

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4903 of 2017

=====

Arjun Paswan s/o Sri Mehi Das resident of village - Narayanpur Dadhiya, P.O.
Shambhupatti, P.S. Muffasil, District - Samastipur.

.... Petitioner/s

Versus

1. The Bihar State Food & Civil Supplies Corporation Ltd. Khaadh Bhawan,
Daroga Rai Path, R. Block, Road No. 2, Patna - 1 through its Managing
Director.
2. Managing Director, Bihar State Food & Civil Supplies Corporation Ltd.,
Khaadh Bhawan, Daroga Rai Path, R.Block, Road No. 2, Patna - 1.
3. Deputy Chief Transport Manager, Corporation Headquarters, Bihar State Food
& Civil Supplies Corporation Ltd., Patna.
4. District Manager, Bihar State Food & Civil Supplies Corporation Ltd.,
Samastipur.
5. The District Transport Officer, Bihar State Food & Civil Supplies Corporation
Ltd., Samastipur.
6. The State of Bihar, through the Principal Secretary, Food & Civil Supplies
Department, Government of Bihar.
7. Additional Collector (Aapda), Government of Bihar, Samastipur.
8. Additional Development Commissioner, Government of Bihar, Samastipur.
9. District Officer, Government of Bihar, Samastipur.

.... Respondent/s

with

=====

Civil Writ Jurisdiction Case No. 4763 of 2017

=====

Rajesh Ranjan, S/o Sri Ram Briksh Sah, Resident of Village- Shambhupatti, P.O.
Shambhupatti, P.S. Muffasil, District- Samastipur.

.... Petitioner/s

Versus

1. The Bihar State Food & Civil Supplies Corporation Ltd. Khaadh Bhawan,
Daroga Rai Path, R Block, Road No. 2, Patna-1, through its Managing Director.
2. Managing Director Bihar State Food & Civil Supplies Corporation Ltd.,



- Khaadh Bhawan, Daroga Rai Path, R Block, Road No. 2, Patna-1.
3. Deputy Chief Transport Manager, Corporation Headquarters, Bihar State Food & Civil Supplies Corporation Ltd., Patna.
 4. District Manger, Bihar State Food & Civil Supplies Corporation Ltd., Samastipur.
 5. The District Transport Officer, Bihar State Food & Civil Supplies Corporation Ltd., Samastipur.
 6. The State of Bihar, through the Principal Secretary, Food & Civil Supplies Department, Government of Bihar.
 7. Additional Collector (Aapda), Government of Bihar, Samastipur.
 8. Additional Development Commissioner, Government of Bihar, Samastipur.
 9. District Officer, Government of Bihar, Samastipur.

.... Respondent/s

=====

Appearance :

(In CWJC No.4903 of 2017)

For the Petitioner/s : Mr. Shakib Ayaz, Adv.

For the Respondent/s : Smt. Namrata Mishra- GA6

(In CWJC No.4763 of 2017)

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv.

Mr. Ankit Katriar, Adv.

For the State : Mr. Manoj Kumar, AC to G.P.-4

For the BSFC : Mr. Harish Kumar, Adv.

For the Intervenor : Mr. Aditya Prakash Sahay, Adv.

=====

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 08-08-2018

Heard Mr. N.K. Agrawal, learned senior counsel for the petitioners and learned counsel appearing on behalf of the State.

Petitioners in the two writ applications have prayed for partially setting aside the approval order dated 29.08.2016 issued under the signature of respondent nos. 4 to 8 wherein the technical bid of the petitioners for appointment as transportation-cum-handling contractor of the Bihar State Food and Civil Supplies



Corporation (hereinafter referred to as the 'Corporation') has been rejected on the ground that as per the NIT, the candidature of the petitioner in C.W.J.C. No. 4903 of 2017 has been rejected firstly on the ground that out of five owned vehicles which have to be submitted, in one of the vehicle documents there was no signature of the M.V.I on the insurance paper. The second ground for rejection is that out of 30 leased vehicles which were required in the tender, six on examination of documents were not found in order. So far as the case of the petitioner in C.W.J.C. No. 4763 of 2017 is concerned, while rejection was similar on the first ground, with regard to the second ground only the documents submitted with regard to 30 leased vehicles, 3 were not found in order. Otherwise, the questions and the relief in both the writ applications are similar.

