IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12378 of 2017

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Rekha Purbey Wife of Sudhir Purbey Resident of Village-Maulaganj, P.O.- Lalbagh, P.S.- Dharbhanga, District-Dharbhanga.

... ... Petitioner

Versus

1. The Union Of India through the General Manager, Eastern Centrl Railway, Eastern Central Railway Headquarter, Vaishali (Hajipur), Bihar.
2. The General Manager, Eastern Central Railway, Eastern Central Railway Headquarter, Vaishali (Hajipur), Bihar.
3. The Divisional Railway Manager (C), Samastipur, Office of the Divisional Railway Manager, Eastern Central Railway, Samastipur, District – Samastipur.
4. The Senior Divisional Commercial Manager, East Central Railway, Samastipur. Office of the Divisional Railway Manager, Eastern Central Railway.
5. The Station Manager, The East Central Railway, Samastipur, Station-Samastipur, District-Samastipur.
6. Kiran Devi Wife of Ganesh Purbey, Resident of Village-Balha, P.O. Bhuskho, P.S. Keoti, District-Darbhanga.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate
		Mr. S. Ali, Advocate
For the Railways	:	Ms. Binita Singh, Advocate
For the Resp. No.6	:	Mr. Sandeep Kumar, Advocate
		Mr. Vinay Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 20-08-2019

This writ application has been preferred for issuance of a writ in the nature of a writ of certiorari to quash the work order dated 03.07.2017 issued by the Commercial Rail Manager, Eastern Central Railway, Samastipur vide letter no. C/536/Taxi Stand/Darbhanga/2017 (Annexure '3' to the writ application) addressed to the respondent no. 6 by which the respondent no. 6 has been granted licence to collect parking charges at Darbhanga Station for Taxi/Motor Car/Tempo during the period 06.07.2017 and 05.07.2020.

By filing I.A. No. 3055/2018, petitioner has sought to amend the relief portion in the light of the order dated 19.02.2018 passed in this case but a perusal thereof would show that in fact there is no substantial addition or modification in the relief portion.

The petitioner then filed I.A. No. 7821/2018 seeking a stay of the work order granted by the respondent authorities to respondent no. 6 to operate the parking area of the Railway Station. I.A. No. 7822/2018 has however been filed for addition of the following relief in the writ application:-

> *(i) A writ order and direction in the nature of mandamus directing and commanding the respondent authorities specially the respondent no. 3, 4 & 5 to grant license to operate the parking area of railway station Darbhanga as per the tender notice no. C/536/Taxi Stand/Darbhanga/2017 to the petitioner, be issued.*
>
> *(ii) A writ order and direction in the nature of*

mandamus directing and commanding the respondent authorities specially the respondent no. 3, 4 & 5 to allow the petitioner to run the parking area and realize the parking charge of railway station Darbhanga with immediate effect and at once to the petitioner, be issued.

(iii) A writ order and direction in the nature of mandamus directing and commanding the respondent authorities specially the respondent no. 3, 4 & 5 to cancel the work order of respondent no. 6 and notify work order in favour of the petitioner to operate the parking area of railway station Darbhanga as per the tender notice no. C/536/Taxi Stand/Darbhanga/2017 to the petitioner, be issued."

Contesting respondents are the railways and it's authorities (respondent nos. 1 to 5) and respondent no. 6 in whose favour the work in question has been awarded. They have filed their separate counter affidavits in support of the impugned order of communication awarding the work to the respondent no. 6.

It is the case of the petitioner that pursuant to a tender notice issued by the Commercial Department of the Eastern Central Railway for award of contract for cycle, scooter, motorcycle stand at Darbhanga and Purnea court and Taxi/Motor-Car/Tempo Stand at Darbhanga and Purnea court for three years, the petitioner had applied in category A-1 for the Taxi/Motor-Car/Tempo Stand. According to the petitioner, as per the tender document the bidder had to give the licence cost for the first year and every year there will be an enhancement in the said cost, the reserve price for A-1 Category parking stand had been fixed at Rs. 17,13,412/-. Along with the tender the bidder had to give other details with regard to different documents and had to furnish security money, education qualification proof, income certificate.

The income certificate should have been issued by the Circle Officer/A.D.M./S.D.M./D.M. and it should be 10% of the reserve price or Rs. 50,000/- whichever is higher. The income certificate should not be older than one year. As per the common rules contained in Clause '4' of the tender document, the highest offer given by the bidder was to be accepted but the Senior Divisional Commercial Manager, Eastern Central Railway had kept his right reserved to accept the tender of lower bidder and also to cancel the tender of any bidder.

