

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17377 of 2018

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M/s Chisti Road Lines Through its Partner Asif Raza, son of Arif Raza,
resident of village/Mohalla Brahamasthan Muhali Maidawa Bhangama Ward
No. 3, M. Babhangama, P.O. Barauni, district Begusarai ... Petitioner

Versus

1. The Chairman and Managing Director Bharat Petroleum Corporation Limited Head Quarters, Bharat Bhavan, Ballard Estate, Mumbai
 2. The Director, Marketing, Bharat Petroleum Corporation Limited Head Quarters, Bharat Bhavan, Ballard Estate, Mumbai
 3. The Senior Transport Manager, Bharat Petroleum Corporation Limited, Kolkata
 4. The State Head, Bharat Petroleum Corporation Limited, Exhibition Road, Patna, Bihar
 5. The Senior Territory Manager, Bharat Petroleum Corporation Limited, Brauni Top, Paprour, district Begusarai, Bihar
 6. The Manager, Operation (Retail), Bharat Petroleum Corporation Limited, Brauni Top, Paprour, district Begusarai, Bihar ... Respondents
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Appearance :

For the Petitioner :Mr. Alok Ranjan Kumar, Adv.

For the Respondents :M/s Siddhartha Prasad & Om Prakash Kumar, Adv.

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL ORDER

2 29-08-2018

Heard learned counsel for the petitioner and the learned counsel appearing on behalf of the Bharat Petroleum Corporation Limited.

The petitioner, in the present writ application, has challenged the letter, dated 27.08.2018, as contained in Annexure 7, by which the respondent-authorities have rejected the tender document of the petitioner on the ground that the petitioner had not submitted documents on-line which is in violation of the essential terms and conditions of the tender. Petitioner also seeks a direction that the respondent-authorities would consider the petitioner for evaluation in the financial bid as his technical bid has been opened on 18.08.2018 and during processing the petitioner has been found to be qualified in the technical bid evaluation which has been duly



informed to the petitioner vide letter, dated 22.08.2018, as contained in Annexure 6 of the writ application.

Learned counsel for the petitioner submits that a notice has been issued to other tenderers, who had qualified in the technical bid vide e-mail, dated 26.08.2018, as contained in Annexure 5, stating the tentative E-auction date to be 29.08.2018 but the petitioner has not been informed.

The short facts of the case, according to the petitioner, is that pursuant to NIT he participated in the E-Tender process for supplies of five tank lorries to the respondent-authorities, but, by order, dated 30.12.2017, petitioner was informed that his tender was rejected on the ground that the tender envelop (technical pre-qualification bid) has been stapled by use of stapler pin, which was violation of following terms of the NIT and is as follows :

“All the documents of the Technical (Pre-Qualification) bid are to be submitted in an envelop super scribed as Tender No. BPC/ER/BR/POL/BULK/BNI/2017-21/01 and marked as “Technical (Pre-Qualification) Bid – BRAUNI”. The envelop is to be closed and sealed by gum/adhesive, tender received in open condition will be rejected.

Tender envelop {Technical (Pre-Qualification) Bid}



shall be put in the designated tender box before the closing time and date at Location; BPCL Brauni TOP.

Note : Tender Envelop {Technical Pre-Qualification Bid} should contain Tender Name/Address/E-mail ID/Contact Phone Nos. and seal of the tender. Stapler pins should not be used to seal tender envelop or else tender shall be rejected.”

