

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22336 of 2018

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M/s R. S. Construction, registered partnership firm having its office at Kalisthan Chowk, P.S. - Begusarai Town, District – Begusarai, through one of its partner namely Rajeev Kumar, S/o Sri Rameshwar Prasad Singh, resident of Village + Post- Sihma, Police Station- Matihani, District- Begusarai.

... .. Petitioner

Versus

1. The State Of Bihar through District Magistrate, Khagaria.
2. The District Magistrate, Khagaria.
3. The District Magistrate-cum- Chairman, District Transport Committee, Khagaria.
4. The Deputy Development Commissioner, Khagaria.
5. The Additional Collector, Khagaria.
6. The District Transport Officer, Khagaria.
7. Bihar State Food and Civil Supply Corporation Ltd., Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna.
8. The Managing Director, Bihar State Food and Civil Supply Corporation Ltd., Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna.
9. The District Manager, Bihar State Food and Civil Supply Corporation Ltd., Khagaria.
10. Sri Vikash Kumar, son of Sri Srinath Singh, resident of Village- Ramdaouli, District- Vaishali Bihar, Pin- 844503.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr.Sanjeet Kumar, Advocate
For the Respondent/s	:	Mr.Shailendra Kr. Singh, Advocate Mr. Shamim Hoda, Advocate

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

Date : 27-03-2019

This writ application has been preferred with prayer to quash the proceeding dated 03.11.2018 as contained in Annexure-P/1 to the writ application by which the objection



filed by the petitioner against private respondent no. 10 in connection with tender notice bearing NIT No. 825 dated 11.07.2018 issued by Bihar State Food & Civil Supplies Corporation Limited (hereinafter referred to as the 'Corporation'), Khagaria has been rejected. The NIT in question has been issued by the Corporation for appointment of one Transporter cum Handling Contractor (Main) and four Transporter cum Handling and Delivering Contractor (DSD) in the revenue district of Khagaria of the Corporation.

It is the case of the petitioner that in terms of Clause-8(ii) of the NIT, the certificate of immovable property worth not less than Rs. 25 Lakhs issued by the competent authority not below the rank of S.D.O./C.O. was required to be submitted but the private respondent has submitted the certificate of immovable property which does not contain any issue number.

Further contention of the petitioner is that as per Clause-8(iii) of the NIT, affidavit by the bidder has to be submitted, sworn before Executive Magistrate. The respondent no. 10 has submitted affidavit sworn before the Notary Public, therefore technical bid of respondent no. 10 was liable to be rejected.

The petitioner has also contended before this court



that in terms of sub-clause-(ix) of Clause 10 the NIT the respondent had not submitted the required documents duly certified by the District Transport Officer of the concerned district. It is submitted that the objection of the petitioner has been rejected by the tender committee without appreciating that Clause-8(iii) as well as sub-clause (ix) of Clause 10 are the mandatory conditions of NIT which were required to be complied with failing which the technical bid was liable to be rejected.

By filing an Interlocutory Application the petitioner has informed this court that the District Transport Committee headed by the District Magistrate has considered the financial bids and found that respondent no. 10 had given the lowest rate, therefore he has been finally selected and recommended for appointment as Transport cum Handling Contractor (Main). An agreement has also been executed accordingly with respondent no. 10.

By filing I.A. No. 8782/2018, petitioner has sought to amend the writ application with a prayer to quash the letter no. 1292 dated 08.11.2018 by which the petitioner and one other participant had been directed to be present in the opening of the financial bid of the tender in question.



Since the financial bid has already been opened, in the opinion of this court, I.A. No. 8782/2018 has become infructuous. I.A. No. 8945/2018 has been filed to quash the subsequent decision of selection of the respondent no. 10.

A counter affidavit has been filed on behalf of respondent no. 7 to 9 sworn by the District Manager, State Food Corporation. In the counter affidavit, it is submitted that the financial bids of three bidders were opened and respondent no. 10 being the lowest rate being L-1 among all the three bidders has been finally selected. A complete copy of NIT has been brought on record as Annexure-9 with the supplementary affidavit filed on behalf of the petitioner and it has been pointed out that Clause-10 of the NIT stipulates the disqualification conditions. Clause-10(xii) prescribes a condition that tender papers not accompanied with all the schedules/annexures, document as detailed in check list (Annexure), the same shall be liable to be rejected.