By furnishing a tabular chart the petitioner has shown that for the parking stand of Taxi/Motor-Car/Tempo four bidders had submitted their tender. The financial bid of the four bidders were as follows:-

Sl. No.	Name	Money
1.	Rekha Purbey	Rs. 22,00,000/-
2.	Kiran Devi	Rs. 21,00,000/-
3.	Amit Kumar	Rs. 12,73,000/-
4.	Sushil Kumar Purbey	Rs. 17,23,500/-

It is the submission of the petitioner that she was the highest bidder for A-1 category, therefore, she was under bona fide belief that she will be awarded the tender. While the petitioner was still waiting for the decision of the railway authorities she suddenly got information that the tender had been allotted to respondent no. 6 who had given the base price of Rs. 21,00,500/- (Twenty One Lakhs and Five Hundred only), no reason was given for not accepting the bid of the petitioner. The petitioner claimed that she had submitted all the required documents including income certificate issued by the Circle Officer, Block Darbhanga issued on 15.03.2017 showing her income at Rs. 4,31,491/- which was more than the 10% of the reserve price fixed by the railways. The petitioner thereafter sent notices to the Commercial Rail Manager, East Central Railway, Samastipur pointing out that she had given security money of Rs. 5,68,000/- as also the serious discrepancies in the document supplied by respondent no. 6 at the time of filing of tender.

The petitioner claimed that respondent no. 6 was awarded the work at a lesser quote by Rs. 99,500/- (Ninety Thousand and Five Hundred only). The petitioner also raised an issue with regard to the identity card of respondent no. 6 wherein the name in the marks statement issued by the NIOS of respondent no. 6 is showing that her mother's name is Chandrakala Devi but the Election Commission of India is showing that the wife of Sudhir Purbey (father of respondent no. 6) is Manju Devi, thus, according to the petitioner, it creates doubt with respect to the identity of respondent no. 6. She also raised a doubt over the date of birth of respondent no. 6 saying that there is difference of only 10 years of age between respondent no. 6 and her son Ravi Ranjan. The case of the petitioner is thus the award of tender to respondent no. 6 is result of an arbitrary decision making by the railways against the loss of revenue to the railways.

By filing a supplementary affidavit the petitioner has submitted that Annexure ‘8/A’, Annexure ‘9’ and Annexure ‘10’ to show that respondent no. 6 had income of Rs. 80,000/- only but she had submitted before Divisional Rail Manager (Commercial), Samastipur, documents showing her income at Rs. 5,71,490/-. It is stated that Annexure ‘10’ will show that the Circle Officer of Sadar Block, Darbhanga had issued income certificate dated 14.02.2017 to respondent no. 6 showing her yearly income at Rs. 80,000/- only. According to the petitioner, the respondent no. 6 has thus submitted false and forged document at the time of making application before the railway authorities.

A counter affidavit has been filed on behalf of respondent nos. 1 to 5 which has been sworn by the Divisional Commercial Manager. Although at the time of filing of the counter affidavit on behalf of respondent nos. 1 to 5 the said respondents had received copy of the writ application as well as the supplementary affidavit of the petitioner but the counter affidavit is confined to a reply to the writ petition only. The railways has taken a stand that during scrutiny of the tender papers submitted by the petitioner it was found that her name mentioned in the educational certificate is of different person i.e. Rekha Kumari and the name mentioned in income certificate, residential certificate, character certificate and PAN Card enclosed by the petitioner were of another person i.e. Rekha Purbey. It is their stand that even if it is presumed that Rekha Kumari and Rekha Purbey are the same and one person, a supporting document should have been submitted by the petitioner in this regard along with said tender application.

Further stand of the railways is that the credentials in terms of income certificate submitted by the petitioner in the tender document does not fulfill the criteria. According to them it was well known to the petitioner that as per tender notice the income certificate should be of Rs. 5,67,139/- but the petitioner had submitted income certificate of Rs. 4,31,491/- only which is against the essential requirement of tender documents. Thus, the tender papers of the petitioner could not be considered as she did not fulfil the eligibility criteria.

