

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8323 of 2020

Suveer Kumar Pardeshi Son of Prem Kumar Pardeshi Resident of Jakariyapur, behind Krishna Niketan School, Dhanuki, P.S.- Agamkuan, District- Patna permanent Resident of Village Mahmadpur, Balwa, P.S.- Harnaut, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Food and Consumer Protection Department, Bihar at Patna.
2. Principal Secretary, Food and Consumer Protection Department, Bihar at Patna.
3. Bihar State Food and Civil Supplies Corporation Through its Managing Director, Bihar at Patna.
4. Managing Director Bihar State Food and Civil Supplies Corporation, Bihar at Patna.
5. District Transport Committee Through its Chairman, Nalanda District- Nalanda.
6. The District Magistrate- cum- Collector- cum- Chairman District Transport Committee, Nalanda District- Nalanda.
7. The Deputy Development Commissioner-cum- Deputy Chairman District Transport Committee, Nalanda.
8. District Manager Bihar State Food and Civil Supplies Corporation, Nalanda District- Nalanda.
9. District Transport Officer- cum- Member District Transport Committee, Nalanda District- Nalanda.
10. General Manager Public Distribution Food and Consumer Protection, Bihar at Patna.
11. Deputy General Manager Bihar State Civil Supplies Corporation, Bihar at Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Adv. Mr. Sumeet Kumar Singh, Adv. Mrs. Satakshi Sahay, Adv. Mr. Rajeev Ranjan, Adv.
For the BSFC	:	Mr. Shailendra Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 04-02-2021 Heard Mr. P.K. Shahi, learned senior counsel for the

petitioner and Mr. Shailendra Kumar Singh representing Bihar

State Food and Civil Supplies Corporation, Bihar, Patna.



2. The present writ application has been filed challenging the letter bearing No. 7673 dated 23.09.2020 (Annexure-P/9) issued by General Manager, Public Distribution, Bihar State Food and Civil Supplies Corporation to the District Magistrate, Nalanda by which the General Manager has informed the District Magistrate that the petitioner does not fulfill the criteria of eligibility as mentioned in NIT-CUM-SB document inasmuch as the petitioner is working as Transportation-cum-handling Contractor (Main) in the district of Giridih within the jurisdiction of State of Jharkhand.

3. Learned senior counsel for the petitioner submits that petitioner has been selected as Transportation-cum-Handling Contractor (Main) by the Chief District Transport Committee, Nalanda after deciding the technical and financial bid in his favour and by Annexure P-7, a letter was issued to the petitioner for entering into an agreement and for issuance of work order in his favour but Respondent No. 10, (General Manager) has issued a letter to the District Magistrate, Nalanda in relation to Clause 8 (iii) (f) of the NIT stating therein that the petitioner has been working as a Handling Contractor in another district and as such, he could not have participated in the tender process. Learned senior counsel further submits that Annexure-9



has been issued by an authority which has no jurisdiction and after verification and inquiry upon the complaint made against the petitioner, the petitioner has been selected as Handling Contractor and the said tender was decided in his favour, as would be evident from Annexure- P-6 which is the Minutes of meeting of District Transport Committee under the Chairmanship of District Magistrate, Nalanda. Petitioner being aggrieved by the action of respondent authority, particularly, respondent No. 8, (District Manager, Bihar State Food and Civil Supplies Corporation, Nalanda) of not entering into the agreement and not awarding the work order in his favour.

4. Learned senior counsel referring to Annexure, P-1 which is copy of NIT-cum-SB document dated 15.05.2020 advertised by the District Manager, Bihar State Food and Civil Supplies Corporation, Nalanda, submits that as per Clause-6 of the said NIT, a bidder may be an individual or proprietor of a company or partnership firm. Furthermore, a bidder participating in a tender for any kind of transportation work (Main & DSD) in a district cannot participate in a tender published under same notification for either kind of transportation work in any district.

