IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1121 of 2022

C.A. Sanjay K. Jha, Son of Late Dhirendra Jha, resident of 208, Jagat Trade Centre, Fraser Road, Patna- 800001, Bihar, President of Indian C.A. Association (ICCA).

... ... Petitioner/s

Versus

1. Smt. Leshi Singh, the Honble Minister Department of Food and Consumer Protection, Government of Bihar, Old Secretariat, Patna, Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Food and Civil Supply Department, Government of Bihar, New Secretariat, Patna.
4. The Chairman, Bihar State Food and Civil Supplies Corporation Limited, Khadya Bhawan, Daroga Prasad Rai Path, Patna 800001, Bihar.
5. The Managing Director, the Bihar State Food and Civil Supply Corporation, Khadya Bhawan, Daroga Rai Path, Patna - 800001, Bihar.
6. The Secretary, Finance Department, Government of Bihar, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sugandha Prasad, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, AAG-4

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

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3 07-02-2022 The petitioner has prayed for the following relief/s :-

a) Commanding the respondent authorities particularly respondent no. 4 and 5 as to why Request for proposals (RFP) uploaded on the web site of BSFCSCL.

Vis-a-vis NIT published on 12th November, 2021 and 14.12.2021 for selection of Chartered Accountant firms for accounting and financial management work, with respect to Bihar State Food and Civil Supplies Corporation Limited (hereinafter referred to as BSFCSCL), fixing eligible criteria viz

i. an engagement of professional firms.

ii. turnover criteria.

iii. number of partners.

iv. marking on the basis of experience of firms.

v. Marking on value of assignments undertaken

vi. Barring of firms to participate in all the cluster in spite of the fact that one cluster is allotted to one firm only.

vii. Selection on the basis of QCBS (Quality and Cost Based Selection) instead of LCS(Least Cost Selection) in spite of the fact that there is minimum qualification criteria of 70% in Technical

Evaluation only for the purpose of increasing the cost to exchequer.

viii. marking on resume of employees already engaged in corporation and

ix. bid security, are not in conformity with and contrary to the proviso of the rules framed under 131u, v, w, x, y, z, za, zb and zc of the Bihar Finance (amendment) Rules, 2005. and CVC guidelines, reeks malafide, not free from malice, well intended to sub serve the interest of big giant operating in the field of accounting and financial management outside Bihar with no appraisal of the ground reality of the chartered Accountant firms having its head office in Bihar.

Vis-a-vis with total negotiation of C.A. Firms/ participation in the tender bid, is not only arbitrary, but suffer from the vice of unjustness, unreasonableness and unfairness, as an attempt has been made to eliminate them by fixing turn over criteria of minimum of Rs. 50-70 Lakhs as the case may be, is not in consonance with the socio economic condition in Bihar. Hence, a direction needs to be given to the respondent authorities either to modify, notice, for inviting tender (NIT), published on 12.11.2021 and 14.12.2021 requires to be rescinded / cancelled contained in Annexure-1 Series in the interest of justice, equally and fair play and/or to alternatively re advertise NIT regarding selection of agency for accounting and financial management at BSFCSL afresh, keeping in view, parameter / criteria contemplated under rule 131 u, v, x, y, z, za, zb and zc of the Bihar Financial

(Amendment) Rule, 2005 and CVC guidelines requires to be revisited and adhere to.

Copies of tender (NIT) published on 12.11.2021 and 14.12.2021 are being annexed herewith and marked as **annexure-1 Series** to this writ petition.

b) For issuance of an appropriate writ(s), order (s) and direction(s) commanding the respondent authorities as to why full proof probe be not held by constituting a high power committee sans the detailed eligibility criteria omitted altogether in request for proposal (RFP)/ NIT uploaded in the tender column of http:\\sffc.bihar.gov.in is fraud in disguise with, no scheduled program uploaded in Annexure-1 regarding date/ time as reflected in S.N. 1 to 5 of the NIT, is hit by Article 14, 16 & 21 of the Constitution of India on the sheer premises of the settled rule reported in AIR 1987 SC 579 which reads as follows:-

"Colourable exercise of power, if any constitutional authority, does indirectly, what is not permitted to do directly. It would clear a fraud on the constitutional provision [DC Wadhwa Vs. State of Bihar J] In. as much as is also hit of the well settled philosophy "Justice must not be done but also seems to be done AIR 1984 SC 1268]"

c) For issuance of an appropriate writ(s)/ order (s) and direction(s) commanding the respondent authorities as to why in the said scenario the respondents State authorities may not be directed to prepare a "Standard operating procedure (SOP) to streamline the engagement of professional firms, consultancy firms, or consultants for specific job well defined in terms of content and time frame for its completion or outsource certain services/ turnover criteria be not excessive, no. of partners/ marking of the basis of experience of firms/ marking on resume of employees already engaged in corporation/ bid security be proportionate to the CVC guidelines and Bihar Financial Rules depending upon socio economic status of Bihar, etc."

d) For issuance of an appropriate writ(s)/ order (s) and direction(s) commanding the respondent authorities as to why submission of pre-bid query with respect to RFP (Request for proposal) dated 02.11.2021 for selection and appointment of accounting and financial management at BSFCSCL as sought for by the petitioner (CA Sanjay Kumar Jha, President, Indian Chartered Accountant Association and Chairman (CA Mukul), Patna Branch of ICCA, (CRC) and for short listing eligibility criteria for the CA/CMA firms be not given effect to have fair chance of participation of firms from Bihar requires to be perceived in the facts and circumstances whole floating RFP/ NIT should be transparent just and fair in all respectability as suggested and sought for in Annexure-2 series to this petition.