It is stated in paragraph-8 of the supplementary affidavit filed by the petitioner that the respondent no. 10 has not met the mandatory conditions which are enlisted hereunder:

- a. The Private respondent no. 10 submitted the details of the 10 trucks, owned by him.*
- b. The road permit submitted in connection with*



Truck having registered number BEQ-9619, is not certified by the concerned District Transport Officer. Insurance, pollution and fitness certificate of the said truck is not counter signed by the concerned MVI.

c. The pollution certificate in connection with Truck having registered number BHA-4317 is not counter signed by the concerned MVI.

d. The pollution certificate in connection with Truck having registered number BR-33A-7545 is not counter signed by the concerned MVI.

e. The pollution certificate in connection with Truck having registered number BR-33A-6012 is not counter signed by the concerned MVI.

f. The road permit submitted in connection with Truck having registered number BEA-2619, is not certified by the concerned District Transport Officer. Insurance, pollution and fitness certificate of the said truck is not counter signed by the concerned MVI.

g. The road permit submitted in connection with Truck having registered number BPL-9622, is not certified by the concerned District Transport Officer. Insurance, pollution and fitness certificate of the said truck is not counter signed by the concerned MVI.

h. The road permit submitted in connection with Truck having registered number JH-09B-1639, is not certified by the concerned District Transport Officer. Insurance, pollution and fitness certificate of the said truck is not counter signed by the concerned MVI.



i. The road permit submitted in connection with Truck having registered number BR-1G-5734, is not certified by the concerned District Transport Officer. Insurance, pollution and fitness certificate of the said truck is not counter signed by the concerned MVI.

Apart from the aforesaid shortcomings the petitioner has also pointed out the following deficiencies in the tender submitted by the respondent no. 10 in paragraph-9 of the writ application which reads as under:

“a. The affidavit submitted by the private respondent no. 10 is not affidavited by the Executive Magistrate but the said affidavit has been sworn before the notary public, which is not in consonance of the mandatory condition contained in Clause-8(iii) of the notice inviting tender.

b. The respondent no. 10 has not disclosed the names of all the family members, as stipulated in mandatory Clause-8(xiii) with the tender documents.

c. The certificate of immovable property, submitted by the private respondent no. 10 is not a certificate issued by the competent authority. A bare perusal of the same would reveal that the same is an enquiry report in connection with the land owned by the ancestors of the respondent no. 10, which is addressed to the Circle Officer, Biddupur. This is further Strengthen by this fact



that the said certificate neither contain letter number nor it contain issue number. Apart from the said, the defective certificate (enquiry report) submitted by respondent no. 10 says that the total value of land fallen in his share is Rs. 21,12,500/-, which is less than what is required in Clause-8(ii) of the notice inviting tender. Clause-8(ii) clearly state that “Certificate of immovable property worth not less than Rs. 25 (twenty five) lakhs issued by the competent authority not less than the rank of SDO/CO.”

Therefore, the certificate of immovable property submitted by the respondent no. 10, disqualifies him from the technical bid itself, even if the said certificate is taken to be a certificate.”

When the matter was heard on the last date on 05.03.2019, this court passed the following order:

“Parties have argued the matter at length ultimately the matter has boiled down to a specific contention of the learned counsel representing the respondent no. 10 that in fact the respondent no. 10 had uploaded all the documents which are mentioned under paragraph-(ix) of the notice inviting tender dated 11.07.2018. The relevant conditions reads as under:

“(ix) Self-attested photocopy of Owner book of 10 trucks 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 of trucks, 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 40 (Forty) such trucks for every trucks separately.”

Learned counsel for the petitioner as well as learned counsel representing the Bihar State Food & Civil Supplies Corporation are unanimous in their submission that so far as the nature of conditions prescribed as aforesaid is concerned, it is a mandatory condition. It is not even being seriously disputed by learned counsel representing the respondent no. 10.