5. Learned senior counsel also submits that by the



said notification, tender for selection of Transportation-cum-Handling Contractor (Main) has been issued for the district of Nalanda. Referring to Clause-8 (iii), it is next submitted on behalf of the petitioner that as per tender condition an affidavit was required to be filed by the tenderer/bidder stating therein that “She/he/they have neither been selected nor are working in more than one district”. Learned counsel further submits that from perusal of Clause-6 and 8(iii)(f), it would be manifest that the condition of NIT as mentioned therein clearly refers to the district for which NIT/notification was published but, at best, it could be referable to the district situated in the State of Bihar and not any other district situated all over India.

6. Learned counsel further submits that from perusal of format of the affidavit as attached to P-37, it would be evident that Clause-5 indicates the district situated in the State of Bihar and not beyond that. Learned counsel, thus, submits that impugned action of the respondent-authority of denying the work order and execution of agreement with the petitioner is completely *mala fide*, arbitrary and not sustainable in the eye of law inasmuch as petitioner fulfills all the conditions as prescribed in NIT.

7. On the other hand, learned counsel representing



Bihar State Food and Civil Supplies Corporation, Bihar, Patna submits that the present writ application does not have any merit as the decision of denying the work order and execution of agreement with the petitioner is valid inasmuch as the respondent-authority has issued NIT No. 687 dated 15.05.2020 for selection of contractors for two vacancies whereas three contractors were selected and two contractors are already working. Learned counsel next submits that insofar as the jurisdiction of the respondent, Managing Director is concerned, he has authority under Clause-11 (iv) (v), Sub-clause (xix), Sub-clause (iv), (v) of the NIT (relevant portion mentioned at page 32), that the decision of the Chairman-cum-Managing Director/Managing Director of the Corporation shall be final and binding.

8. Learned counsel referring to para-7 of the counter affidavit submits that petitioner was selected and appointed as Transportation and Handling Contractor in the district of Giridih, Jharkhand by Memo No. 1346 dated 23.07.2020. As such, in view of Clause-8(iii)(f) of the NIT, he is not liable to be awarded with the present contract.

9. In reply to the submissions made on behalf of respondents, learned senior counsel for the petitioner, referring



to minutes of the Tender Committee mentioned at P-53, (relevant Page 54) submits that District Transport Committee in view of COVID-19 Pandemic, has considered this aspect that a huge quantity of food-grains are required to be distributed and for which three contractors, i.e., Transportation-cum-handling Contractor are required to be selected. Learned senior counsel further submits that the submission advanced on behalf of Bihar State Food and Civil Supplies Corporation that there was only two vacancies, is not tenable in view of the fact that Tender Committee in its meeting has discussed in detail regarding the necessity to select three contractors. However, learned counsel submits that from the impugned letter (Annexure-P9), it would also be evident that lack of vacancy was not one of the grounds mentioned in the impugned order and it is a trite law that additional ground supplanting the reasons is not permissible in law.

10. I have heard learned counsel for the parties.

11. From perusal of special condition No. 6 and 8 of the NIT, it is clear that tenderer should not have a contract in any other district published under the same notification. It is admitted position that NIT has been issued in relation to the district of Nalanda only, and no selection of contractor was



intended in other district pursuant to the said NIT. However, even if Clause-6 is expanded to its logical end any other district is referable to the districts situated in State of Bihar and cannot by any stretch of imagination will include the districts situated out side Bihar.

12. It is admitted position that the petitioner has not been working as contractor in any other district of Bihar and he was awarded contract in the District of Giridih within the State of Jharkhand and the terms and condition of NIT does not bar the contractor from award of contract if he has been working in a district situated outside the State of Bihar. However, I also find that Clause-8 of the NIT is specific in relation to the district situated in the State of Bihar and not outside the State.

13. In view of the discussions held hereinabove and taking into consideration the materials on record and the conditions mentioned in NIT, I am of the considered view that impugned letter bearing No. 7673 dated 23.09.2020 (Annexure-P/9) is not sustainable in the facts and law and the same is, hereby quashed.

14. Accordingly, respondent No. 8, District Manager Bihar State Food and Civil Supplies Corporation, Nalanda District-Nalanda is directed to enter into the agreement with the petitioner within a period of one month and award work order in his favour in



accordance with law.

(Anil Kumar Sinha, J)

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