It is submitted that so far as respondent no. 6 is concerned she had submitted the tender papers alongwith the required documents and in her case the name mentioned in the tender application and educational certificate is the same. She had also submitted income certificate which was proper and according to tender notice it was equal to 10% of the reserve price for three years. It is, thus, the stand of the Railway that after considering every aspect and in the interest of the Railway Administration, the tender submitted by respondent no. 6 has been accepted and no infirmity may be found with the same.

The petitioner has filed second supplementary affidavit stating therein that she had given a representation on 28.04.2018 before the Circle Officer, Sadar Darbhanga with respect to issuance of false income proof issued by the Circle Officer to respondent no. 6 to enable her to get the tender from the Railway Authorities. In her representation (Annexure '13') the petitioner had submitted to the Circle Officer that the Circle Officer had issued the verification for the income proof of Kiran Devi to the extent of Rs. 5,71,490/- and had forwarded the same to the railway department. The income certificate was issued on the basis of income tax return for the year 2016-2017 for the said amount which the respondent no. 6 claimed to have submitted but in fact the said return had been classified as invalid by the Income Tax Department. In response to the representation of the petitioner, the Circle Officer, Sadar Darbhanga vide Memo no. 798 dated 10.5.2015 wrote to the petitioner that he had sought further clarification in this regard from respondent no. 6 and on receipt of explanation from respondent no. 6 if it will not be found in accordance with law the same will be cancelled. The Circle Officer had issued notice to respondent no. 6 vide Annexure ‘14’ to the writ application and then subsequently vide Memo No. 1155 dated 30.06.2018 he had cancelled the income certificate No. 1/17/00123 dated 14.02.2017 earlier issued to respondent no. 6. The petitioner has, thus, submitted that respondent no. 6 had indulged in forging document to obtain the tender.

By filing a rejoinder to the counter affidavit filed on behalf of the Divisional Commercial Manager, the petitioner has contested the submissions of the Railways. She has submitted that the application of the petitioner was verified at the technical bid stage. The income certificate and residential certificate were duly verified and in this regard letter dated 06.04.2017 was issued by DRM (C) Samastipur who had found them correct and did not raise any objection. To verify her original documents the petitioner was asked to be personally present along with her original documents at the time of technical bid on 22.05.2017. She had appeared personally with the original papers, got them verified and were found genuine.

It is further submitted that nowhere in the tender notice dated 09.02.2017 it was mentioned that income certificate equal to the value of three years of reserve price is required for entertaining the technical bid as annexed in the counter affidavit of the railways at Annexure ‘A’. It is her submission that the relevant clause of the tender document only shows that the income certificate of annual income of reserve price ought to be mentioned in the application of technical bid. It is submitted that the income certificate of the petitioner was also verified. The petitioner has again raised an issue with regard to the income certificate of respondent no. 6. The Circle Officer, Darbhanga had issued letter dated 08.09.2018 to DRM (C), Samastipur and had explained the facts and circumstance under which he had cancelled the income certificate of respondent no. 6. A copy of the said letter has been brought on record as Annexure '6-F' to the second supplementary affidavit of the petitioner. She has also explained that her name appearing in the certificate as Rekha Kumari is correct. After her marriage to Mr. Sudhir Purbey the title of her husband was added to the name of Rekha Kumari and her name was known as Rekha Purbey which is customary in nature. The name Rekha Purbey is correctly mentioned in the income certificate, residential certificate, character certificate and PAN Card enclosed by the petitioner.

The petitioner has explained that her income certificate of Rs. 4,31,491/- is more than the required amount of 10% of the reserve price mentioned in the tender notice which is Rs. 17,13,412/- (Rupees Seventeen Lakhs Thirteen Thousand Four Hundred and Twelve only).

Respondent no. 6 has also filed a counter affidavit. According to her, as per tender document, income certificate should have been given of Rs. 5,67,139/- but the petitioner had submitted income certificate of Rs. 4,31,491/- only. She has further stated that her date of birth in Secondary School Examination Certificate is 05.02.1988 and her mother has sworn an affidavit that Manju Devi and Chandrakala Devi both are her name. She has then brought on record a letter no. 100 dated 23.01.2019 as contained in Annexure 'B' to her counter affidavit issued by the Circle Officer Sadar Darbhanga addressed to the Divisional Rail Manager (Commercial) Samastipur. The Circle Officer has now stated in the said letter that on 22.11.2018, respondent no. 6 had submitted an application saying that her return was shown not invalid because her return form had not reached the CPC, Income Tax, Bangluru within the prescribed period. Her return was placed in the invalid column. She had informed that in this regard steps have been taken to get the same validated. The letter dated 23.01.2019 says that until a decision is taken by the Department on the validity of the return the income certificate issued by his office shall remain as it is.