The contention of learned counsel for the petitioner is that respondent no. 10 had not uploaded all the documents with his bid, still he was declared technically qualified by rejecting the objection of the petitioner. The minute of the Committee as contained in Annexure-A to the counter affidavit filed on behalf of respondent nos. 7 to 9 has been placed before this court wherein while giving reasons rejecting the objection of the petitioner, in paragraph-2, the Tender Committee has recorded as under:

“2. निविदादाता द्वारा समर्पित आपत्ति के कंडिका 2 से 10 तक में प्रकाशित NIT में निविदा रद्द शर्त के कंडिका 10 (I to XIII) बिन्दुओं के अन्तर्गत आपत्ति नहीं आता है। इसलिए श्री विकाश कुमार, निविदादाता (मुख्य) पर लगाये गये आपत्ति के आधार पर निविदा के आगे की कारवाई से वंचित नहीं किया जा सकता है। जहाँ तक वाहन के फीटनेश, प्रदुषण, टैक्स एवं इन्स्युरेशन तथा वाहन का भौतिक सत्यापन की बात रही है, इस संबंध में समिति द्वारा निर्णय लिया गया कि निविदा में चयनित



निविदादाता के द्वारा एकरारनामा के पूर्व सभी बिन्दुओं को जांच एवं वाहन का भौतिक सत्यापन करा लिया जायेगा।”

In paragraph-2 as contained in Annexure-A to the counter affidavit of respondent nos. 7 to 9 gives an impression that the fitness certificate, pollution certificate, tax-token and Insurance certificate as also physical verification of vehicles will be considered before execution of agreement. It is not clear in this paragraph as to whether these certificates were uploaded by the petitioner.

Let a categorical affidavit be brought on record both by respondent no. 10 as well as the Bihar State Food & Civil Supplies Corporation clarifying the aforesaid issues.

List this matter on 11th March, 2019 under the same heading.”

Pursuant to the aforesaid order a supplementary counter affidavit has been filed on behalf of respondent no. 9. It is the stand of respondent no. 9 that the respondent no. 10 has participated in the tender process by uploading all the documents. It is stated that he had submitted self-attested tax token, road permit, pollution certificate and insurance certificate.

Respondent no. 10 has also filed a supplementary counter affidavit in which it is submitted *inter alia* that as per sub-clause (viii) of Clause-10 of the NIT disqualification



condition as contained in Annexure-P/3 if the bidding proprietor/Karta of the HUF or any of the partner of the bidding firm has been convicted or punished by the court of law for the offence and sentenced to imprisonment for a period of three years or more such bidders will be ineligible. It is submitted that even in case of lodgment of F.I.R. in the matters relating to transportation, handling, pilferage, black-marketing etc. of food grains against a bidder or transporter he will incur ineligibility for purpose of taking part in bid process or continuing as a handling and transporting contractor. Submission is that the petitioner in the present case is an accused in Samastipur Sadar P.S. Case No. 265/2013 for the alleged act of black marketing of food-gains which has been suppressed from this court.

It is further submitted that in the rejoinder filed on behalf of the respondent no. 10 to the second supplementary affidavit of the petitioner that the respondent no. 10 had uploaded self-attested photocopies of owner book of ten trucks registered in his name duly attested by the District Transport Officer of the concerned district Begusarai and Samastipur respectively. The five vehicles are registered in the district of Patna and its owner book and tax token were attested by the District Transport Officer but the MVI at Patna had not



countersigned in the insurance and reasons said by him was insurance certificate was not issued by his office so he will not countersigned the same. It is further submitted that DTO Patna had refused to attest the road permit for the reason that he was not the permit issuing authority and it is the Transport Commissioner who is the road permit issuing authority.

It is further submitted that the condition mentioned in paragraph-‘9’ of the second supplementary counter affidavit is not mandatory in nature. The private respondent has claimed that he submitted the certificate of moveable properties of Rs. 21,12,500/- (It should be read as immovable properties). The value of certificate of 25 lakhs is not mandatory and it did not come under the disqualification clause.

Having heard learned senior counsel for the petitioner, learned counsel for the Corporation and learned counsel representing respondent no. 10 and on going through the records, I find that Clause-8 of the NIT provides that the technical bid must include as self-attested copies of the following documents:

- (i) Income tax return for last three years.*
- (ii) Certificate of immovable property worth not less than Rs. 25 (Twenty Five) Lakhs issued by the competent authority not less than the rank of SDO/CO. (Emphasis supplied)*



(iii) Affidavit by the bidder to the effect following used by Executive Magistrate.

(a) She/he/they have not been convicted by any court of law clearly specifying them no court of law has taken cognizance or FIR has been lodged against him/her/them or their family member/director/partner in any matter related to Transportation Handling, pilferage and Black marketing etc. of food grains.

