

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.381 of 2018
IN
Civil Writ Jurisdiction Case No. 174 of 2018**

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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, Barauni Top, Paprour, District-Begusarai, Bihar.

.... Appellant/s

Versus

Arjik Carrier Pvt. Ltd. Through Its Director Md. Jabed Imam Khan, S/o-Md. Nabiraj Khan, R/o village + Post-Deona, Ward No.3, Deonah, District-Begusarai.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Siddhartha Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 05-07-2018

This Intra-Court Appeal has been preferred for setting-aside the order dated 22.02.2018 passed by the learned writ Court in Civil Writ Jurisdiction Case No.174 of 2018 by which the learned writ Court has been pleased to allow the writ application with a direction to the respondent authorities to open the financial bid of the petitioner and to proceed further in the matter in accordance with law.

Learned counsel representing the appellants submits that the learned Single Judge has allowed the writ application without appreciating that the conditions mentioned in the Notice Inviting Tender (NIT) had prescribed a condition inter alia that the tenderer had to submit the tender documents in an envelope duly sealed with gum/adhesive and it was made clear that stapler pins were not to be used. It is his submission that the respondent while participating in



the e-tender process for supply of seven tank lorries even though submitted his tendered documents through e-tender process, while sending the tendered documents to the respondent authorities in physical form he sent his documents in a stapled envelope. It is submitted that the conditions prescribed in the NIT cannot be bracketed as a clause which is hyper technical and the learned writ Court is not justified in exercising its writ jurisdiction and power of judicial review therein in the facts and circumstances of the case.

On perusal of the pleadings available on the record, we find that the tendered documents of the writ petitioner were rejected only on the ground that the documents submitted to the respondents were in a stapled envelope. While 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 at the same time, the Court cannot be a mute spectator if it is found that the decision to reject the tender document of a tenderer is arbitrary and is based on a totally irrelevant or insignificant considerations.

The facts of the case reveal that the writ petitioner had participated in the e-tender process. The writ petitioner has categorically stated that he had submitted all the documents online through e-tender process with the requisite Demand Draft for different tank lorries and have fulfilled all the mandatory requisites. The tendered documents were sent to the respondent authorities in physical form as well. It is his stand that in the case of **Mangalore Chemicals and Fertilizers Limited vs. Deputy Commissioner of Commercial Taxes & Ors** reported in **1992 supp (1) Supreme Court cases, 21** the Hon'ble Apex Court has observed that modern Court seek to cut down on technicalities and public authority can be stopped from relying on pure technicalities.

It is the further stand of the writ petitioner that in the case of **Poddar Steel Corporation vs. Ganesh Engineering Works & Ors.** since reported in



(1991) 3 Supreme Court Cases 273 while dealing with the tenders, the Apex Court held that the requirement in a tender notice can be classified into two categories:- First it lays down the essential conditions of eligibility and the other which are ancillary and subsidiary with the main object to be achieved by the condition. In the first case, the authority issuing the tender may be required to be forced to follow them rigidly but in the other cases, it is open to the authority to deviate and not to insist on literal compliance of the condition in appropriate cases.

Reliance was also placed on the views taken by a learned Single Judge of this Court in the case of **M/s Mahadev Enclave Pvt. Ltd Vs. The State of Bihar & Ors. (CWJC No.6518 of 2013)** wherein the learned writ Court in similar kind of situations where the tender was sought to be rejected on a solitary technical ground, directed the respondents to consider the technical bid of the petitioner if the petitioner is found qualified, his financial bid was also to be considered.

Reliance was also placed on the judgment of this Court in the case of **M/s Binda Prasad Vs. The State of Bihar & Ors (CWJC No.17779 of 2008).**

The learned writ Court has upon hearing the parties and on consideration of the materials available on the record, took a view that the petitioner had duly sealed the envelope, not with gum/adhesive as required in the NIT but by using stapler pins. The solitary ground taken by the respondents to reject his technical bid is that a stapled envelope does not ensure secrecy which is required for ensuring that there is no malpractice on the part of both the tenderers and the Corporation. The writ Court found that the requirement of using gum/adhesive for sealing the envelope must be held to be only a hyper-technical requirement which had no bearing upon the main object.

In course of argument learned counsel representing the appellants



admits that the tender process in the present case is in the nature of on-line e-tender process in which documents are required to be uploaded online and then those documents are required to be furnished in physical form. Even though attempts have been made to argue that while some of the documents were required to be uploaded, there were other documents in addition which had to be submitted in physical form, in the nature of the present case we agree with the view taken by the learned writ Court that the rejection of the tender of the writ petitioner on the solitary ground that the envelope sent by him was stapled would not be just and proper in the facts and circumstances of this case where tender process is online and the learned writ Court is correct in taking this ground of rejection as a hyper technical ground.

Thus, we do not find any reason to interfere with the impugned judgment. The Letters Patent Appeal has no merit. It is, accordingly, dismissed.

At this stage, learned counsel representing the appellants submits that the learned writ Court has directed to open the financial bid of the petitioner even though his technical bid has not been opened and was rejected earlier. To that extent, we make it clear that in view of the orders passed by the learned writ Court the technical bid of the petitioner shall be opened and on his being found to be qualified, his financial bid shall also be considered along with that of the other tenderers.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

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