The petitioner has in her rejoinder dated 17.07.2019 submitted that she had offered Rupees 22 Lakhs for one year and she is ready to follow further criteria and condition asked by the respondent for further three years. She has also pointed out that the date of birth of respondent no. 6 as per Aadhar and Xth certificate is 05.02.1988. According to respondent no. 6 her marriage was solemnized on 15.07.1994 and in support thereof she has brought on record the invitation card with her counter affidavit, it means at the time of marriage the respondent no. 6 was hardly 6 years 6 months old. Further the letter issued by the Circle Officer saying that her earlier income certificate is maintained has been challenged saying that the same is without jurisdiction and has no basis because even on the date of issuance of the said letter the ITR of the petitioner was lying under invalid column.

In course of argument, Mr. P.K. Shahi, learned senior counsel for the petitioner has raised all the above mentioned issues on behalf of the petitioner.

Mr. P.K. Shahi, learned senior counsel has also placed before this court a Hon’ble Division Bench judgment of this court in LPA No. 765/2009 (Ram Babu Choudhary Vs. The Union of India and others) wherein the railways has awarded tender to the appellant Ram Babu Choudhary who was a single tenderer. The learned Single Judge had found that there was no justification for award of tender to the appellant by giving a go-bye to the element of competition. In order to get the railway the base competitive price the learned Single Judge had directed the Railway Administration to re-tender the matter ensuring healthy competition for getting the base price. In Letters Patent Appeal, the Hon’ble Division Bench when called upon the parties to put-forth their bids in respect of tender item no. 1 & 2, as far as the Cycle cum scooter stand and taxi stand was concerned the offer started from Rupees Five Lakhs and eventually went up to Rupees 21 Lakhs. As regards Taxi Stand, it commenced from Rupees 10 Lakhs and went up to Rupees 25 Lakhs. The Hon’ble Division Bench, therefore, referred the judgment of the Hon’ble Apex Court in the case of **Ram & Shyam Company Vs. State of Haryana and others** reported in **AIR 1985 SCC 1147**. In the said case the Hon'ble Apex Court had called upon the parties to raise their offer and what was found ultimately was surprising, as the bid started from Rupees 5.50 Lakhs and went up to Rupees 21.25 Lakhs. Thereafter, their Lordship recorded the following observations in paragraph 5, 6, 13, 14 and 19 as under:-

> "5. At this stage it would be advantageous to refer in some details of what transpired at the hearing of this appeal in this court. Let us at once recapitulate what happened in the court because that by itself provides a tell-tale piece of evidence compelling the court to interfere and set aside the impugned order. Mr. L.N. Sinha, learned Attorney General raised a sort of a preliminary objection that this court should not assist the syndicalists to join hands to deprive the State of its legitimate revenue. Then he made a pertinent observation interposing an objection when Mr. Sorabjee, learned counsel for the petitioner was making his submissions. The question posed was; if this Court interferes and quashes the grant in favour of the fourth respondent, the only option open to the court would be to direct a fresh auction. He posed the further question that if at the time of re-auction, the highest bid does not reach up to Rs. 4,50,000/- p.a. for which the lease is granted to the fourth respondent, would the Court make good the loss? Apart from the rhetoric of the question, the issue raised was of primary importance. We therefore asked Mr. Sorabjee

whether his client is willing to make an affidavit incorporating therein that if the highest bid at a reauction, if the court so directs, falls short of Rs. 4,50,000, the appellant would agree and undertake to accept the contract at the value of Rs. 5,50,000/- p.a. Such an affidavit was immediately filed. In order to give the fourth respondent to whom contract under the impugned order was given, an opportunity whether he would like to raise his offer. Mr. P.P. Rao voiced his apprehension about his contentions. We assured him that without prejudice to his contentions, it would be open to his client to raise his offer. What transpired may be tabulated in a chart :

Appellant's offer	Respondent's offer
1. 5.50 lacs	2. 6 lacs
3. 6.50 lacs	4. 7 lacs
5. 7.50 lacs	6. 8 lacs
7. 8.50 lacs	8. 9 lacs
9. 10 lacs	10. 10.50 lacs

Court intervened at this stage and said that the raise must be minimum at the rate of Rs. 1 lac.