(b) Neither she/he/they nor her/his/their family member has been banned or black listed or contract has been terminated before expiry of the contract or at any stage of the bidding by FCI/CWC/SWC/SFC or any government/quasi Government Organization for appointment of transport/carrier.

(c) She/he/they or their family members/director/partner are neither working transport-cum-handling agent engaged in transportation of food grain from FCI depot to SFC Godown in the same district.

(d) Neither she/he/they nor her/his/their family members/director/partner are license Holder of fair price shop as well as rice miller/flower mill owner or in business of food grain (eg. Rice & Wheat).

(e) No dues of the corporation are pending against her/him them or against her/his/their family members;

(f) She/he/they have neither been selected nor are working in more than one district.



(g) She/he/they will not create hurdle in transport of essential food grains by way of strike or any other mode.

Note : The above affidavit is to be furnished respectively by the proprietor, Karta, MD, all partners in respective cases of Proprietorship, HUF, Company and Partnership firm.

(iv) Affidavit by the family member/s or director or partners of the bidder to the effect that she/he/they as family member of bidder-cum-vehicle owners have no objection to the use of vehicle for transportation operations of the Corporation (if applicable).

(v) Self attested photocopies of Certificate of incorporation, the memorandum and Articles of Association along with self attested photocopy of the Resolution of the Company and in case of firm the self attested photo copy of the partnership deed.

(vi) Self attested photocopy of PAN number of the individual, HUF, company of the firm as the case may be.

(vii) Residential and character certificate issued by District Magistrate and Superintendent of Police respectively along with the self attested passport size photo and



Sample signature of bidder.

(viii) A Bank Draft of Rs. 3,00,000/- (Three Lakhs) Only as Earnest Money of any Nationalized Bank issued after the publication of the Tender Notice and drawn in favour of the District Manager of the District "Bihar State Food & Civil Supplies Corporation Ltd.

(ix) Self-attested photocopy of Owner book of 10 trucks 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 of trucks, pollution certificates and fitness certificates counter signed of 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 40 (Forty) such trucks for every trucks separately.

(x) An undertaking that he/she/they will not create hurdle in transport of essential food grains by way of strike or any other mode.

(xi) Statement of Bank account for last six months preceding the publication of Tender Call Notice.

(xii) Power of Attorney if the person signing



the tender is other than the partners or directors in respective cases of partnership and company or authorization letter in case of other persons than individual, or Karta of HUF There must be disclosure of the names of all the family members of bidder in case of an individual, by the karta in case of HUF, of all the partners in case of firm and of directors in case of company.

(xiii) A disclosure of the names of all the family members of bidder in case of an individual, by the karta in case of HUF, of all the partners in case of firm and of directors in case of company.”

Clause 10 provides the disqualification conditions according to sub-clause (ix) of Clause 10 “in case if any of the documents of the “technical bid” duly self-attested by the bidder/authorized person is not submitted in the technical bid, the tender will be rejected and the financial bid of the tender will not be open for further process.”

It is this sub-clause on which the petitioner is resting his argument to the effect that the private respondent having failed to submit all the documents which were required at the technical bid stage his tender was liable to be rejected. This court finds that the tender committee has considered the



objection of the petitioner. It is the stand of the respondent Corporation that as per Clause 10(xiii) the District Manager, SFC, Khagaria has verified all the documents and then the agreement has been executed with respondent no. 2 and work order has been issued. It is also the stand of the respondent no. 9 that the respondent no. 10 had participated in the tender process by uploading all the documents. Respondent no. 10 has also explained in his counter affidavit that private respondent had disclosed the names of family members as required issued by the *Sarpanch* which is legal and valid in the eye of law, a copy of the same has been obtained under R.T.I. and enclosed as Annexure-‘17’ to the second supplementary affidavit. This court finds that the certificate issued by Sarpanch contains the name of ancestors and brother of the Respondent no. 10. The name of wife, sons and daughter if any are not mentioned therein. It will have a consequence in the matter of calculation of the share of the private respondent no. 10 in the family property and consequent value thereof.

As regards the value of the certificate of immovable property, he had submitted a calculation sheet under signature of the Circle Officer showing value of his share of land at Rs. 21,12,500/- and the value of certificate of 25 Lakhs is not



mandatory as it would not come under the disqualification clause. While calculating the value of share of land it is not mentioned whether it is 'HUF' share or individual share of respondent no. 10.