Photo copies of letter dated 02.11.2021 and 06.06.2021 are being annexed herewith and marked as **Annexure-2 Series** to this petition.

c) For issuance of an appropriate writ(s)/ order (s) and direction(s) commanding the respondent authorities as to why the reliefs sought for by the petitioner vide Para 2 regarding the terms incorporated at page no. 40-41 of RFP Clause (other condition, Point-vii) quoted as per new clause inserted RFP of 2021 i.e. BSFC may ask to the agency to provide additional man power as per the requirement of work. The professional fee for additional team will be given as per rates applicable (same category team leader, deputy team leader, cluster head and accountant etc.) at that of hiring of additional member according to the agreement same is void ab-initio, illegal ultra virus for the reason that this is pure service contract input cost of material is not involved of whole contract of bid is fixed as per contract of deliverables cost escalation in service contract is not possible for the firm deliverable. We are comparing the RFP proposal given by corporation in year 2017-2021 and the said terms of condition so imposed is a fraud in disguise to accommodate big giant in the trade of fixing selection criteria of agency for accounting and financial management be quashed and set aside as the said clause is superimposition and is in breach of Bihar Finance (Amendment) Rules, 2005 and the CVC guidelines.

f) For issuance of an appropriate writ(s)/ order (s) and direction(s) to the commanding the respondent authorities as to why in comparison between 2017 (State Level) and 2021 detailed marking scheme reflected in annexure-1 under the column criteria and weightage / maximum marks (point B,C and D) under Sl. No. 2 at page 20-21 for Cluster 1 and page 22-23 for Cluster 2 & 3) is wholly arbitrary, capricious and unjust enrichment to external consulting firms not primarily based in Bihar in as much as the value based marking with assignment is not only malafide but wholly unjust, unfair, and unreasonable to prevent and deprive of to the deserving stake holders of Bihar and to favour the big firm outside Bihar is highly discriminatory and suffer from the vice of ultra vires and unconstitutional and is in breach of Article 14,16 and 21 of Constitution of India.

g) For issuance of an appropriate writ(s)/ order (s) and direction(s) commanding the respondent authorities as to why the cost factor has not been considered as It is beyond our understanding that, the tender is targeted to the Firms of Chartered Accountants fulfilling minimum eligibility criteria and getting at least 700 marks in the Technical Evaluation. Meaning thereby firms which will qualify in this tender have more or less same quality. Hence, why go for QCBS instead of LCS as LCS shall have effect of reducing the cost for the organisation. It seems that the cost factor was not taken into consideration while floating this tender and for the purpose of inflating the rate so as the intended party should get the maximum benefit at the cost of exchequer.

h) For issuance of an appropriate writ(s)/ order (s) and direction(s) commanding the respondent authorities as to why the bidders are restricted to participate in only one cluster which totally arbitrary and curtailment of competition which has the effect of supporting and favouring the intended party and smacks of biased approach towards the stakeholders of Bihar firms.

i) For issuance of an appropriate writ(s)/ order (s) and direction(s) to the commanding the respondent authorities as to why the BSFCSCL after it has decided for the Outsourcing of the Accounting Work to the External

CA Firm has floated Six numbers of RFPs and by seeing and comparing all these RFPs, inspite of the fact that the scope of work are almost similar in all the RFPs but the criteria for selection are being changed in each RFPs and that is also arbitrarily. It seems that in each RFPs the Management of BSFCSCL has played in the hand of the intended party to favour them for the reason best known to the Management itself. It is totally against the interest of the Firm's Practicing in Bihar as a whole. It seems that they are being governed and handled by the intended parties and big giants in the field.

j) For issuance of an appropriate writ(s)/ order (s) and direction(s) to the commanding the respondent authorities as to why particularly (Respondent No. 4 and 5), a public sector undertaking (PSU) as per the reports published vide appendix-4.5 regarding arrears of accounts of State Finance Audit Report of the Comptroller and Auditor General of India for the year ended 31st march 2020 not audited since 2003-04 to 2019-2020 be not accounted for as against the errant officials of (BSFCSCL), fixing accountability and be proceeded with in accordance with law for their lapses with no compliance of the mandated and statutory procedure of an annual Audit (Sine- Quo-Non) be adhered to, is being flauted with impunity as there is every danger of misappropriation of Fund, misutilization of public money, with falsification of accounts, with no transparency in the proper maintenance of accounts, rather well grooved in defalcation and embezzlement of an allocated fund of the government earmarked to streamline the budgetary allocation as per the guidelines and rules framed in this regard.

A photo copy of the report dated 31.03.2020 of State Finance Audit Report of CAGI is annexed herewith Annexure-3 to this writ petition.

k) For any other order/ orders/ direction/ directions, relief/ reliefs to which the petitioner may be entitled to under the facts of this case as well as the cost be awarded to the petitioner.

Shri Anjani Kumar, learned AAG-4 invites our attention to the communication dated 01.02.2022 which reads as under :-

Bihar State Food & Civil Supplies Corporation Ltd.
"Khadya Bhawan" Daroga Rai Path, R.Block, Road N0.-2, Patna-1

Letter No.-04:09:81:02:2016 (Part-2)- 920 Finc, Patna, Dated- 1.2.22

"Tender Cancellation Notice"

Tender Notice No. PR-08593(Ni-Ni) 2021-22 and PR No-20173(Ni-Ni) 2021-22 which was published in daily newspaper for "Selection of Agency for Accounting and Financial Management at Bihar State Food & Civil Supplies Corporation Limited" is hereby cancelled due to unavoidable circumstances.

By the order of competent Authority.

1/2/22
General Manager, Finance & IFA

In view of the same, we find the present petition to have become infructuous.

As such, present petition stands disposed of reserving liberty to the petitioner to agitate the issue, if any, as and when should the need so arise, in accordance with law.

Interlocutory application, if any, also stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

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