11. 12 lacs	12. 14 lacs
13. 15 lacs	14. 16 lacs
15. 17 lacs	16. 18 lacs
17. 19 lacs	18. 20 lacs
19. 21 lacs	20. 22 lacs
21. 25 lacs."	

……...

"6. Shock and surprise was visible on the face of each one in the court. Shock was induced by the fact that public property was squandered away for a song by persons in power who hold the position of trust. Surprise was how judicial intervention can serve larger public interest. One would require multi-layered blindfold to reject the appeal of the appellant on any tenuous ground so that the respondent may enjoy and aggrandize his unjust enrichment. On this point we say no more."

"13. Approaching the matter from this angle, can there be any doubt that the appellant whose highest bid was rejected by the Government should have no opportunity to improve upon his bid more so when his bid was rejected on the ground that it did not represent adequate market consideration for the concession to extract minor mineral. A unilateral offer, secretly made, not correlated to any reserved price made by the fourth respondent after making false statement in the letter was accepted without giving any opportunity to the appellant either to raise the bid or to point out the falsity of the allegations made by the fourth respondent in the letter as also the inadequacy of his bid. The appellant suffered an unfair treatment by the State in discharging its administrative functions thereby violating the fundamental principle of fairplay in action. When he gave the highest bid, he could not have been expected to raise his own bid in the absence of a competitor. Any expectation to the contrary betrays a woeful lack of knowledge of auction process. And then some one surreptitiously by a secret offer scored a march over him. No opportunity was given to him either to raise the bid or to controvert and correct the erroneous statement."

"14.What happened in this case must open the eyes both of the Government as well as the people at large. How an uncontrolled exercise of

> executive power to deal with socialist property in which entire community's interest was sacrificed so as to cause huge loss to the public exchequer would have gone unnoticed but for the vigilance of the appellant who no doubt is not altruistic in its approach but its business interests goaded it to expose the unsavoury deal. ....."
>
> "19.Apart from various considerations herein examined if any other view is taken in the facts and circumstances of this case, it may provide a classic example of ostrich burying its face in sand and declining to see the reality."

Mr. Sandeep Kumar learned counsel has appeared on behalf of respondent no. 6 and has contested the writ application by supporting the ground raised by the railways in their counter affidavit. In the midst of the hearing respondent no. 6 made a submission that she is willing to match the offer given by the petitioner for the first year and is also willing to pay the differential amount of all the first, second and third year on the basis of the said matching offer. This submission was made by respondent no. 6 to avoid any argument alleging loss of revenue to the railways which may be taken against the public interest. An affidavit has been submitted by respondent no. 6 stating that the respondent no. 6 is ready to match the offer, as stated above.

In response to the said affidavit of respondent no. 6 now the petitioner has made a statement on oath that she is ready to offer more than Rupees 22 Lakhs. The railways have filed an affidavit that they accept the offer which is being made by respondent n. 6 because it is in the interest of the railways. It has also been disclosed that after the tender was given to respondent no. 6 the amount offered was negotiated with her and it was enhanced from Rs. 21,00,500/- to 21,51,000/-.

In the aforementioned background of the facts and circumstances this court would proceed to consider the matter.

<u>Consideration</u>

The bone of contention in the present writ application is one of the clauses of the tender notice (Annexure '1') which reads as under:

> "(iii) आय प्रमाण पत्र- वार्षिक आय पत्र जो अंचलाधिकारी / एसडीओ / एडीएम / डीएम स्तर से जारी होना चाहिये जिसमें आय के स्त्रोंत का उल्लेख हो । वार्षिक आय आरक्षित मुल्य का दस प्रतिशत या न्यूनतम पचास हजार दोनों में जो अधिक हो मान्य होगा । यह प्रमाण पत्र निविदा सूचना जारी होने की तिथि से एक वर्ष से अधिक पुराना न हो ।

संस्था की स्थिति में संस्था का ऑडिटेड बैलेंससीट संलग्न करना होगा जिसमें आय का उपरोक्त मानक ही रहेगा ।"

It would be relevant to reproduce the table as contained in paragraph '3' of the tender notice showing the reserve prices fixed for one year and three years and then the amount of Beyana (Earnest Money Deposit). The table provided in paragraph '3' as under:-

