

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21475 of 2018

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Nishi Kant Son of Prem Krishn Resident of More House Rajendra Nagar
Road No.01, P.O.-Rajendra Nagar, P.S.-Rajendra Nagar, District-Patna, PIN-
800016

... .. Petitioner/s

Versus

1. The Divisional Railway Manager, East Central Railway, Danapur.
2. The Senior Divisional Railway Manager Commercial, East Central Railway, Danapur.
3. The Divisional Railway Manager Commercial, East Central Railway, Danapur.
4. The Assistant Railway Manager Commercial, East Central Railway, Danapur.
5. Amitesh Son of Balmiki Prasad Sharma Resident of B-24, BISCOMAUN Colony, P.O.-Gulzarbagh, P.S.-Alamganj, District-Patna, PIN-800007, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sandip Kumar, Adv. Mr. Apurva Kumar, Adv. Mr. Kumar Vikram, Adv. Mr. Avinash Chandra, Adv.
For the Railways	:	Mr. Siddhartha Prasad, Adv.
For the Respondent no.5	:	Mr. Mritunjay Kumar, Adv. Mr. Dinkar Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 14-08-2019 Heard learned counsel for the petitioner and learned
counsel for the Railways.

The only ground on which the writ petitioner has assailed the award of work to the respondent no.5 is that he had not signed on each and every page of the tender documents in terms of clause 8 of the tender conditions.

Mr. Sandip Kumar, learned counsel for the petitioner has taken this Court through the method of tendering provided



in the tender documents and submits that the tenor of the language used therein would show that those are essential conditions of the tender and if the essential condition has not been fulfilled, the employer could not have accepted the tender of respondent no.5.

On the other hand Mr. Siddhartha Prasad, learned counsel for the Railways submits that essentiality of a condition should be left to be considered by the employer. He has further submitted that the tender committee has given reasons for accepting the bid of the respondent no.5 which shows that the respondent no.5 was a highest bidder and not signing on each and every page of the tender document was found to be unintentional.

Mr. Dinkar Kumar, learned counsel appears for respondent no.5 and has opposed the writ application by endorsing the submissions of Mr. Siddhartha Prasad, learned counsel for the Railways.

In the given facts and circumstances of the case, this Court finds no reason to set aside the impugned order and interfere with the award of tender to respondent no.5.

It is well settled in a catena of decisions that essentiality of conditions be left to be decided by the employer and unless it is shown that the employer has not applied his



discretion judiciously and thereby has not provided a level playing field to all the tenderers, the Court may take a view against him. It is also well settled that in certain circumstance the employer may to some extent relax the essential condition. It is however again to allow all the tenderers the same level playing field.

In this case there is no issue that by accepting the tender of respondent no.5 simultaneously for the same reason any other tender was rejected. This being the position, this Court finds no reason to interfere with the impugned order.

This writ application is dismissed.

(Rajeev Ranjan Prasad, J)

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