

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14888 of 2021

M/s Balaji Enterprises (A S.S.I. Unit registeted in the State of Bihar), apropietorship firm, having its Office at Babu Bazar, Ara (Bhojpur), P.O. and P.S. Ara, District-Ara, State of Bihar, through its Authorized Signatory, namely, Pawan Kumar Singh, aged about 35 Years, Son of Ajit Kumar Singh, Resident of Bindaul, Patna, P.O. Bindaul, P.S. Bihta, District Patna, Bihar-801112.

... .. Petitioner/s

Versus

1. North Bihar Power Distribution Company Limited (A Company of Bihar Undertaking), through its Managing Director, Having its registered Officer at Vidyut Bhawan, Bailey Road, P.O. and P.S. Bailey Road, District Patna, State of Bihar.
2. Chief Engineer Store and Purchase, North Bihar Power Distribution Company Limited, having its registered Office at Vidyut Bhawan, Bailey Road, P.O. and P.S. Bailey Road, P.O. and P.S. Bailey Road, District Patna, State of Bihar.
3. Senior Manager (Finance), North Bihar Power Distribution Company Limited, having its registered Office at Vidyut Bhawan, Bailey Road, P.O. and P.S. Bailey Road, District-Patna, State of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Apurva Kumar, Senior Advocate
For the Respondent/s	:	Mr.Vinay Kirti Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 13-07-2022

1. The present writ petition has been filed for quashing the Office Order dated 05.08.2021 to the extent that the petitioner has been suspended for 03 years from participating in future tenders of North Bihar Power Distribution Company Limited (hereafter referred to as the



“NBPDCCL”).

2. The short facts of the case are the North Bihar Power Distribution Company Limited issued a notice inviting tender bearing N.I.T. no. 14/PR/ NBPDCCL/2021, inviting tender from eligible and experienced original manufacturers for procurement of DPC Aluminum Winding Wire of various sizes. The estimated cost of materials to be supplied was specified at a sum of Rs. 10,75,45,200/-. The petitioner had also participated in the said tender along with 06 other Bidders.

3. The learned Senior Counsel for the petitioner has submitted that inadvertently, in the price bid format, unit for submission of the price, which though was prescribed as Metric Ton but the petitioner had quoted price in terms of Kg. on account of confusion and there being ambiguity in the Tender Document itself, inasmuch as on one hand, the quantity to supplied was specified in the Tender Document in the unit of Kg., however in the Price Bid Format, the unit for submission of the price was prescribed as Metric Ton.

4. It is on account of the aforesaid mistake made by the petitioner in the Price Bid i.e. quoting its price per Kg.



instead of per Metric Ton, the petitioner has been suspended from participating in future tenders of NBPDCCL for 03 years as also its Bid has been disqualified.

5. The learned Senior Counsel for the petitioner has submitted that one Metric Ton is equivalent to 1000 Kg. and on bare perusal of the Price Bid of the petitioner, it is apparent that the price quoted by the petitioner was in the Unit of Kg. and not in the unit of Metric Ton since the price offered by the petitioner of Rs. 300.31 can, by no stretch of imagination, be the price of supply of one Metric Ton quantity of DPC Aluminum Winding Wire. It is also submitted that if the price quoted by the petitioner is taken to be the price in Metric Ton, then the total price quoted by the petitioner for supply of 434 Metric Ton of DPC Aluminum Winding Wire would add upto a meagre sum of Rs. 1,30,334/- instead of a sum of Rs. 10,75,45,200/-, thus the afore-said facts cumulatively demonstrates that the price which was quoted by the petitioner, on the face of it, was in the unit of “Kg.” and not in the unit of “Metric Ton”.

6. The learned Senior Counsel for the petitioner has also submitted that the Price Bids were opened by the



respondents on 22.07.2021 and the petitioner, realizing the aforesaid mistake committed on account of inadvertence to the effect that it had quoted the price in the unit of “Kg.” instead of “Metric Ton”, immediately apprised the respondent no. 2 vide letter dated 23.07.2021 and had sought correction of the said clerical error, however, no heed was paid to the same and instead, by the impugned order dated 05.08.2021, not only the petitioner has been suspended for 03 years from participation in future tenders of NBPDC, for gross violation of Clause 1.10(d) of the N.I.T. but its Bid has also been disqualified. In this regard, it is also submitted by the learned Senior Counsel for the petitioner that Clause 1.10(d) of the N.I.T. is not applicable in the present case, inasmuch as the same pertains to withdrawal or modification of Bid after Bid submission date and time, during Bid validity period, which shall result in suspension of the Bidder for 3-5 years, whereas, in the present case, neither the petitioner had sought to withdraw its bid nor had sought any modification of its Bid but had only clarified that the price quoted by the petitioner should be treated to be in the unit of “Kg.” and not in the unit of “Metric Ton”. It is also



submitted that such action on the part of the NBPDCCL in suspending the petitioner for 03 years is not only violative of Articles 14 and 19(1)(g) of the Constitution of India but also contrary to the terms and conditions of the N.I.T. as also entails civil consequences and severe financial loss qua the petitioner herein.

7. Per contra, the learned counsel for the respondent NBPDCCL has though supported the impugned order dated 05.08.2021 and has opposed the present writ petition tooth and nail, however, it is submitted that the respondent- NBPDCCL is not averse to the idea of re-considering the case of the petitioner, as far as its suspension is concerned, in case this Court directs the NBPDCCL to do so.

8. At this juncture, the learned Senior Counsel for the petitioner has fairly submitted that by efflux of time, the grievance of the petitioner regarding disqualification of its Bid has become redundant.

9. We have heard the learned counsel for the parties and from the pleadings as also from the impugned order dated 05.08.2021, we find that the respondent-



NBPDCL has failed to consider the aforesaid aspect of the matter, as has been raised by the learned Senior Counsel for the petitioner to the effect that Clause 1.10 (d) of the N.I.T. is not applicable in the present case, inasmuch as neither the petitioner had sought to withdraw its Bid nor had sought to modify the same but had merely clarified that the price quoted by it should be treated in the unit of “Kg.” instead of “Metric Ton”, however the respondent authority of NBPDCL has, on the contrary, considered the request of the petitioner made vide letter dated 23.07.2021 to be a request for change in price of the bid tantamounting to modification of the Price Bid. We also find that since such order of blacklisting/suspending the petitioner from participating in future tender of NBPDCL entails grave civil consequences, it would be apt that the respondent authorities once again reconsider the aforesaid defense put forth by the petitioner especially in view of the fact that the respondents have taken a very hypertechnical view of the matter and it may be possible than an inadvertent error has been made by the petitioner while submitting its Bid, thus we deem it fit and proper to quash the impugned order dated 05.08.2021, issued by the



Chief Engineer (Store & Purchase), North Bihar Power Distribution Company Limited, Patna, to the extent decision has been taken to suspend the petitioner for 03 years from participating in future tenders of NBPDCCL and remit the matter back to the same authority for a decision afresh, which shall be taken after grant of an opportunity of hearing to the petitioner/ its representative.

10. The writ petition stands allowed to the aforesaid extent.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.08.2022
Transmission Date	NA