<table>
<tr><th>क्रं सं.</th><th>पार्किगं ,स्टैण्ड का नाम / स्थान</th><th>स्टैण्ड में पार्क किये जाने वाले वाहन के प्रकार</th><th>पार्किंग स्टैण्ड का क्षेत्रफल (वर्गमीटर)</th><th>प्रथम वर्ष हेतु आरक्षित मूल्य (रू में)</th><th>तीन वर्षो हेतु मूल्य (रू में)</th><th>निविदा प्रपत्र का मूल्य (रू में)</th><th>बयाना की राशि (रू में)</th></tr>
<tr><td rowspan="4">01</td><td>दरभंगा (ए1)</td><td rowspan="2">टैक्सी /मोटरकार /टेम्पू</td><td>1100.00</td><td>1713412</td><td>5671393</td><td>5000</td><td>567139</td></tr>
<tr><td>पूणियॉ कोर्ट (ई)</td><td>500.00</td><td>144540</td><td>478427</td><td>1000</td><td>47843</td></tr>
<tr><td>दरभंगा (ए1)</td><td rowspan="2">साईकिल/ स्कूटर मोटर/ साईकिल</td><td>570.83</td><td>884653</td><td>2928201</td><td>3000</td><td>292820</td></tr>
<tr><td>पूणियॉ कोर्ट (ई)</td><td>150</td><td>57670</td><td>190888</td><td>1000</td><td>19089</td></tr>
</table>

The petitioner has submitted income certificate of Rs. 4,31,491/- which is more than 10% of the reserved price of the first year i.e. Rs. 17,13,412/-, whereas according to the respondents, the income certificate should have been for 10% of the reserved price of three years i.e. Rs. 5,67,139/-.

A perusal of the other terms and conditions of the tender notice would show that the tenderer/employer has reserved it's right to reject an offer even if the same is found to be the highest. This may be done if the tenderer has not submitted all the required documents or has not submitted the required Beyana/Earnest Money Deposit (in short 'EMD'). If a tenderer is declared successful then he would be required to deposit a further 5% of the tender amount in form of bank guarantee, FDR, DD or cash after adjustment of the Beyana amount. Those who were not successful had to get back their Beyana/EMD without any interest. In this case it is not in dispute that the petitioner had submitted the required Beyana/EMD. The only issue is with regard to income certificate.

A perusal of the relevant clause relating to submission of income certificate shows that it talks of annual income be equal to 10% of the reserved price or minimum Rs. 50,000/- whichever is higher. (emphasis supplied) To this court, clause (iii) is not very clear inasmuch as it does not say that the annual income be equal to 10% of the reserved price for three years.

A plain reading of the provision clearly demonstrates that a person applying for the work in question would read it in the manner it has been read by the petitioner. If this condition is read alongwith Note No. '1' it would appear that the employer i.e. the railways had also provided in the Note that the tenderer has to put the licence fee of the first year in the tender. It was then indicated that an increase by 10% every year will be there on the licence fee indicated by the tenderer for the first year.

Mr. P.K. Shahi, learned senior counsel has brought to the notice of this court a subsequent tender notice published by the Railways being Tender Notice No. C/536/ dated 29.05.2017 wherein in the column '*Kha*' Clause (iii) reads as under:-

> "(ख)(iii) आय प्रमाण पत्र- वार्षिक आय पत्र जो अंचलाधिकारी / एसडीओ / एडीएम / डीएम स्तर से जारी होना चाहिये जिसमें आय के स्त्रोंत का उल्लेख हो । **वार्शिक आय तीन वर्शो के आरक्षित मुल्य का दस प्रतिशत या न्यूनतम पचास हजार दोनों में जो अधिक हो मान्य होगा** । यह प्रमाण पत्र निविदा सूचना जारी होने की तिथि से एक वर्ष से अधिक पुराना न हो । संस्था की स्थिति में संस्था का ऑडिटेड बैलेंससीट संलग्न करना होगा जिसमें आय का उपरोक्त मानक ही रहेगा ।"

Learned senior counsel has pointed out and the court understands that it has been rightly argued by Mr.

Shahi, learned senior counsel that the infirmity in the earlier tender notice has been in fact conceded by the Railways inasmuch as they have subsequently amended Clause (iii) to make it clear that they require the annual income certificate equal to 10% of the reserved price for the three years.