Against the rejection of the candidature of the petitioner at the threshold he had moved this Court in C.W.J.C. No. 1626 of 2018 and this Court relying on the decision of the Apex Court in **Manglore Chemicals and Fertilizers Limited Vrs. Deputy Commissioner of Commercial Taxes & Ors.** since reported in **1992 Supp (1) SCC, 21** and in the case of **Poddar Steel Corporation Vrs. Ganesh Engineering Works & Ors.** since reported in **(1991) 3 SCC, 273**, as well as in the case of **United India Insurance Company Limited Vrs. The State of Bihar through the Chief Secretary & Ors.**, since reported in **2015(1) P.L.J.R., 772** it had been observed that the solitary ground taken by the respondents to reject the technical bid of the petitioner is that a stapled envelop does not ensure secrecy which is required for ensuring that there is no mala fide practice on the part of both the tender and the Corporation and that the requirement for sealing the envelop by using gum and by adhesive and not staple is



merely a procedural requirement of a hyper technical nature and any violation of this condition would not lead to rejection of the petitioner's technical bid. A direction was given to the respondent-authorities to open the technical bid of the petitioner and proceed further in the matter in accordance with law. The appeal, being L.P.A. No. 561 of 2018, preferred by the respondent-authorities was also dismissed by the Division Bench by the order, dated 23.07.2018, in the light of order passed in L.P.A. No. 381 of 2018, which was disposed of by judgment, dated 05.07.2018. In pursuance and in compliance to the order passed in L.P.A. No. 561 of 2018, dated 23.07.2018, and the order of the learned Single Judge passed in C.W.J.C. No. 1626 of 2018, dated 19.03.2018, the Tender Evaluation Committee for the respondents, Bharat Petroleum Corporation Limited, had opened the tender envelop, dated 18.08.2018, for further processing of the document and the petitioner was found qualified in the technical bid evaluation, which was informed to the petitioner vide letter, dated 22.08.2018, as contained in Annexure 6, with stipulation that the remaining tender process would be as applicable would be informed. But, by the impugned order referring to general instructions to tenderers for E-Tender wherein at Clause 5 tenderers were required to complete entire Technical (Pre-Qualification) Bid process on-line and or before the due date of closing of the tender, the



petitioner has been found not qualified for opening the financial bid as the petitioner had not participated in the on-line Technical (Pre-Qualification) Bid process as documents have not been submitted on-line in the concerned web-portal of the Corporation. Thus, considering the same in violation of the essential terms and conditions of tender, the tender of the petitioner has been rejected vide order, dated 27.07.2018, and the petitioner would not be called for reverse auction/opening of the financial bid, which is under challenge in the present writ application.

Learned counsel for the petitioner submits that in pursuant to the order passed by the Single Judge in the writ application and not interfered by the Division Bench in the letters patent appeal, the technical bid had been opened and evaluated and the petitioner was found to be qualified in the technical bid, now the respondent-Corporation cannot turn around and again raise a hyper technical ground for rejection of the tender of the petitioner, which was not a ground for rejection earlier, thus, debarring the petitioner from participating in the financial bid which is to be opened today itself, i.e., 29.08.2018. He submits that the tender was through E-Tender process and also the document had to be submitted in the physical form, hence, the rejection on the ground that the documents for Technical (Pre-Qualification) Bid was not submitted on-line is a



hyper technical ground and liable to be rejected. He submits that the notice inviting tender was for submission of the documents through E-Tender process as well as the tender document had to be submitted duly completed along with demand draft, hence, both modes were acceptable, especially so when the technical bid of the petitioner has been opened, evaluated and the petitioner found successful in the technical bid.

The learned counsel for the respondent-Bharat Petroleum Corporation Limited, however, submits that the terms of the notice inviting tender is a notice of inviting E-Tender and the participants had to submit on-line documents in the concerned web-portal of the Corporation, which the petitioner has not done, which was a mandatory condition. He submits that as per the terms of tender, which is contained in Annexure 1, only the Technical (Pre-Qualification) Bid is to be submitted in the first stage and the price bids are to be submitted directly on-line through electronic bidding (reverse auction process). He submits that the Division Bench in L.P.A. No. 561 of 2018 has referred to the judgment, dated 05.07.2018, passed in L.P.A. No. 381 of 2018 wherein it has been observed that the tender process in the present case is in the name of on-line E-Tender process in which documents are required to be uploaded on-line and those documents are required to be furnished in



