

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23201 of 2019

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1. Lav Kumar Mishra, aged about 29 years, Son of Avdha Kumar Mishra, Resident of Pariouna, P.S.- Pariouna, District- Nalanda.
 2. Janki Prasad, aged about 51 years, Son of Shri Chand Prasad, Resident of near Samudayiak Bhawan, Ibrahimpur, Meyar, Musepur, P.S.- Nalanda, District- Nalanda.
 3. Shree Ram Kumar, aged about 28 years, Son of Ram Narayan Sah, Resident of Bidupur, P.S.- Bidupur, District Vaishali (Hajipur).

... .. Petitioner/s

Versus

1. The Principal Secretary, Food and Consumer Protection Department, Bihar at Patna.
2. The Bihar State Food and Civil Supplies Cooperation through the Managing Director, Bihar at Patna.
3. The Managing Director, Bihar State Food and Civil Supplies Cooperation, Bihar at Patna.
4. The District Magistrate-cum-Chairman, District Transport Committee, Saran (Chhapra), District- Saran (Chapra).
5. The District Development Commissioner-cum-Deputy Chairman, Transport Committee, Saran (Chapra), District- Saran (Chapra).
6. District Transport Officer-cum-Member, District Transport Committee, Saran (Chapra), District- Saran (Chapra).
7. The Additional Collector-cum-Member, District Transport Committee, Saran Chapra, District- Chapra.
8. The District Manager-cum-Member Secretary, District Transport Committee, Saran Chapra, District- Chapra.
9. The District Manager, Bihar State Food and Civil Supplies Cooperation, Saran, Chapra, District-Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.



Mr. Sumeet Kumar Singh, Adv.

Mr. Satyendra Prasad Singh, Adv.

For the Respondent/s : Mr. Sanjay Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
Date : 10-12-2019

Heard Mr. P.K. Shahi, learned Senior Advocate for the petitioners and Mr. Sanjay Prasad, learned Advocate for the respondent/Bihar State Food and Civil Supplies Corporation (*in short the Corporation*).

2. The petitioners are aggrieved by the decision of the District Transport Committee, withdrawing the Notice Inviting Tender (*NIT for short*) for selection/empanelment of transporters for main as well as door-to-step delivery on the ground that only one of the contenders excluding the petitioners remained in the fray.

3. It has been urged on behalf of the petitioners that rejection of the technical bids of the petitioners is arbitrary and in derogation of the requirement under the NIT in question.



4. One of the conditions for disqualification of a tenderer is that he ought not to have been selected or should have been participating in similar kind of expression of interest in any other district. The petitioners claim that they are not working as transporters in any similar scheme floated by the respondent/Corporation. However, on a complaint by someone, it was found that the vehicles of petitioner Nos. 2 and 3 were being used in such contract with other empanelled contractor. The vehicles of petitioner Nos. 2 and 3 were found to have been taken on hire by other contractors.

5. Mr. Shahi, therefore, submits that this disqualification is only for ousting such tenderers who have been selected/empanelled against similar kind of expression of interest by the respondent/Corporation. Lending a vehicle on hire is no disqualification as any agreement of hire of vehicles could be terminated unilaterally. Apart from this, it has been submitted that if a person participates in a tender and is otherwise not



disqualified, it would not be proper to oust him for the only reason that he does not have vehicles ready for use in performance of tender.

6. The tender of petitioner No. 1 has been rejected on the sole ground of his having furnished papers in another district in the same kind of NIT, but which he withdrew before his papers could be evaluated in the technical bid.

7. These aspects were made known by the petitioners to the Committee deciding the issue, but the representations of the petitioners were arbitrarily rejected.

8. Only one person out of the bidders was held to be successful after the opening of the technical bid remain and therefore, according to the practice, it was not desirable to have a single tenderer in the fray.

9. Hence, a fresh NIT has been floated.

10. The arguments raised on behalf of the petitioners may, in the first blush, appear to have some substance, but looking at the entire scheme of the



tender and especially *Appendix* attached thereto, it becomes very clear that the disqualification is aimed at preventing any disruption/delay in the services. One of the requirements under the tender condition is to provide registration numbers of the vehicles which would be put into use for carrying out the contract work, if such bidders are empanelled and selected.

11. Even if the petitioners as bidders have not been empanelled in other districts, but their vehicles are under use as those have been taken on hire by other empanelled contractors, it gives rise to reasonable apprehension that the work may hamper if the vehicles would not be available for the same. That the hire agreement between the petitioners and the contractors who have taken the vehicles of the petitioners under hire could be terminated unilaterally, but it could lead to a situation which might create difficulties in future.

12. So far as the case of petitioner No. 1 is concerned, he has been non-suited in the technical bid for the reason that he had applied for being empanelled



in a different district with respect to similar kind of expression of interest. However, before his bid could be evaluated for technical assessment, he withdrew the same on 02.08.2019. This fact was brought to the notice of the Committee, but the Committee has arbitrarily, as has been argued, decided that mere filing of tender papers would amount to participation and prospective selection and, therefore, the disqualification clause would apply to the petitioner also.

13. There is some reservation of this Court in accepting the aforesaid logic of the Committee in ousting petitioner No. 1 in the technical bid on the ground of such disqualification. Mere filing of tender papers ought not to render him disqualified for being considered for further selection/empanelment.

14. However, before this matter could be taken up for admission, a fresh tender has been floated and some of the tenderers have also furnished their papers for their participation and eventual selection/empanelment.



15. Mr. Shahi submits that mere filing of tender papers by such tenderers in the fresh tender which has been floated would not give any vested right to them and it would not be necessary for the petitioners to implead them as party respondents, if such fresh tender were held to be unnecessary.

16. True it is that mere filing of tender papers would not give any vested right to any person to be impleaded as necessary party respondent in any litigation, if the floating of the fresh tender is under challenge, but considering the fact that the petitioners also do not have any vested right for being selected/empanelled and the selection process having been begun afresh by floating of the new tender, this Court would not at all disturb or forstall the process.

17. Since the ouster of petitioner No. 1 does not appear to be justified, this Court can only direct that even if the last date for applying or filing of the tender papers is over, but the technical bid has not opened, petitioner No. 1 be permitted to file his tender



papers and he be considered for selection/empanelment. For availing of the aforesaid opportunity, petitioner No. 1 would be required to file the tender papers within a period of 48 hours to be calculated from today at 4:15 P.M.

18. The aforesaid liberty does not extend to the petitioner Nos. 2 and 3, who, in the opinion of this Court, have justifiably been rejected in the technical bid assessment.

19. The purpose for floating the new tender is to have uninterrupted services of a contractor with listed automobiles/vehicles. The ground for ousting petitioner Nos. 2 and 3 is that their vehicles which have been listed in their proforma are being used in the same work, viz., main and door-to-step delivery for the respondent/Corporation, but in a different district. This consideration of the authorities that it might impact adversely the unimpeded supply of service cannot be faulted with. The author of the tender paper knows it best interests.



20. The decision of the authorities in cancelling the tender on the ground of only one successful bidder remaining in the fray, therefore, may not have been correct, but in the event of a fresh tender having been floated, this Court does not deem it appropriate to disturb that process. It is for this reason that an opportunity has been provided to petitioner No. 1 for filing the tender papers even though the last date may have crossed.

21. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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