Now coming to another aspect, it is not in dispute that the petitioner happened to be the highest tenderer. The Railways has mainly contested the writ application on the ground of non-submission of the income certificate fulfilling the criteria of the tender notice, however, this court is of the considered opinion that the plea with regard to the income certificate of the petitioner is not based on reasons and relevance which are the twin principles of our Constitution. If the tender notice did not provide for submission of annual certificate showing income equal to 10% of the reserved price of all the three years, the petitioner had no reason to understand the same and the Railways cannot make it a ground to reject the tender of the petitioner.

Further it has no relevance because it is evident that the Railways had asked for Beyana of Rs. 5,67,139/- to secure 10% of the reserved price of all the three years. The petitioner had submitted the same and thereby complied with the condition of deposit of Beyana. In these circumstances, there was no relevance of the annual income certificate equal to 10% of the reserved price of all the three years particularly when the Railways had not clearly provided the tenderers that they should submit income certificate taking the reserved price of all the three years. The decision of the Railways to reject the tender of the petitioner on this ground is totally arbitrary, unjust and improper.

At the same time, when this court finds that the respondent no. 6 had produced a income proof certificate issued by the Circle Officer which was issued on 14.02.2017 on the basis of an application submitted by respondent no. 6 showing her income tax return for the assessment year 2016-17, two things are to be noticed at this stage. Firstly, the petitioner has brought on record Annexure '9' to show that as per income certificate No. 1/17/00123 dated 14.02.2017, the respondent no. 6 had an annual income of Rs. 80,000/- only. Annexure '9' has been issued by the Circle Officer. It appears that she filed a return in ITR-V for the assessment year 2016-17 and the acknowledgment available on the record with the second supplementary affidavit of the petitioner shows that respondent no. 6 had submitted the return without any signature on 11.02.2017. This return was invalidated, but on the basis of this the Circle Officer had issued another income certificate on 14.02.2017 itself showing her income from all sources at Rs. 5,71,490/-. When the petitioner brought to the notice of the Circle Officer that he had issued a income certificate on the basis of an invalidated return, he issued a show cause notice to respondent no. 6 vide Annexure '14' to the second supplementary affidavit of the petitioner and thereafter vide Memo No. 1155 dated 30.06.2018 (Annexure '15') the Circle Officer cancelled the income certificate. This shows that from 11.02.2017 i.e. the date of filing till the date of cancellation on 30.06.2018 the return of the respondent no. 6 continued to remain under 'invalidated condition'. Respondent no. 6 has brought on record letter no. 100 dated 02.03.2019 by which the Circle Officer, Sadar Darbhanga has now communicated to the

Railways that as per information received from the respondent no. 6 vide her application dated 22.11.2018, she had taken action for validation of the return, therefore, the Circle Officer had taken a view to maintain the income certificate issued to the petitioner earlier.

In course of hearing of the writ application, however, nothing has been brought on record on behalf of the respondent no. 6 to show that what action was taken by her to validate the return and even if that action was taken on or about 22.11.2018 that would alone be a basis for the Circle Officer to issue letter dated 23.01.2019. This court is not at all happy with the manner in which the Circle Officer has gone on issuing income certificate one after another, firstly, for Rs. 80,000/- annual income, then for Rs. 5,71,490/- and then cancellation and stay.

The tender notice in this case was issued on 09.02.2017. The tender was to be submitted latest by 28.03.2017 and according to the tender condition the income certificate should not have been more than one year old from the date of issuance of tender notice. In case of an institution the tenderer was required to submit audited balance sheet of the same. In this case after issuance of tender notice the respondent no. 6 submitted an income tax return showing her annual income at Rs. 5,71,490/-. Apparently respondent no.6 had filed her return for financial year 2015-2016 and assessment year 2016-2017 not within the normally prescribed period by the department and it was filed only after issuance of the tender notice to show her return adequately to match the requirement of tender notice. This return was not signed by respondent no. 6 and without looking into the same that the return was invalidated by the Income Tax Department, the Circle Officer had issued an income certificate to respondent no. 6. This court has already discussed the manner in which the Circle Officer has acted at different stages at the instance of respondent no. 6 in satisfying the criteria of the tender notice. Surprisingly, the Railways accepted the income certificate of respondent no. 6 without being fully satisfied with the correctness of the certificates particularly when on the same date i.e. 14.02.2017 the Circle Officer had issued an income certificate of respondent no. 6 (Annexure '9') showing her annual income of Rs. 80,000/-. This is where this court will come to a conclusion that on the one hand the tender of the petitioner has been rejected arbitrarily without any relevance and reason and at the same time respondent no. '6' has been shown favour by accepting her income certificate on the basis of a return which remained under invalidated condition right from the day of it's filing till the date of it's cancellation by the Circle Officer on 30.06.2018 and even till the date of last communication of the Circle Officer as on 23.01.2019, there was no material to show that the return of respondent no. 6 had been validated. Surprisingly now the Circle Officer says that his earlier certificate is maintained until action is taken by the Income Tax Department on the request of respondent no. 6 to validate her return.

