
(2012) 01 PAT CK 0052
In the Patna High Court
Case No : CWJC No. 22272 of 2011

M/s Arun Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-01-2012

Acts Referred:

Citation : (2012) 2 PLJR 254

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Gautam Kejriwal and Akash Chaturvedi, for the Appellant; Lalit Kishore and Shankar Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This writ has been filed by the petitioners for the following reliefs:- (i) For issuance of writ of mandamus directing the respondents to extend the time for submission of e-Tender in respect of Notice inviting Tenders by the Department of Water Resources in respect of all the NITs issued for Anti Erosion Work and other works because of the fact that the Server of the website was not properly functioning and has went down due to which the Tenderers could not submit their tenders, in time;

(ii) For restraining the respondents from processing the e-Tender of different NITs without extending the time of submission of tender by 24 hours in terms of the tender notice;

(iii) For a direction to the respondents for allowing the petitioners to submit their tenders as nothing has happened till date except opening the Technical Bid and as such no prejudice will be caused to anybody if the petitioners are allowed to submit their tenders;

(iv) For a direction that non-extending of time by the respondents for submission of the tender in spite of the fact that the server of the service provider website virtually became non functional due to congestion; and for any other relief(s) for

which the petitioners may be found entitled to in the facts & circumstances of the present case.

It is not in dispute that Water Resources Department of the Respondent State Government came out with several number of NITs, i.e. Notice Inviting Tenders for Anti Erosion Works and other works, published in November, 2011. All the tenders were to be submitted through e-tendering process and the Department had employed the services of the Website, namely www.eproc.bihar.gov.in for the purpose of floating of the tender and submission of the Bids by the Tenderers. One of such Notice Inviting Tender bearing NIT No. 03/2011-12 of the office of the Executive Engineer, Ganga Sone Flood Protection Division, Digha is an example as the same contains the terms and conditions of the Tender.

2. Learned counsel for the petitioners further averred that in almost all the NITs the period of sale of bid documents was between 1.12.2011 to 7.12.2011 up to 3.00 p.m. or 5.00 p.m. only from the website www.eproc.bihar.gov.in. On the same day about 300 tenders were to be closed and accordingly submission of offers was to be made on the website. He also submitted that it has been specifically stipulated in the NIT that the time, date and place of receipt of Bids will be up to 3.00 p.m. on 8.12.2011 on the website www.eproc.bihar.gov.in and the date and time of opening of Technical Bid has been fixed at 3.30 p.m. on 8.12.2011 on the same website. Subsequently the date for opening of the bid was fixed on 17.12.2011.

3. Learned counsel for the petitioners further stated that clause 19 of the Tender Notice clearly stipulated that in case the Server through which the E-tendering Process is to be completed and tenders are submitted, suffers from any error because the server goes down then the last date of receiving of the bids shall be automatically extended to next working day till the last receiving time stipulated in the original NIT. Clause 19 reads as follows:-

In the unlikely event of the server for www.eproc.bihar.gov.in being down for more than two consecutive hours in the period from 12 0" clock at night to closing time of receipt of tenders on the last date of receiving of bids, the last date of the same shall automatically be extended to next working day till the last receiving time stipulated in the Original NIT.

4. Learned counsel for the petitioners also claimed that on 8.12.2011, the server of www.eproc.bihar.gov.in was suffering from some problem, and was not working since morning and, therefore, the tenders could not be submitted by a number of tenderers, including the petitioners. It is further claimed that the petitioners and a number of other contractors, who were desperately trying to submit their tenders throughout the day on 8.12.2011 could not submit their tenders because the server was down, and as such, they could not upload their tenders on their website as the website was not uploading the tender documents.

5. Learned counsel for the petitioners argued that faced with the aforesaid situation, the petitioners and other tenderers raised their genuine grievances by

making applications to the authorities concerned not to open the Bids as the date of submission of tenders was to be automatically extended up to 3.00 PM of 9.12.2011 in terms of Clause 19 of the Terms and Conditions of the Tender Notice, but in spite of the requests made by the petitioners and a number of tenderers, the respondents did not extend the period by 24 hours for submission of tender and opened the tender at 3.30 P.M. on 8.12.2011. Learned counsel for the petitioners cited a few examples, in which tenderers were deprived from uploading their tenders alongwith bid details downloaded from the website through e-procurement Bihar in respect of different works on 8.12.2011 and claimed that only a few of the aforesaid tenderers could submit their tenders and the majority were unable to submit their tenders.

6. Learned counsel for the petitioners claimed that earlier the respondents denied that the petitioners were applicants, but subsequently they admitted the fact that petitioners no. 1 and 2 had hit the tenders and their eligibility was up to Rs. 70 lacs, but claimed that they did not submit their tenders honestly within time. Hence he argued that a grave injustice had been done against the petitioners and, therefore, the reliefs claimed by them are fit to be allowed.

7. On the other hand, learned counsel for the respondents stated that the notice inviting tender was for works relating to protection of embankment to save people and their properties and hence the matter being urgent in nature, the Water Resources Department fixed a specific time schedule calendar for the same and all the authorities as well as the intending applicants or applicants were bound to follow the same.

