

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7138 of 2020

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Munna Kumar Jaiswal S/o Shankar Prasad, Resident of Mirja Tola, Bagaha,
P.S.- Bagaha, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Project Manager (M.R. Cell), Rural Works Department, Government of Bihar, Patna.
3. The Superintending Engineer, Work Circle, Bettiah, West Champaran, Rural Works Department, District- Bettiah.
4. The Chief Engineer, Rural Works Department, Govt. of Bihar, Patna.
5. The Secretary to the Engineer in Chief (Technical) Rural Works Department, Government of Bihar.
6. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
7. The Executive Engineer, Rural Works Division, Bagaha-1, District- West Champaran.
8. M/s Maa Bindyavashini Construction through Birendra Tiwary, Partners at Jogiraha Thakraha, P.S.- Thakraha, District- West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Braj Kishore Singh Chouhan, Adv.
For the Respondents : Mr. Satya Vrat, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 08-02-2021

The present writ petition has been filed
seeking the following reliefs:-

" For quashing the Tender decided in
favour of the respondent no. 8 on the
basis of resubmitted tender on
24.02.2020, which is completely in
violation of the terms and conditions /
contained in notice inviting tender to



undertake initial rectification work including the surface renewal works on selected roads as described in para no. 9 of the notice inviting tender."

2. The brief facts of the case are that a notice inviting tender was floated via e-tendering on 16.01.2020 to undertake initial rectification work including the surface renewal works on selected roads as described therein. The petitioner is stated to have submitted his tender bid. However, it is submitted that the private respondent no. 8 had submitted e-tender on 23.02.2020, but had not complied with the norms, whereafter it had resubmitted the tender on 24.02.2020 through e-filing, but had never produced the original documents and papers, however, work order has been illegally issued to the private respondent no. 8 and an agreement has been entered into on 31.07.2020, after the respondent no. 8 has been held to be the successful bidder.

3. The learned counsel for the petitioner has submitted that he has sought information under



the Right to Information Act and the Public Information Officer-cum-Assistant Engineer, Rural Works Department, Bagaha, by his letter dated 01.07.2020, has made available 370 pages of the documents uploaded by the respondent no. 8, however, he has also stated that the re-submission acknowledgment has not been submitted by the private respondent no. 8. It is thus submitted, by referring to the NIT in question, which is Annexure-1 to the writ petition, that the condition at serial no. 7 specifies that till 15:00 hours on 24.02.2020, the original instrument of EMD, cost of BOQ and affidavit regarding correctness of information provided with the bid document has to be submitted, however, the private respondent no. 8 had not submitted the original documents on 24.02.2020.

4. Per contra, the learned counsel for the respondents-State, by referring to the counter affidavit filed on behalf of the respondents no. 4 to 6, has submitted that the notice inviting tender was floated via e-tendering on 16.01.2020 for work



in question. It is further stated that the contention of the petitioner to the effect that though the respondent no. 8 had resubmitted his tender on 24.02.2020 through e-filing, but he had never produced the original documents and papers, which is mandatory and even then, its tender has been accepted, is not correct inasmuch as the original documents and papers are not required to be submitted at the time of re-submission of the tender and the fact is that the respondent no. 8 had already submitted the original documents and papers before the Technical Bid Committee, which were found to be genuine and correct, hence, it was declared as qualified by the Technical Bid Committee. The learned counsel for the respondents-State has further submitted that a complaint was filed by the petitioner regarding non-submission of the original documents by the private respondent no. 8 i.e. M/s Maa Bindhyavashini Construction, whereafter the Engineer-in-Chief, Rural Works Department, Bihar, vide letter dated 05.06.2020, had called for an



inquiry report from the Executive Engineer, Rural Works Department, Government of Bihar, Works Division, Bagaha-1, on the issue raised by the petitioner, whereupon a report dated 06.06.2020 was submitted before the Engineer-in-Chief and it was stated that upon inquiry, it has been found that the private respondent no. 8 has submitted the acknowledgment at 9:10 pm. on 23.02.2020.

5. The learned counsel for the Respondents-State has also submitted that the meeting of the Departmental Tender Committee was convened on 29.07.2020 in which the financial bid of the tender in question was placed for taking a decision and therein, the respondent no. 8 was declared to have qualified in the financial bid. The learned counsel for the respondents-State has also referred to the minutes of the meeting of the Technical Bid Committee held on 27.07.2020 and it has been submitted that the Technical Bid Committee had considered the complaint of the petitioner to the effect that though the acknowledgment submitted by the private respondent no. 8 before the Rural



Works Department, Works Division, Bagaha-1, is dated 23.02.2020 at 9:10 pm., pertaining to submission of the tender, however, the work has been allotted to the private respondent no. 8 on the basis of the resubmitted tender, which is dated 24.02.2020 at 1:50 pm., despite the fact that the original of the same has not been submitted with the RWD Work Division, Bagaha-1. The learned counsel for the Respondents-State has stated that the Technical Bid Committee had considered the said aspect of the matter, as raised by the petitioner, and had gone through the inquiry report submitted by the Executive Engineer dated 06.06.2020, from which it is clear that three contractors including the petitioner and the respondent no. 8 herein had submitted their envelopes, pertaining to the technical bid on 24.02.2020 in the office, which was opened on 24.02.2020 at 3:30 pm. The Technical Bid Committee has also found that the said three contractors had submitted the documents in the office as also had uploaded the same online.



Finally, the Technical Bid Committee had come to a conclusion that from the materials on record as also from the perusal of the complaint of the petitioner and the inquiry report of the Executive Engineer, it is clear that the private respondent no. 8 has not submitted the acknowledgment of the final bid submission, which has been made on 24.02.2020 at 1:50 pm., but then, there is no provision of submitting bid acknowledgment in the MBD.

6. At this juncture, the learned counsel for the petitioner has submitted in reply that it is very intriguing as to how the private respondent no. 8 could have submitted the original documents on 23.02.2020 at 9:10 pm. before uploading the tender document online, hence, it is clear that the private respondent no. 8 has not followed the norms, as prescribed in the notice inviting tender, for the purposes of submission of the original documents, thus, it is required to be declared ineligible.

7. I have heard the learned counsel for the



parties and gone through the materials on record. At this juncture, it would be relevant to reproduce herein below clause nos. 5 and 7 of the NIT:-

5. Last date & Time for uploading tender document by bidder	: Date 24.02.2020 up to: 15:00 hrs.
7. Last date, time and place for submission of Original instrument of EMD, Cost of BOQ and Affidavit regarding correctness of information provided with bid document.	: Till 15:00 hrs on 24.02.2020 : Place-O/o- concerned (i) Executive Engineer Or (ii) Superintending Engineer Or (iii) Chief Engineer

8. A bare perusal of the aforesaid two provisions of the NIT would show that the process of uploading tender and that of filing of original documents are separate and independent of each other and there is no bar in the NIT that the original documents cannot be filed prior to



uploading of the tender documents, hence, since the private respondent no. 8 has admittedly submitted the original documents / acknowledgment in the office of the respondent on 23.02.2020 at 9:10 pm. and has also submitted the envelop pertaining to the technical bid in the office of respondents on 24.02.2020 at 1:50 pm., apart from having uploaded the tender documents online, there is no discrepancy in submission of the tender / bid documents etc. by the private respondent no. 8, especially on account of the fact that there is no provision of submission of the acknowledgment of the final bid submission separately, in the Model Bidding Document. Consequently, I do not find any merit in the present writ petition, hence, the writ petition stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.02.2021
Transmission Date	NA