In the opinion of this court, even if the return is validated at this stage, the fact remains that Railways has allowed respondent no. 6 to get declared successful on the basis of an income certificate provided to the respondent no. 6 by the Circle Officer on the basis of an invalidated return. This court must record that the manner in which the Circle Officer has issued two different income certificates to respondent no. 6 require some attention of the District Magistrate, Darbhanga and appropriate steps would be required to be taken by him with in accordance with law. The first income certificate of respondent no. 6 enclosed with the supplementary affidavit of the petitioner shows her application no. 040212131041700124 and certificate no. 1/17/00123 dated 14.02.2017 showing a total annual income of respondent no. 6 at Rs. 80,000/- only and the subsequent income certificate issued to her also shows the same application and certificate numbers and the date. The invalidated return of respondent no. 6 shows her income from business at Rs. 3,19,860/- and agricultural income at Rs. 2,51,630/- making the total annual income at Rs. 5,71,490/- which is an attempt to satisfy the income criteria of the tender notice. It is an apparent act of creation of income certificate based on invalidated return with the help of the office of the Circle Officer, to participate in the tender. This court cannot remain oblivious to this act of a public officer issuing two different income certificates under same application number to the same person. The District Magistrate, Darbhanga is thus directed to constitute an internal inquiry in accordance with law in the matter which should be completed within ninety days from today, and, in case, it is found that the Circle Officer has done this act for any extraneous consideration, the matter be referred to an appropriate statutory agency for investigation and other action without any delay.

In the counter affidavit Railways has tried to raise an issue with regard to the title of the petitioner as according to the Railways her education certificate is in the name of Rekha Kumari whereas she is now writing herself in the income certificate, residential certificate, character certificate and PAN Card as Rekha Purbey.

In the opinion of this court, the petitioner has rightly submitted that after her marriage the surname of her husband has been added to her name which is the normal custom. Moreover, this court finds that at this stage the plea taken by the Railways on this score is a mere pretext and this litigant approach of the Railways is not well appreciated. The arbitrary decision making by the Railways has caused loss of revenue as well to the Railways.

The respondent no. 6 has come out with an offer of Rupees 22 Lakhs to match the offer of the petitioner. The petitioner has filed an affidavit that she is willing to pay more than Rupees 22 Lakhs. This court is not impressed with the submission of respondent no. 6 offering to match the bid of the petitioner. This court is of the considered opinion that the award of tender to respondent no. 6 is result of an arbitrary decision of the Railways and it is a favour shown to respondent no. 6, therefore, the impugned award of tender to respondent no. 6 is hereby set aside.

The tender was for a period of three years and the work order is valid only till 05.07.2020 meaning thereby that now only 8 ½ months have been left. In the present circumstance, the Railways is directed to either go for a fresh tender for the aforesaid parking space in terms of it’s policy and finalise the same within 30 days from today. In the meantime, respondent no. 6 may, as a stop-gap arrangement, be allowed to continue for 30 days or in case Railway finds itself unable to initiate and finalise fresh tender within the aforesaid period, the petitioner shall be considered within the same period to award the work for the remaining period. In no case, the respondent no. 6 shall be allowed to continue after 30 days from today. The respondent no. 6 shall be obliged to pay the difference amount of the tender taking the bid amount at Rupees 22 Lakhs for the first year which will increase for the second year and proportionately for work period of third year in terms of tender conditions. The respondent no. 6 shall pay the differential amount within one month from the date of this order.

The petitioner shall in case of award of work to her for the remaining period would pay the proportionate amount of bid applicable for third year.

The writ application as well as Interlocutory Application stand allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	17.07.2019
Uploading Date	20.08.2019
Transmission Date	