8. Learned counsel for the respondents further stated that the clauses of Notice clearly prescribed that if the server was continuously down for two hours on 8.12.2011, a further time of 24 hours had to be granted, but there is no material to show that the server was continuously down for two hours on the said date. He also stated that from 2.12.2011 to 8.12.2011, 1549 tenders were received/uploaded, out of which 350 tenders were received/uploaded on 8.12.2011 and every minute several tenders were received on the said website. Hence, according to him, there was no occasion for any extension of time.

9. Learned counsel for the respondents also stated that the entire exercise as mentioned above is to save people and villagers from erosions, for which steps have to be taken before monsoon season and hence time schedule has to be followed strictly, failing which, monsoon season may arrive before completion of the work, which is bound to fail the entire purpose.

10. Learned counsel for the respondents further stated that out of the five petitioners, petitioner no. 3 is not a registered contractor and hence he is not fit to submit tender as per the NIT, whereas, petitioners no. 4 and 5 did not even hit the website for downloading. So far petitioners no. 1 and 2 are concerned, he stated that they downloaded many NITs much before 8.12.2011, but they did not upload their tenders on 5th or 6th or even 7th of December, 2011 and according

to them they approached the website for uploading their tenders only on the closing day i.e. 8.12.2011 although in the NIT it was specifically mentioned that the intending tenderers should upload their tenders immediately not waiting for the last date.

11. Learned counsel for the respondents lastly submitted that although according to the petitioners thousand of tenderers were affected due to the defects, but except the five petitioners, neither any one was aggrieved nor did any one file such applications. Hence he submitted that this writ petition is fit to be dismissed.

12. Considering the averments made by learned counsel for the parties and the materials on record, it transpires that according to the notice inviting tenders dated 17.11.2011, sale of bid document started on 1.12.2011, whereafter the bids were to be sent on the prescribed website till 8.12.2011 up to 3.00 PM only. It is also not in dispute that in Clause 18 of the aforesaid NIT, it was specifically prescribed that no claim shall be entertained on account of disruption of internet service being used by bidders, who were advised to upload their bids well in advance to avoid last minute technical snags.

13. Clause 19 of the aforesaid NIT provided that in the unlikely event of the server for www.eproc.bihar.gov.in being down for more than two consecutive hours in the period from 12.00 O'clock (night) to closing time (3.00 PM) of receipt of tenders on the last date of receiving of bid (8.12.2011), the last date of the same shall automatically be extended to next working day till the last receiving time stipulated in the original NIT. Hence, according to the aforesaid clause, if the server is down for two consecutive hours on 8.12.2011, the time for filing the bids would be extended by 24 hours.

14. In the instant case, the petitioners have relied upon the information regarding [eproc.bihar](http://eproc.bihar.gov.in) website given on 8.12.2011 at 3.18 PM (Annexure-2) by the said website informing that "due to some problem from data centre, e-Proc Bihar site is working slow since morning, due to which today vendors are having problem to submit their tenders. Most of the vendors could not submit their tender due to the particular/concern department, so we are requesting you that please take necessary action for the same".

15. in the aforesaid circumstances, it is quite apparent that according to the information given by the website, the data centre was working slow, but it was not completely down and out of service. However, Clause 19 of the NIT dated 17.11.2011 (Annexure-1) provided that only when the server for the said website was completely down for more than two consecutive hours on the last date i.e. 8.12.2011, the last date would be extended to the next working day till last receiving time stipulated in the original NIT.

16. From a bare perusal of the aforesaid Clause 19 of the NIT and the information given by the website, it is quite apparent that the said provision in the NIT was not applicable and slow working of the data centre would not attract the said clause of the NIT, specially when the sale of bid documents had started

on 1.12.2011 and Clause 18 of the NIT provided that on account of such disruption of internet service no claim shall be entertained from the bidders, who were advised to upload their bids well in advance to avoid last minute technical snags.

17. Furthermore, details of tenders submitted between 1.12.2011 and 8.12.2011 and received from the helpdesk e-procurement BSEDC on 8.12.2011 (Annexure-A) clearly showed that between the said period 1459 tenders were received/uploaded, out of which tenders from serial nos. 1052 to 1549 were for 8.12.2011 till 3.00 PM. Hence 497 tenders were received on that date and almost every minute some tenders were received. This completely falsified the claim of the petitioners that server was completely down for more than two consecutive hours attracting Clause 19 of the NIT.

18. There may be some technical snags, but they did not seriously affect the receiving/uploading of tenders and hence no benefit can be derived by the petitioners on that count. Clauses 18 and 19 of the NIT have to be considered harmoniously for giving them a proper construction. Hence bidders were advised in advance to upload their bids as early as possible to avoid any last minute technical snags. This advice appears to have been completely ignored by the petitioners and hence if they suffered, they suffered due to their own delay and not due to any fault of the authorities concerned.

19. Although the petitioners have claimed that due to the server being down, thousands of intending bidders were affected, but they could not substantiate their claim by any material whatsoever and the respondents had specifically claimed that except the five petitioners of this writ petition no one else had raised any grievance nor did they file any such application. In the aforesaid facts and circumstances, this Court does not find any merit in this writ petition, which is, accordingly, dismissed. However, respondent-authorities are directed to take immediate steps so that time gap occurred due to the pendency of this writ petition is filled up and stipulated work is done within the prescribed period.