In the facts and circumstances placed before this court, I am of the considered opinion that so far as the submission of the petitioner that the private respondent had not submitted self-attested document as per Clause-8 of the NIT, in so far as it relates to Clause 8(iii), (iv) and (ix) are concerned those are not well substantiated. Respondent no. 9 has submitted affidavit sworn before Notary Public and has also uploaded self-attested copies of owner books and other documents. He has satisfactorily explained as to why road permits and insurance documents were not countersigned by D.T.O. and M.V.I. at Patna. However, this much is apparent from the pleadings available on the record that respondent no. 10 has not submitted certificate of immovable property worth not less than Rs. 25 Lakhs issued by the competent authority not less than the rank of SDO/CO in terms of Clause-8(ii) in the nature of the conditions essential to qualify at the technical bid stage. Sub-clause (ii) of Clause-8 is evidently mandatory in nature as it contains the word 'worth not less than Rs. 25 Lakhs' followed



by the words “issued by the competent authority not less than the rank of SDO/CO”. This makes me to believe that in order to qualify at a technical bid stage the participating contractor would be obliged to produce the certificate as sought for under Clause-8(ii). In his rejoinder the private respondent has stated that he had submitted the certificate of movable property (it should be immovable property) of Rs. 21,12,500/- and the value of certificate of Rs. 25 lakhs is not mandatory. This court is not ready to accept the submission of private respondent. The condition as envisaged under Clause-8(ii) of the NIT seems to have got some reasons for its incorporation in the NIT. The NIT has been floated for appointment of an agency to carry out storage and transport of food-grains and other civil supply items meant for distribution through the Targeted Public Distribution System (TPDS). It involves massive movement of food-grain intra (within) district and inter-district and therefore the purpose behind incorporation of the clause such as Clause-8(ii) is that a transporter who participates for the appointment as Transportation cum Handling and Delivering Contractor must be in possession of immovable property worth not less than 25 lakhs. It has got a purpose and therefore this court is of the considered opinion that the District Transport Committee while



scrutinizing the technical bid of the participants could not have rejected the objection of the petitioner on this ground without giving a proper thinking and reasoning in it's order. Admittedly, the private respondent no. 10 has not submitted a certificate of immovable property worth not less than Rs. 25 lakhs. The Committee had to keep in mind that because of this condition in NIT many other willing contractors who may not have the immovable property worth Rs. 25 lakhs may not have participated in tender. In this situation, I have no hesitation in holding that sub-clause (ix) of Clause 10 of N.I.T. gets attracted. On this ground alone, this court is willing to hold and declare that the objection preferred by the petitioner before the technical committee has not been considered properly and it has been rejected without giving any reasons, thus it is liable to be quashed.

For the aforesaid reason, the decision of the tender committee/District Transport Committee contained in the minute of the meeting held on 13.09.2018 as contained in Memo No. 1235 dated 03.11.2018 (Annexure-P/1) in so far as it relates to rejection of the objection submitted by the petitioner as to non compliance of condition no. 8(ii) of the N.I.T. stands quashed.



Consequent upon the setting aside of the decision of the District Transport Committee as contained in Annexure-P/1 to the extent indicated above, all subsequent action including the execution of agreement with the respondent no. 10 is liable to be quashed; I.A. No. 8945/2018 is allowed; the District Transport Committee is at liberty to take a fresh decision including to go for re-tender and complete the whole process of selection afresh within 45 days from the date of receipt/production of a copy of this order.

At this stage learned counsel for the Corporation has apprised this court about the hardship which may be faced by the Corporation in sending supplies of food-grains for distribution under the Targeted Public Distribution System in case private respondent is restrained from carrying on the work, this court is making it clear that in case the Corporation is not having any alternative arrangement in accordance with its present policy, only then the Corporation may continue to take work from respondent no. 10 for a maximum period of 45 days awaiting fresh selection by the tender committee. If the tender committee fails to complete selection afresh within the aforesaid period, it will not be open for the Corporation to continue with the arrangement with respondent no. 10 anymore.



In case the District Transport Committee goes for re-tender it will be open to the parties to participate in terms of N.I.T.

This writ application stands disposed of in terms stated here-in-above.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	26.03.2019
Uploading Date	27.03.2019
Transmission Date	

