

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.4253 of 2017**

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Shyam Kumar, S/o Vinod Bihari Gupta, Resident of Village- P.O.- Daud Chhapra,  
P.S.- Minapur, District- Muzaffarpur.

.... .... Petitioner

Versus

1. The Bihar State Food & Civil Supplies Corporation Limited through its Managing Director, Khadya Bhawan, 4<sup>th</sup> Floor, Daroga Prasad Ray Path, Patna.
2. The District Transport Committee through its Chairman District Magistrate, Muzaffarpur.
3. The District Manager, B.S.F.C., Muzaffarpur.
4. Sri Jay Prakash, S/o not known,
5. Sri Chandan Kumar, S/o not known,
6. Sri Sunil Kumar Sahni, S/o not known,
7. Sri Umakant Thakur, S/o not known

All are newly selected Transporter as Door Step Delivery Agency in the District- Muzaffarpur.

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. N.K. Agrawal, Senior Adv.  
Mr. Vijay Anand, Adv.  
For the Respondent/s : Mr. Mayank Shekhar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 25-07-2017**

Heard learned counsel for the parties.

- 2.** In this case, the petitioner is challenging the order dated 23.09.2016 passed by the respondent no.2, by which the decision has been taken by the District Transport Committee not to open the Financial bid of the petitioners as he has failed to comply



Clause-9(vii) of the N.I.T. having filed two affidavits, contradicting to each other and also on the ground that the photograph which was affixed on the Character Certificate issued from the Office of the Superintendent of Police does not bear his signature, which was/is essential in terms of the performa attached with the N.I.T.

**3.** The Bihar State Food and Civil Supplies Corporation Limited has issued an advertisement for the appointment of transporters. According to the N.I.T. certain conditions were to be satisfied for being an eligible candidate for consideration for appointment of transporter. Attaching of Bank Draft of Rs.1,50,000/- was essential element was complied with by the petitioner. He has also attached the character certificate issued from the Office of the Superintendent of Police as also filed affidavit, making a statement that no criminal case is pending against the petitioner. But, later on, another affidavit was filed by the petitioner about instituting the criminal case against him in connection with Excise matter.

**4.** The case of the petitioner and others were considered by the District Transport Committee, headed by the Collector, Muzaffarpur and it was found that technical bid of the petitioner was suffering from two infirmities; one has been mentioned “in Clause-9(vii) describes the residential and character certificate issued by the



District Magistrate and Superintendent of Police respectively along with passport size photo and signature of the bidder”. It has been mentioned that the photograph, which was affixed on the Certificate does not bear the signature of the petitioner. Further ground has been shown for rejection of his technical bid that he has filed two affidavits which are contradictory to each other. In the first affidavit he has mentioned that no criminal case against the petitioner, but the second affidavit indicates that the petitioner is involved in a criminal case in connection with Excise Act. Both were the grounds for rejection of the technical bid and accordingly, it was decided not to open the financial bid of the petitioner for the consideration of selection of transporter.

5. Learned counsel for the petitioner submits that so far as the self signature on the photograph affixed on the Certificate is mere a technical defect, it is not in dispute that the certificate was not issued from the office of the Superintendent of Police, having failed to put signature is only the mistake does not create doubt on the authenticity of the certificate, it is a minor irregularity, required to be ignored, should not be a ground for rejection of technical bid of the petitioner.



6. With respect to criminal case, learned counsel for the petitioner submits that when he has submitted the tender no criminal case was pending against him, but later on the case under the Excise Act was instituted, so he informed this fact to the District Transport Committee by filing an affidavit. In such view of the matter, the affidavits filed by the petitioner cannot be said to be contradictory to earlier affidavit nor he has suppressed any fact from the Committee.

7. Whereas, learned counsel for the Bihar State Food and Civil Supplies Corporation Limited submits that the petitioner could not satisfy the conditions mentioned in the N.I.T. as his signature was not there in his photograph, which has been mentioned in the performa as well as he has not mentioned that a criminal case is pending against him.

8. Having considered the rival contentions of the parties, the technical bid of the petitioner has been rejected on two grounds as has been mentioned hereinabove. So far the signature on the photograph affixed on the Certificate is concerned, there is no dispute that the certificate which has been submitted by the petitioner was not issued from the Office of the Superintendent of Police and there is no allegation that the certificate which he has produced is forged and tampered certificate, but the reason has been



assigned that it does not bear the signature, it is too technical that can not be a ground for rejection of the technical bid. The authority should call upon the petitioner and ask him to put his signature on his photograph. So this Court is of the view that the ground which has been taken having no signature on the photograph is not sufficient for rejection of the tender of the petitioner.

9. So far as the criminal case is concerned, admittedly, on the date of filing of the tender no case was pending against the petitioner, but a case under the Excise Act was instituted later on. The F.I.R. which has been brought by the petitioner discloses that while he was coming from Nepal his vehicle was intercepted by the Police and it was found that one of the person had taken wine and verified at the police station. It is an admitted fact that the petitioner had not taken wine within the territory of Bihar, but had taken wine in the territory of Nepal and it has not been brought to the notice of this Court prohibition of liquor also prevails in Nepal. Merely, a person after taking wine enters into the territory of Bihar, cannot be a ground for rejection of technical bid when he informed the Committee about criminal case inasmuch as the condition which has been attached with the N.I.T. only speaks the persons should not be involved in the criminal case relating to transporting, handling,



pilferage, black marketing the food grains.

**10.** It will be relevant to quote Clause\_9(iii)(a) of the N.I.T. which reads as under:-

*”(iii)(a). She/he/they have not been convicted ny any Court of law clearly specifying that “no court of law has taken cognizance or FIR has been lodged against him/her/them or their family member/director/partner if any matter related to Transportation. Handling, pilferage and Black marketing etc. of food grains”.*

**11.** On reading of this Clause, it only gives inference that if a person is facing a criminal case, relating to transportation, handing and black-marketing of food-grains, he will be treated to have been disqualified.

**12.** In the present case, there is no criminal case with respect to the nature which has been mentioned in the aforesaid Clause. In such view of the matter, the grounds for rejection of the tender of the petitioner, in view of aforesaid discussion, are not sustainable in law. Accordingly, the order dated 23.09.2016 is set aside. If the vacancies are available, the District Magistrate shall open the financial bid of the petitioner and decide the claim of the petitioner within three weeks from the date of receipt/production of a copy of



this order.

**13.** With the aforesaid observations and directions, this writ application is allowed.

**(Shivaji Pandey, J)**

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| AFR/NAFR          | N.A.F.R.   |
| CAV DATE          | N/A        |
| Uploading Date    | 08.08.2017 |
| Transmission Date | N/A        |

