7. I.A. No. 2 of 2022 has been filed for stay of the process of the said NIT dated 31-03-2022 (incorrectly typed as 31-03-2021 in I. A. No. 2 of 2022).

8. As has been noted above, learned counsel appearing on behalf of the petitioner has vehemently argued that the sole purpose of rejection of his technical bid on the basis of complaint of unsuccessful bidder was to deny him award of



Contract as he was the sole bidder whose technical bid was initially found to be responsive. He contends that rejection of the technical bid is not only in violation of principles of natural justice, but the manner, in which the same has been done, reflects the action of the respondent to be malicious.

9. A counter affidavit has been filed on behalf of the respondent-State of Bihar. It has been stated that based on a complaint received by one of the unsuccessful bidders, meeting of the Technical Bid Committee was re-convened and the allegations made against the petitioner touching the requirements under Clause 4.8 of the ITB was enquired into which was found to be correct. It has been further stated in the counter affidavit that, upon enquiry, it was revealed that the petitioner had been allotted work under the Works Division, Masaurhi. The letter of acceptance thereof had already been issued in his favour on 22.06.2021, which indicated that on the last date of submission of bid i.e. 15-07-2021, the petitioner had already been awarded Contract under the Works Division, Masaurhi. The petitioner, however, had not disclosed the then existing commitment in relation to the aforesaid works, for which, letter of acceptance was already issued on 22-06-2021. On the allegation of non-disclosure of the aforesaid material fact



rejection of technical bid has been justified in the counter affidavit.

10. A rejoinder affidavit has been filed on behalf of the petitioner in response to the counter affidavit denying averments made therein.

11. Be that as it may, we are not inclined to enter into all such dispute as are being raised in relation to the previous NIT dated 12-06-2021 considering the circumstance that a fresh NIT has been issued upon cancelling the said NIT in respect of which the petitioner's technical bid has been cancelled. Once fresh NIT has been issued, in our considered opinion, no interference is required, specifically, for the reason that the petitioner has chosen not to participate pursuant to the fresh NIT.

12. This writ application is, accordingly, dismissed. The Interlocutory Applications stand disposed of.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20-05-2022
Transmission Date	