The facts of the case is that the Corporation invited tender for selection and empanelment of transportation-cum-handling and delivery agents for Samastipur and other District which was published in the daily Hindi Newspaper 'Prabhat Khabar' on 23.05.2016. In terms of the schedule, the pre bid meeting was held on 03.06.2016 wherein all the applicants participated, were explained the conditions along with other points. It was clarified with regard to clause 9 (ix) and clause 11 (xiii) of the terms and conditions of the NIT and clause 13 and 14 of the



checklist of the tender for cross verification of the tender document. After pre bid meeting, the petitioners produced the documents, dropped the seal cover and as per the schedule date the technical and final bid were opened on 14.06.2016 at 4 P.M. but by the orders of the District Magistrate, Samastipur all the tenderors were requested to remain present on 29.08.2016 at 1 P.M. for opening of seal tender and selection of contractors. The petitioners did not qualify in the technical bid and as such, the financial bid of the petitioners was not opened and after proper scrutiny five transportation-cum-handling and delivery agents were selected. The petitioners were informed that in the insurance paper one out of the five vehicles did not bear the signature of the Motor Vehicle Inspector (M.V.I.) and out of 30 vehicles which was to be leased, 24/27 were found in order but the rest were not found in order. Hence, the candidature of the petitioners was rejected.

Learned counsel for the petitioners submits that the rejection of the candidature is per se illegal as in terms of the NIT clause 9 (ix) stipulates two categories of vehicles namely the self owned vehicle would be five and the hired vehicle would be 30. With respect to own vehicle, it had to be a registered Pick-Up Van/407/ Mini Truck/ Tractor registered in the name of the bidder or his/her/ their family member/s with up to date tax-token and road



permits duly certified by the District Transport Officer of the concerned District and also self-attested photo copy of the insurance, pollution certificates and fitness certificates counter signed by the M.V.I. of the district from where vehicle is registered. With regard to second category, the applicants would have to provide original copies of separate lease/contract agreements on stamp paper of Rs. 1000/- of 30 such small vehicles like Pick-Up van/407/Mini Truck/Tractor for every vehicle separately. Learned counsel for the petitioners submits that their technical bid could not be rejected at the very threshold as it was only at the time of agreement that the successful bidders have to submit self attested photo copies of up to date tax-token and road permits, pollution certificate and insurance certificate of all leased vehicles to the District Manager, SFC and it was at the final stage of agreement that those documents were required as clause 9 (ix) stipulates in relation to 30 leased vehicles only the original lease/contract agreements on stamp paper of Rs. 1000/- was to be provided. Clause 9 (ix) and clause 11 (xiii) are extracted below for ready reference:

“9 (ix) Self-attested photocopy of Owner book of 05 small vehicles like-Pick up Van/407/mini truck/Tractor registered in the name of the bidder or her/his/their family member/s with



up to date tax-token and road permits duly certified by the District Transport Officer of the concerned District and also self-attested photocopy of insurance pollution certificates and fitness certificates counter signed by MVI of the district from where vehicle is registered along with original copies of the separate lease/contract agreements on stamp of Rs. 1000/- of 30 (thirty) such small vehicles like-Pick up Van/407/mini truck/Tractor for every vehicle separately. Total number of tractors cannot be more than 50% of total number of small vehicles like-Pick up Van/407/mini truck.

11. (xiii) At the time of agreement, successful bidder/bidders will have to submit self-attested photocopies of updated tax-token, road permit, pollution certificate and insurance certificate of all leased vehicles to District manager, SFC. Failing this, no agreement will be executed with him/her/them, and he/she/they will be barred for taking part for next five years in the future tender forfeiting the deposited EMD at the same time.”

So far as the first ground of rejection that one of the five self owned vehicles the insurance paper was not signed by the M.V.I., counsel for the petitioner submits that so far the signature of the M.V.I. on the insurance paper is concerned, the role of the



M.V.I is of counter signing the fitness certificate after perusing the insurance and pollution certificates and since the insurance was up to date counter signing on the insurance paper would not have been such a hyper-technical irregularity so as to reject the candidature of the petitioner. As regards the first ground of rejection of the candidature of the petitioners on account of no counter signature of the M.V.I. in the insurance paper, I am in agreement with the submission of the petitioners that the candidature of the petitioners could not have been rejected on such hyper-technical ground.