physical form. He also relies on the orders passed by the Chhattisgarh, Bilaspur, High Court in Writ Petition (C) No. 1826 of 2015 in the case of Shreyans Industries Ltd. Vrs. Chhattishgarh Textbook Corporation & Anr., dated 14.10.2015, decision of Andhra High Court in the case of M/s KrK Infraprojects India Pvt. Ltd. vrs. State of Telangana in Writ Petition No. 1068 of 2015, dated 13.02.2015, decision of Rajasthan High Court at Jodhpur, in S.B. Civil Writ Petition No. 9293 of 2017 in the case of M/s K.R. Berwal & Sons Vrs. The Bharat Petroleum Corporation Limited & Ors., dated 24.11.2017, and the decision of the Madhya Pradesh High Court in the case of Sunflag Iron and Steel Co. Ltd. Vrs. the State of Madhya Pradesh in Writ Petition No. 11068 of 2018, dated 18.05.2018, on the proposition that if the requirement is of submitting the bids on-line, the same is a mandatory requirement and has to be strictly adhered to. Hence, the rejection of the tender of the petitioner vide order, dated 27.08.2018, is in accordance with law as the petitioner have not submitted the documents on-line in concerned web-portal of the Corporation.

Heard the parties.

Although it is true that in normal course this Court sitting in its writ jurisdiction would not like to impose its own conditions in lieu of the conditions prescribed in the NIT, but, the present case has a



peculiar history. Firstly, the technical bid of the petitioner was rejected at the threshold as the petitioner had used stapler pin to seal the Technical (Pre-Qualification) Bid, which, as per the NIT, was to be sealed by gum/adhesive. This Court in the earlier round of litigation held that the rejection of the technical bid of the petitioner on the ground that he had used stapler pins was merely a procedural requirement of a hyper technical nature and would not lead to rejection of the technical bid and a direction was given to the respondent-Corporation to open the technical bid of the petitioner. Even the NIT at Annexure 1, second paragraph, postulates that Technical (Pre-Qualification) Bid is to be submitted in the first stage and the price bid are to be submitted directly on-line through (electronic bidding) reverse auction process, and is quoted here-in-below :

“Only the Technical (Pre-Qualification) Bid is to be submitted in the first stage and the Price Bids are to be submitted directly on-line through Electronic Bidding (Reverse Auction) process which will be conducted by “M/s E Procurement Technologies Ltd.”

In pursuance to the order passed by this Court by the Single Bench and the Division Bench the Technical (Pre-Qualification) Bid of the petitioner was opened. Now, the



respondent-authorities cannot turn around and say that since the petitioner had not participated in the on-line Technical (Pre-Qualification) Bid process as per general instructions to tenderers for E-Tendering wherein Clause 5 requires the tenderers to complete Technical (Pre-Qualification) Bid process on-line on or before the due date of closing of the tender when earlier rejection was not on the said ground. The respondent-authorities ought to have sought a clarification from the learned Single Judge or the Division Bench on the direction of opening the technical bid by the respondents at that stage itself. After opening the Technical (Pre-Qualification) Bid of the petitioner now they are estopped from raising hyper technical ground that the petitioner had not participated in the on-line Technical (Pre-Qualification) Bid process.

Hence, the rejection of the Technical (Pre-Qualification) Bid of the petitioner vide letter, dated 27.08.2018 cannot be sustained, which is, accordingly, **quashed**.

Since, the petitioner had already qualified in the Technical (Pre-Qualification) Bid, his financial bid shall also be considered along with the other tenderers. The authorities would grant opportunity to the petitioner to participate in the financial bid, if all other conditions are fulfilled, which is to be opened today, i.e., 29.08.2018. However, this order shall not be cited as a precedent as it



has been passed in view of the earlier orders passed by this Court and
in the peculiar facts and circumstances of the case.

The writ application is **allowed**, with the said
observations.

(Nilu Agrawal, J)

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