

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6204 of 2020

M/s Unibro Infrserv Pvt. Ltd. having its registered Office at Ujjain Market 1st Floor, Middle Lane, J.P. Chowk, PS. Town Siwan, Distt. Siwan, through its Director Mr. Uday Kumar Singh Sex-Male, Aged about 46 Years, S/o Late Ram Nath Singh Resident of Village Chaurasi, Bhikhampur, PS. Bhagwanpur, Dostt. Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Rural Works Department, Government of Bihar, Patna.
2. The Departmental Tender Committee Headed by the Chief Engineer-3, Rural Works Department, Govt. of Bihar, Patna.
3. The Chief Engineer-3, Rural Works Department, Govt. of Bihar, Patna.
4. The Superintending Engineer, Works Circle, RWD, Chapra.
5. The Executive Engineer (HQ), Office of Chief Engineer-3, Rural Works Department, Govt. of Bihar. Patna.
6. The Executive Engineer, Rural Works Division, at Chapra.
7. M/S Hari Om Construction Vill-Jaitpur, P.O.-Jaitpur, Dist-Saran, Chapra.
8. Raj Bhushan Singh Vill and PO- Mukrera, PS- Revilganj, Dist- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Suresh Pd Singh No.1, Advocate Ms. Kumari Rashmi, Advocate Mr. Aditya Raj, Advocate
For the State		Mr. Vikash Kumar, SC 11
For the private respondents		Mr. Anshul, Advocate Mr. Chandra Mohan Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 25-03-2021

Heard learned counsel for the petitioner and learned counsel for the respondents. Learned counsel for the petitioner has filed an undertaking to remove all defects pointed out by the Stamp Reporter as and when required. It is accordingly directed that all defects pointed out by the Stamp Reporter be removed within one month hereof.

2. The following reliefs as formulated by the petitioner have been claimed in the writ petition--

“(i) For quashing the Memo No. 3246



dated 22.05.2020 & Memo No. 3252 Dt. 23.5.2020 issued by the respondent No.2, whereby technical bid of the petitioner has been disqualified by the Respondent no.2 assigning reason as deficient welfare stamp affixed on the affidavits submitted the petitioner with the technical bid and stated that it is not as per the instruction issued by the Engineer-in-Chief vide its Letter No. मु.अ 4 (मु.) विविध (कार्य) 23-346/2019-511 अनु. दिनांक 29.1.2020, dated 29.1.2020 whereby welfare stamp of Rs. 25/- was required in place of Rs. 15, and this order is passed in connection with the NIT dated 16.01.2020 vide NIT No. Re-Tender MR-3054-09/2019-20 invited by the Rural Works Department, Bihar Patna for initial Rectification and Ordinary Maintenance Works of Roads under package No. MR-N.19-20 Chapra 2/06 & MR-N-19-20 Chapra 2/07 under Works Division Chapra-2, in Baniyapur Block under PMGSY Scheme, however the respondent no.2 had overlooked that alleged notification issued by the Engineer-in-Chief, vide its letter No. मु.अ 4 (मु.) विविध (कार्य) 23-346/2019-511 अनु. दिनांक 29.1.2020, letter to the NIT, and it could not be application in this NIT until any corrigendum in this regard is issued, which is lacking in this case. Virtually the



impugned order is passed to oust the petitioner and to allot the work to the single bidder under vested interest as the petitioner had quoted lowest rate as per information to him and in that case the said single bidder could not be accommodated by the respondents, moreover there is no deficiency in the documents of Technical Bid, hence under vested reasons the reasons assigned for disqualifying the technical bid, which is per say illegal, arbitrary and not sustainable in law, and may be quashed, as no state instrumentalities of the state had jurisdiction to adopt nepotism as being contrary the mandates of Art. 14, 16 and 19 (g) of the constitution of India, hence the impugned orders dated 22/23.05.2020 may be quashed.

ii. For directing the respondents not to act upon the decision dt. 22/23.05.2020 till disposal of the writ application, and meanwhile the respondents may be restrained from opening financial bid and from issuing work order in favour of single bidder as in that there could not be healthy competition and in that case there may be chance of loot of public fund in the name of Re-tender; moreover balance of convenience is in favour of the petitioner as such there is no impediment in law to grant interim relief



to the petitioner. And after quashing the impugned order, the respondents may be directed to open the financial Bid of the petitioner and if he may be found otherwise qualified, then allot the tender to the petitioner.

iii. For granting any relief/s for which the petitioner be found entitled in law. “

3. The short facts of the case, according to the petitioner, are that an NIT (Annexure-1) was issued on 16.01.2020 for initial rectification (IR) and for ordinary maintenance of roads (OMR) for a period of five years in different packages. The petitioner applied for two packages and uploaded its tenders for the packages appearing at item nos.10 and 11 of the NIT. By the impugned orders as contained in Memo No. 3246 and Memo No. 3252 both dated 23.05.2020 (Annexure-2), however, the petitioner's technical bid was rejected on the ground that advocate welfare stamps were deficient on the affidavits which were required to be of the value of Rs.25/- in terms of the letter dated 29.01.2020 (Annexure-4) issued by the Rural Works Department.

