

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1020 of 2017

IN

Civil Writ Jurisdiction Case No. 14657 of 2016

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Binod Kumar Singh, son of Late Arjun Prasad Singh, resident of Village- Ahmadpure, P.O.- Ahmadpure, P.S.- Sarairanjan, District- Samastipur.

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Department of Food and Civil Supplies, Government of Bihar.
2. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna- 01.
3. The Deputy in Chief, Parivahan Department of Bihar State Food and Civil Supplies Corporation Limited, Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna- 01. null null
4. The District Magistrate-cum- Chairman, District Transport Committee Samastipur.
5. The Deputy Development Commissioner, District- Samastipur.
6. The Additional Collector, District- Samastipur.
7. The District Transport Officer, District- Samastipur.
8. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, District- Samastipur.
9. Sri Pankaj Kumar, resident of Village- Shahpur, Post- Bhorejal Ram, P.S.- Khanpur, District- Samastipur.
10. Sri Manoj Kumar Thakur, resident of Village- Nandani, Post- Siwaisingpur, P.S. Town, District- Samastipur.
11. Sri Kulanand Jha, resident of Village- Gopur, Post- Bhagwatpur, P.S.- Sarairanjan, District- Samastipur.
12. Jitendra Jha, resident of Village- Jhakhre, P.S. Sarairanjan, District Samastipur.
13. Sri Harendra Sah resident of Village & Post- Motipur, P.S.- Tajpur, District- Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sushil Kumar Ray, Adv. Mr. Anirudh Kumar Sinha, Adv. Mr. Abhijeet Ranjan, Adv.
For the BSFC	:	Mr. Nirmal Kumar, Adv.
For the State	:	Mr. Bijay Kumar Sinha, AC to AAG-5



For the Res. 9 to 13 : Mr. Aditya Prakash Sahay, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 01-05-2018

Heard counsel for the appellant, counsel for the Bihar State Food and Civil Supplies Corporation as well as counsel for the private respondents and the counsel for the State.

Writ application of the present appellant was dismissed by the learned Single Judge vide order dated 28.06.2017.

The issue raised by the appellant before the writ Court was that the decision of the respondent authorities to reject his tender on the ground that the number of owned vehicles should not include tractors more than 50%. His submission before the writ Court as well as before us is that such a requirement was not indicated in the notice inviting tender and, therefore, the checklist based on which the rejection of the offer made by the appellant before the corporation who had the lowest price bid was uncalled for.

Initially an impression was sought to be created that the checklist based on which the requirement of not more than 50% vehicles being tractors was a decision taken subsequently, unilaterally and therefore, the same cannot be used against the interest of the appellant. However, on closer examination of the materials on



record, it is evident from the reading of the tender documents especially clause-11 (xii) that the checklist was part and parcel of notice inviting tender.

It is for this reason that the learned Single Judge observed as under:

“Learned counsel for the respondents have argued that the interpretation which has been offered by the petitioner is completely misconceived as Clause 9 (ix) along with checklist itself stipulates the percentage of tractor furnished by the contractor will equally be applicable with respect to own vehicle. It makes it very clear that 50% ceiling will be applicable to both the categories not in sum total number of vehicles. It has further been argued that while interpreting the deed or document, it should be read whole, each part of the deed plays an important part of role, it has further argued that while interpreting the deed, intention of writer is gathered reading each part of the deed. In the present case, the checklist is part of the NIT which explains and prescribes ceiling of tractor under own category will not be more than 50%. The NIT has to be read in a composite manner not in isolation of each part of the NIT. It has further been argued that before opening the technical and financial bid, all the contractors were called, they were explained conditions of NIT in the pre-bid meeting in which the petitioner has also participated which has been mentioned in the writ application



*itself shows that the guideline explained to all Contractors ceiling of tractor under the category of personal vehicle and the hired vehicle will not be more than 50% of the tractor. This condition is mandatorily required, if there was any confusion, the petitioner should have sought for clarification but, knowing it well, the petitioner dropped the sealed tender, as the condition was not satisfied led to rejection of the technical bid and in support of his submission, he has placed reliance in the case of **Laxmi Sales Corpn. Vs. Bolangir Trading Co. & Ors.** reported in **2005 (3) SCC 157** Para 11 & 12 wherein the Hon'ble Supreme Court has said that even the checklist is the part of the NIT and if the documents were not filed which is mandatorily required, in case of failure of attachment of necessary document, that will certainly will lead to rejection of the tender. In the present case, the petitioner did not maintain 50% ceiling of tractor with respect to own vehicle, rightly the action has been taken.*

In addition to that the learned Single Judge also further took note of the following fact:-

“In reply, learned counsel for the petitioner submits that in terms of the scheduled date provided in the NIT, the petitioner and others were called for pre bid meeting on 3.6.2016 vide letter dated 24.8.2016, and, accordingly, he participated in the meeting but the



letter dated 5.8.2016 (Annexure-4) of the District Magistrate, Samastipur itself discloses the confusion was prevailing in the matter of condition of ceiling fixed for tractor not more than 50% with respect to the private owned vehicle. It has further been submitted that the response of the respondents that the pre bid meeting has explained to the petitioner about the fixation of upper limit of 50% of tractor itself is belied from the letter of the District Magistrate, Samastipur. In such circumstances, Clause 9(ix) makes it abundant clear the percentage of tractor with 50% limit cannot be attached to the private vehicle but it will be only in sum total vehicle, namely, own vehicle and hired vehicle. In that view of the matter, rejection of the tender of the petitioner is per-se illegal and not sustainable in law.

Admittedly, in this case, there was a pre-bid meeting, all the Contractors were called, they have been explained and, accordingly, they have dropped the sealed tender. Clause-9 (ix) prescribes two types of vehicle, one is self owned vehicle and the another is a hired vehicle. It will be relevant to quote Clause 9(ix)



and 11(xii), 13 & 14 of the checklist which reads as follows:-

"Clause 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 of her/his/their family members/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 tractor cannot be more than 50% of total number of small vehicles like pick up van/407/mini truck.

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

Sl. No.13 – Owner book of five small vehicles like- pick up van/407/mini truck/Tractor of the bidder with road permits, up to date tax token, insurance paper, pollution certificates and fitness certificate. (Tractor at most 50%)



Sl. No. 14 – 30 original copies of Lease/Contract agreements of vehicles on stamp of Rs. 1000/- each."

In view of the above position that the checklist was integral to the notice inviting tender or the tender document and both have to be read in harmony and there was no element of surprise because in the pre-bid meeting which was held, the appellant also participated and this position was explained to him but he failed to take necessary corrective steps and measure. In view of the same, the learned Single Judge rightly found no merit in the writ application and dismissed the same.

We are satisfied that no illegality has been committed in the adjudication and decision dated 28.06.2017 made by the learned Single Judge while dismissing the writ application, which requires to be rectified in the appeal.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Devendra/Arjun

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.05.2018
Transmission Date	NA

