IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 18518 of 2015

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Paras Publication Pvt. Ltd. Incorporated under the Company Act 1956 situated in Industrial Area Hazipur having it is head office at Khazanchi Road, Patna through its Managing Director Rakesh Kumar, S/o Lt. Ram Parash Singh.

.... Petitioner/s

Versus

1. The State of Bihar through the Chairman, Bihar School Examination Board, Patna.
2. The Secretary, Bihar School Examination Board, Patna.
3. The Principal Secretary, Department of Education, New Secretariate, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Singh & Ms. Rajgiri Singh, Advocates.
For the B.S.E.B.	:	Mr. Lalit Kishore, P.A.A.G. Mr. Satyabir Bharti, Advocate.
For the State	:	Mr. M. K. Singh, S.C. 6.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 15-02-2016

Heard learned counsel for the parties.

The petitioner has challenged the short tender notice No. S.T. 59/2015 dated 26.11.2015 published in the Hindustan Patna edition by which a tender notice has been issued for binding of books, sale and distribution of model papers-cum-marking scheme books for Class 10th and 12th for the annual examination of 2016 and further for restoring the previous short tender No. ST 53/2015 dated 20.10.2015 and award of the work to the petitioner being the highest offerer of donation in terms of the tender notice and also to enter into an agreement with him in pursuance to the same.

Learned counsel for the petitioner submits that he had offered donation of Rs. 3.21 crores whereas the second highest donor has offered Rs. 2.14 crores. It is submitted that his bid was rejected only on the ground that he could not have made payment of such an amount as his income tax return did not reflect any profit. It is submitted that the ground is totally unfounded, presumptuous and erroneous as the petitioner has more than Rs. 10 crores turn over for the last three years as is reflected from the audited account and income tax return and thus the Bihar School Examination Board, Patna (hereinafter referred to as the 'BSEB') had no occasion to suspect the capacity of the petitioner to pay the amount and only if the petitioner had failed to do the same within the time specified, the concerned respondent could have gone ahead either with re-tender or settle the same to the next highest tenderer.

Learned counsel for the BSEB submits that the entire writ petition is misconceived for the simple reason that the petitioner did not satisfy the very basic eligibility criteria of having yearly turnover of Rs. 5 crores for the last three years. It is submitted that from the documents filed by the petitioner, his turnover over for the last three years was of Rs. 4.46, 2.68 and 3.7 crores for assessment years 2012-13, 2013-14 and 2014-15 respectively. It is submitted that Clause-3 of the technical condition of the N.I.T. of ST No. 53 of 2015, can only be given the literal interpretation which unsuited the petitioner and thus having been ineligible even to submit a tender, cannot have any grievance with regard to the tender in his favour not having fructified.

Learned counsel for the petitioner by way of reply submits that the meaning of the said Clause-3 does not indicate that for every year the turnover should be at least 5 crores but it ought to be read to mean that Rs. 5 crores should be for the last three years taken as a whole.

After having considered the rival contentions, the Court finds substance in the contentions of learned counsel for the BSEB and finds that the plain and simple reading of the said clause of the N.I.T. of ST No. 53 of 2015 clearly and unambiguously stipulates that the tenderer should have minimum turnover of Rs. 5 crores per year for the last three years meaning thereby that in every year for the last three financial years, the turnover should be minimum Rs. 5 crores. The petitioner thus, admittedly not having the same, the Court finds that it was not eligible to even apply pursuant to the said N.I.T. Any error which may have been committed by the authorities concerned in the past with regard to the petitioner’s tender having initially been found in order cannot fasten liability on BSEB to accept the tender of the petitioner in view of the discussions made hereinabove.

The Court thus, does not find any error in the ultimate decision of the BSEB in going for re-tender, in the facts and circumstances of the present case.

Accordingly, the writ petition stands disposed off.

(Ahsanuddin Amanullah, J.)

P. Kumar

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