So far as the second ground of rejection of not having proper documents with regard to six leased vehicles of petitioner in C.W.J.C. No. 4903 of 2017 and three leased vehicles of the petitioner in C.W.J.C. No. 4763 of 2017, he submits that the petitioners was to provide only lease contract agreements of 30 vehicles as per Clause 9 (ix) of the NIT and as per Clause 11 (xiii). The said documents like tax-token road permits, pollution certificate, insurance certificate of all leased vehicles have to be provided at the time of agreement. He submits that the tender document provided only the leased agreements in original of 30 vehicles and providing their upto date tax-token, road permit, pollution certificate and insurance certificate of those leased vehicles were merely ancillary or subsidiary which was not required



to be enforced rigidly while the lease agreements were main documents. As per the NIT, the tax-token, road permit, pollution certificate and insurance certificate of such leased agreement were ancillary and subsidiary which could only be asked for at the time of agreement. For the said proposition, he relies upon a case of **M/s Poddar Steel Corporation Vs. M/s Ganesh Engineering Works & Ors. since reported in A.I.R. 1991 SC 1579**. Paragraph 6 of the said judgment reads as follows:

“6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause no. 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned. in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories-those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases



it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this in G.J. Fernandez V. State of Karnataka, (1990) 2 SCC 488: (AIR 1990 SC 958), a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. The high Court has, in the impugned decision, relied upon Ramana Dayaram Shetty V. International Airport Authority of India, (1979) 3 SCC 489: (AIR 1979 SC 1628), but has failed to appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favour on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the Court closely examined the nature of the condition which had been relaxed and its impact before answering the question whether it could have validly condoned the shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses the present case belongs.”



For the same proposition, he also relies in the case of **Rashmi Metaliks Limited & Anr. Vs. Kolkata Metropolitan Development Authority & Ors. since reported in (2013) 10 SCC**

95. Paragraphs 10.4 and 18 of the said judgment reads 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 from 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.

18. we think that the income tax return would have assumed the character of an essential term if one of the qualifications was either the gross income or the net income on which tax was attracted. In many cases this is a salutary stipulation, since it is indicative of the commercial standing and reliability of the tendering entity. This feature being absent, we think that the filing of the latest income tax return was a collateral term, and accordingly the



Tendering Authority ought to have brought this discrepancy to the notice of the appellant Company and if even thereafter no rectification had been carried out, the position may have been appreciably different. It has been asserted on behalf of the appellant Company, and not denied by the learned counsel for the respondent Authority, that the financial bid of the appellant Company is substantially lower than that of the others, and, therefore, pecuniarily preferable.”

He submits that prior to the said tender, petitioner was also working as a transportation-cum-handling and delivery agents for the Corporation for the year 2015-16 and worked with full satisfaction of the Corporation.

Learned counsel for the Corporation, however, submits that the seal box of the tenders of the petitioners and other candidates was opened on 14.06.2016 in presence of the bidders who had put their respective signature on the envelope. Thereafter, the documents were arranged, verification done and on 29.08.2016 the Evaluation Committee along with other members took a decision on the technical bid. The technical bid of all the 15 bidders was examined and only 5 tenders were found to be valid who were accordingly, selected. He submits that as per the specific terms and conditions stipulated in the tender notes especially clause 11 (xii) of



the tender which clearly stipulates that tender paper accompanied with all the schedules/annexure documents as detailed in the checklist which is annexure of the NIT, the same shall be liable for rejection. For ready reference Clause 11 (xii) is quoted hereinbelow.

“11. (xii) Tender paper not accompanied with all the schedules/annexure, documents as detailed at Checklist (Annexure), the same shall be liable for rejection.”

Since the tender papers were not accompanied with all the schedules/annexure, documents as detailed in the checklist and out of 30 vehicles which the petitioners had offered only 24/27 numbers of such lease agreements were accompanied with schedules/annexure, documents. Hence, the candidature of the petitioners was rightly rejected. He submits that the rejection of the candidature of the petitioners was neither arbitrary, irrational nor unreasonable. He relies on the decision in the case of **Michigan Rubber (India) Ltd. vs. State of Karnataka & Ors.** since reported in (2012) 8 SCC 216 stating therein that in the matter of formalities and conditions of a tender document and awarding a contract unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted. The scope of judicial review of administrative action is intended to prevent arbitrariness, irrational,



unreasonableness, bias and mala fides. Petitioner had submitted documents in sealed cover on 03.06.2016. On 29.08.2016 Evaluation Committee had sat to take decision on the technical bid and financial bid was opened. The harmonious reading of Clause 9 (ix) with Clause 11 (xii) of the NIT required that the tender paper had to be accompanied with all schedules/annexure, documents of even lease agreements of 30 vehicles which on verification 6/3 in the case of the two petitioners was not found correct. Hence, the candidature of the petitioners has rightly been rejected.