4. Mr. Suresh Prasad Singh No.1, learned counsel for the petitioner, makes a short submission to assail the impugned orders (Annexure-2). It is stated that the advocate welfare



stamps of the value of Rs. 15 were affixed on the respective affidavits in relation to the two tenders. Without entering into the other contentions for the time being, it is submitted that in any event, if the advocate welfare stamps were deficient on the affidavits, the respondents ought to have granted an opportunity for rectification of the defect rather than reject the technical bids of the petitioner. Reliance is placed on a decision of the Hon'ble Supreme Court in the case of *Rashmi Metaliks Ltd & Anr. Vs. Kolkata Metropolitan Development Authority & Ors. (2013) 10 SCC 95*.

5. Learned counsel for the State as well as learned counsel for the private respondents appear and have been heard. It is submitted on behalf of the State that the petitioner was bound to affix Rs. 25/- worth of advocate welfare stamp in terms of Section 22 of the Bihar State Advocates' Welfare Fund Act, 1983 as amended in 2019 (Annexure-D to the counter affidavit). It is submitted that for want of proper amount of stamps being affixed as statutorily mandated, the affidavits in question could not be received or entertained as provided under Section 23 of the said Act.

6. Learned counsel for the private respondents submits that in absence of any provision for relaxation of the terms and



conditions in the NIT, the deficit advocate welfare stamp affixed on the affidavits was fatal and the technical bid of the petitioner has rightly been rejected.

7. Having heard the parties and on consideration of materials on record, this Court finds merit in the submission of learned counsel for the petitioner.

8. The broad facts relating to deficit advocate welfare stamp having been affixed on the two affidavits in the tender documents of the petitioner are admitted. The solitary question for consideration is whether in such a case, the respondents have rightly acted in rejecting the technical bid outright or whether an opportunity ought to have been granted to the petitioner for rectification. The Hon'ble Supreme Court in *Rashmi Metaliks Ltd.* (Supra) was considering the case where the 'Invitation to Tender' required, inter alia, "(j) Valid PAN No., VAT No., Copy of acknowledgment of latest Income Tax Return and Professional Tax Return." It appears that the Division Bench of the High Court stated that clause (j) could not be viewed as a non-essential term and, therefore, the deficiency should have been corrected before the submission of the tender. The Hon'ble Supreme Court took note of the decision in *Tata Cellular Vs. Union of India (1994) 6 SCC 651, Kanhaiya Lal Agrawal Vs.*



Union of India (2002) 6 SCC 451, as also the Wednesbury principle of reasonableness, and the principle of proportionality, observing in para 10.4 as follows –

“10.4. Kanhaiya Lal, relied upon by Shri Vishwanathan, talks in the same timbre in that it distinguishes between essential and collateral terms of a tender and in the latter case allows elbow room for exercise of discretion. Although it may be seen as a facet of Wednesbury reasonableness, this decision can be seen as adding another factor to Tata Cellular viz. the Court is empowered to separate the wheat from the chaff. In this exercise the Court can segregate the essential terms forming the bulwark of the compact, and whilst ensuring their strict adherence, can allow leniency towards the compliance with collateral clauses.”

9. Accordingly, the Hon'ble Supreme Court did interfere and held that the requirement in Clause (j), referred to above, was not an essential element or ingredient or concomitant of the subject NIT, rather “the filing of the latest income tax return was a collateral term and accordingly the authority ought to have brought this discrepancy to the notice of the tenderer and if thereafter no rectification had been carried out, the position may



have been appreciably different.”

10. In the present case, the petitioner has admittedly filed the affidavits affixing Advocate welfare stamps though deficient and hence his case stands on a somewhat better footing than the case of *Rashmi Metaliks* (supra) which involved a failure to file the latest income tax return altogether. Having regard to the observations of the Hon'ble Supreme Court as above, this Court has no hesitation in holding that deficiency in the Advocate welfare stamps affixed on the affidavits was a non-essential and collateral term, moreso as such defect did not reflect upon the ability and competence of the bidder to perform the work. Such defect was therefore rectifiable and the respondents ought to have granted a reasonable opportunity to the petitioner for this purpose before rejecting his technical bid.

11. With regard to the objection on the part of the State based on Sections 22 and 23 of the Bihar State Advocates' Welfare Fund Act, there can be no gainsaying that affixation of the proper amount of advocate welfare stamp was a prerequisite mandatory requirement. However, that by itself may not be construed as resulting in a situation which might render an inadvertent mistake incapable of being rectified under any circumstances whatsoever. The spirit of Section 28 of the Court



Fees Act may well come to the aid of the petitioner which provides as follows –

“28. Stamping documents inadvertently received.—No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped. But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.”

12. As regards the submission on behalf of the private respondents, the same does not appear to be well-founded at all, inasmuch as the petitioner is not seeking relaxation of any of the terms and conditions of the NIT, but merely an opportunity to rectify the defect in question.

13. In the above view of the matter, the impugned orders contained in Memo No. 3246 as well as Memo No.3252, both



dated 23.05.2020, are hereby set aside to the extent they relate to the petitioner and the respondents are directed to open the technical bids of the petitioner. All consequences shall follow.

14. The writ petition stands disposed of with the aforesaid observations and directions.

15. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the petitioner within the stipulated time provided in para 1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	-
Uploading Date	26.03.2021
Transmission Date	-

