

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6902 of 2020

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Ramanand Prasad, through its proprietor M/s Konark Printers, aged about 69 years, male, son of late Rewat Mahto, resident of 602, Rewti Apartment, Kajipur Quarter, Kajipur, Road No. 2, Arya Kumar Road Patna- 800004, P.O. Bankipore, P.S.- Kadamkuan, town and district at Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Finance Department, Government of Bihar, Patna.
3. The Chairman, Appellate Committee, Department of Industry, Government of Bihar.
4. The Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
5. The Managing Director, Bihar Rajya Pathya Pustak Prakashan Nigam Limited, Pathya Pustak Bhawan, Budha Marg, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Prasad, Advocate
		Mr. Vijay Vevek Jaiswal, Advocate
For the Respondent/s	:	Mr. Lalit Kishore (AG)
For the Corporation	:	Ms. Anukriti Jaipuriyar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 06-07-2020

Heard Mr. Ajay Prasad, Advocate for the petitioner, assisted by Mr. Vijay Vivek Jaiswal, Advocate; Mr. Ajay Kumar Rastogi, for the State; and Ms. Anukriti Jaipuriyar, for the Bihar State Text Book Corporation.

The present petition is for quashing of the Tender notice dated 29th of May, 2020 as well as the amended Tender notice dated 04.06.2020 issued by Bihar State Text Book



Publishing Corporation Limited on the ground that the eligibility criteria in the aforesaid notice has wrongly been fixed.

From the perusal of the eligibility criteria (Clause-d), it appears that a desirous applicant / bidder is required to have executed one single order contract of Rs. 25,00,000/- for participating for printing of one package. If the desirous bidder is interested in participating in more than one package, he ought to have work order credentials in multiple of the number of package.

The learned counsel for the petitioner submits that this is an onerous criterion which was never insisted upon in earlier Tenders and it is rather unreasonable that if a tenderer wishes to participate for more than one package, he asked for the experience and credentials for that many number of times the amount which has been fixed.

The learned counsel for the petitioner therefore submits that the eligibility criterion is unconscionable and cannot be sustained in the eyes of law.

He further submits that the Store Purchase Policy of 2002 nowhere fixes the monetary limit and therefore fixing this



limit as an essential eligibility criteria is not only a condition which prevents a start-up company as well as persons who do not have the experience of packaging for such monetary value from participating in the Tender. He therefore submits that the notice is bad in the eyes of law and should not be permitted to be acted upon.

The other argument of the learned counsel for the petitioner is that the representation of the petitioner after the amended notice has not yet been disposed off. He therefore submits that in any view of the matter, in view of Clause 2.11A of the Store Policy of 2002, he be permitted to represent / appeal against the aforesaid decision of the Tender authority.

As opposed to the aforesaid contentions, Ms. Anukriti Jaipuriyar, learned Advocate for the Bihar State Text Book Corporation Limited, has submitted that because a representation was made by the petitioner with respect to the eligibility criterion, the maximum ceiling of Rs. 50,00,000/- was reduced to Rs. 25,00,000/- for single package experience.



Apart from this, it has been submitted that the Clause 2.11A of the Store Purchase Policy, 2002 is not applicable in the case of the petitioner, as it allows a tenderer to appeal against the decision of the authority / department calling for tenders. This clause can be made use of only till the time the tender notice has not been acted upon.

She further submits that it is only on the representation of the petitioner that the eligibility criteria has been substantially reduced by virtue of an amendment in the Tender notice.

Apart from this, it has been submitted that the notice has already been acted upon and 17 participants were considered and the contract stands concluded against the successful candidates.

As such, Ms. Jaipuriyar submits that there is no reason for this Court to interfere in the matter.

After having heard the parties, this Court is of the view that the petitioner has not made out any case for interference. The Store Purchase Policy is only a recommendation of how the purchases are to be made.



Apart from this, the option of appealing against the calling of the tenders or issuing of notice for the tenders can be challenged and objections be made before such notice is acted upon. However, once a notice of tender has been acted upon, the aforesaid clause of the Store Purchase Policy, referred to by the petitioner, cannot be resorted to.

Apart from this, no interference can be done in a concluded contract.

The eligibility requirement which has been fixed does not appear to be unconscionable for the reason that if an applicant desires to participate for more than one packaging, he ought to have the experience of more than one packaging. There is nothing unusual or unconscionable about fixing the aforesaid criteria.

With respect to the conditions of tenders, the law is very clear. The Department or the authority issuing tender is the best person to know the requirement of the Department or company. Unless the criteria fixed is absolutely unreasonable and unconscionable, no interference is required to be made. A line of decisions of the Supreme Court have clarified that in



matters of tender, the wisdom of the authority issuing the tender has not to be lightly interfered with. The authority issuing the tender is the best persons to test as to what kind of concessionaire is required for the work.

The petition has no merit and accordingly it is dismissed.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	07.07.2020
Transmission Date	