The successful bidder whose I.A. 5864 of 2017 for intervention has been allowed to be impleaded as respondent nos. 10 and 11 by order dated 18.01.2018, submits that on the pre bid meeting dated 03.06.2016 all the tenderers were directed to submit photocopies of documents of all 30 leased vehicles along with original lease deed for verification. As per note-A of Clause 9 of the NIT, the petitioners submitted only 24/27 original documents out of the 30 leased vehicles which on verification were found not to be in order. The challenge has also been thrown that there was only five vacancies, five successful bidders were selected in the said meeting dated 29.08.2016 and one has been selected in pursuance to the order of this Court. He submits that the advertisement was for five vacancies and all the successful bidders have been selected. He



points out that note-A of Clause 9 specifies that bidders or their authorized person will have to come with all original documents of whatever photocopies submitted in the technical bid for verification at the time of its opening and since the petitioners who had come with all the original documents of all the 30 lease agreement in which 6/3 of the two petitioners were found to be not in order, hence, the decision taken by the Evaluation Committee dated 29.08.2016 is fair and reasonable.

Learned counsel for the petitioner with regard to vacancies submits that there were not five but 10 vacancies as is evident from the meeting held by the three men committee dated 24.05.2016 wherein for the district of Samastipur there were 10 vacancies with regard to 10 transporting-cum-handling and delivery agents as is evident from Annexure-11 of the writ application. He submits that the advertisement dated 23.05.2016 as contained in Annexure-10 although did not specify the vacancies and day after i.e. 24.05.2016, the three men committee have prepared the list of vacancies of different districts. The said ground regarding number of vacancies has not been taken by the Corporation but by the intervenor and such ground which are not mentioned cannot be supplemented by fresh reasons in the shape of affidavit as held in the case of **Mohinder Singh Gill & Anr. Vs. The Chief Election**



Commissioner, New Delhi & Ors. since reported in A.I.R. 1978

SC 851. The relevant para-8 is quoted herein below:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji (AIR 1952 SC 16) at p.18):

“Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public order made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself”.

Orders are not like old wine becoming better as they grow older.

A Caveat.”



Petitioner has filed I.A. No. 4549 of 2018 that now the Corporation has issued a letter bearing no. 6281 dated 20.06.2018 advertising the vacancies of different districts and also in the remaining vacancies four in number for the District of Samastipur to be filled through tender. The last date of opening of tender is 07.08.2018 and the appointment of new contractor on the vacancy would defeat the very cause of the petitioner and render the writ application infructuous. Hence, he seeks restraint upon the respondent Corporation from creating a 3rd party right.

Considering the statement made in the said interlocutory application, I.A. No. 4549 of 2018 is allowed.

From the pleadings of the parties as well as the rival submissions, admittedly there was a pre bid meeting and all the desirous contractors were called, they have been explained and accordingly, they have dropped the seal tender. Clause 9 (ix) of the NIT prescribes two types of vehicles five self owned and 30 leased/contracted vehicles. For interpreting the documents it has to be decided in what manner the document or contract of NIT has been formulated and arranged in order to gather the intention of the party and every part of the document would play an important and significant role in understanding and interpreting the different clauses of the document. The basis or ground on which there is a



scope of judicial review is whether the process adopted or decision made by the authority is mala fide or intended to favour some one or the process adopted or decision made is so arbitrary or irrational that no responsible authority could have acted so. The NIT has to be read harmoniously along with all its clauses. From a plain reading of the NIT Clause 9 (ix), 11 (xii) and (xiii) if read harmoniously would bring to the surface that even the lease documents had to be accompanied by schedules/annexure, documents as detailed in the checklist. Hence, the contention of the petitioners that those documents could have been taken into consideration at the time of agreement as stipulated in clause 11 (xiii) would have to be read harmoniously as in the pre bid meeting such documents were asked to be produced and was evaluated thereafter the technical bid and the consideration of the Evaluation Committee in its meeting dated 29.08.2016 as contained in Annexure-3 was after taking into consideration the technical bid submitted by the bidders and was for opening of the financial bid. Having taken into consideration the technical bid and the documents so produced by the petitioners in their lease agreement relating to 30 vehicles it was found that six in the case of petitioner in C.W.J.C. No. 4903 of 2017 and three in the case of petitioner in C.W.J.C. No. 4763 of 2017 were found to be not in order. So far as the signature of the M.V.I., on the insurance



paper with regard to one of the self owned vehicle would be a minor and ancillary defect which was not required to be enforced rigidly. Since the petitioner did not qualify in the technical bid as he was unable to show from the documents so submitted along with lease agreement which was a vital criteria, as the advertisement was for appointment transporting-cum-handling and delivering agents and vehicles were to be used for such dispensation. The action of the Evaluation Committee in its meeting dated 29.08.2016 could not in any way be classified as the arbitrary, discriminatory or mala fide.

Writ applications are dismissed.

(Nilu Agrawal, J)

Devendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.08.2018
Transmission Date	NA

