IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.810 of 2023

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M/s Balaji Enterprises, a Proprietorship Firm, Having its Office Situated at Babu Bazar, Arrah (Bhojpur) through its Authorised Signatory Pawan Kumar Singh, aged about 36 Years, Male Son of Ajit Kumar Singh, Resident of Bindaul, P.S. Bihta, District-Patna.

... ... Petitioner/s

Versus

1. The North Bihar Power Distribution Company Ltd. through its Managing Director having its Registered office at Vidyut Bhawan, Bailey Road, Patna.
2. The Managing Director, North Bihar Power Distribution Company Ltd.,Vidyut Bhawan, Bailey Road, Patna.
3. The Chief Engineer (S and P), North Bihar Power Distribution Company Ltd.,Vidyut Bhawan, Bailey Road, Patna.
4. The Senior Manager (Finance), North Bihar Power Distribution Company Ltd.,Vidyut Bhawan, Bailey Road, Patna.
5. The South Bihar Power Distribution Company Ltd. through its Managing Director having its Registered Office at Vidyut Bhawan, Bailey Road, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
		Mrs. Parul Prasad, Advocate
		Ms. Sushmita Mishra, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate
		Mr. Vijay Kumar Verma, Advocate
		Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-04-2023

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In the instant petition, petitioner has prayed for the following relief(s):-

> "*(i) For issuance of appropriate writ/writs, order/orders, direction/directions for quashing/setting aside the Office Order No. 15641 issued vide Memo No. 1358 dated 26.12.2022 whereby the Chief Engineer (S&P) without taking into consideration the reply/show cause filed by the Petitioner has arbitrarily and illegally proceeded to uphold the suspension/blacklisting/debarment of the Petitioner for three years from participating in any future tender of NBPDCL on the alleged ground of violation of clause 1.10.d) of the NIT terms and conditions of NIT bearing NIT No. 14/PR/NBPDCL/2021 dt. 04.06.2021;*
>
> *ii) For issuance of appropriate writ/writs, order/orders, direction/directions including the writ of declaration declaring that the action of the Respondent Authority in blacklisting/debarring the Petitioner from participating in future tenders of the Respondent NBPDCL for a period of three years w.e.f. 05.08.2021 for the*

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alleged violation of clause 1.10.d) of the NIT Terms and conditions bearing NIT No. 14/PR/NBPDCL/2021 dated 04.06.2021 is wholly arbitrary and illegal being violative of Articles 14, 19(1)(g) and 21 of the Constitution of India;

iii) For issuance of appropriate writ/writs, order/orders, direction/directions, declaration that the impugned order does not affect the participation of the Petitioner in any tender of Respondent South Bihar Power Distribution Company Limited or any other Government Department/ Authority/ Organisation in the State of Bihar as well as the entire Country;

iv) For issuance of any other appropriate writ/writs, order/orders, direction/directions as your Lordships may deem fit and proper in the facts and circumstances of the case."

02. Among others, petitioner was one of the bidder insofar as supply of DPC Aluminum winding wire of various sizes, in Two- Tier (Technical and Financial), pursuant to the NIT No.-14/PR/NBPDCL/2021 issued by the North Bihar Power Distribution Company Limited (NBPDCL). The last date

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of submission of hard copy of the NBPDCL processing fee and other tender cost was assigned on 07.07.2021 later on by way of corrigendum, it was modified to 08.07.2021 while retaining the date of opening of Techno-Commercial bid (Part-I) on 08.07.2021. The petitioner was required to furnish his price with reference to unit of measurement-Metric Ton, on the other hand, he had submitted price-unit of measurement-in Kg, Annexure-3, which is a prescribed form reads as under:-

ANNEXURE-3

Department Name:- Store & Purchase

Tender Details

Tender ID	11001
Tender Reference No.	14/PR/NBPDCL/2021
Description	DPC ALUMINIUM WINDING WIRE OF VARIOUS SIZES

BOQ Comparison Sheet

Item Code	Item Description	UOM	QUANTITY	Vendor Company Name	BALAJI ENTERPRISES	M/s SUSAN ELECTRICALS INDIA PRIVATE LIMITED	Nav Jyoti Metals
				Email	balaji_energy@rediffmail.com	susanelectricals.india@gmail.com	navjyotimetals@gmail.com
				Contact No	7295856673	9818485324	9873370623
01	DPC ALUMINIUM WINDING WIRE OF VARIOUS SIZES	MT	434	Ex-factory price	249.50	238,000.00	234,450.00
				Freight	5.00	5,900.00	5,000.00
				SGST % (As Applicable)	9.00	0.00	0.00
				CGST % (As Applicable)	9.00	0.00	0.00
				GST Value	45.81	0.00	
				IGST % (As Applicable)	0.00	18.00	18.00
				IGST Value (As Applicable)		43,902.00	43,101.00
				Other Charges, if any		0.00	0.00
				Discount if any		0.00	0.00
				Landed Price per unit(Inclusive of Ex-factory price and all applicable	300.31	287,802.00	282,551.00

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Department Name:- Store & Purchase

Tender Details

Tender ID	11001
Tender Reference No.	14/PR/NBPDCL/2021
Description	DPC ALUMINIUM WINDING WIRE OF VARIOUS SIZES

Rank Summary

Vendor	BALAJI ENTERPRISES	M/s SUSAN ELECTRICALS INDIA PRIVATE LIMITED	Nav Jyoti Metals
Total Landed Price per unit(Inclusive of Ex-factory price and all applicable taxes & duties)	300.31	287,802.00	282,561.00
Amount in word	(Three Hundred rupees and Thirty One paise only)	(Two Lakhs Eighty Seven Thousand Eight Hundred and Two rupees only)	(Two Lakhs Eighty Two Thousand Five Hundred and Fifty One rupees only)
Vendor Rank	1	3	2

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03. When the petitioner came to know that his price bidding was not in terms of Annexure-3 cited (supra), he made a communication on 23.07.2021, reiterating that whatever the price quoted by the petitioner with reference to Kg is required to be treated as price in Kg. Thereafter, notice was issued by the NBPDCL on 23.07.2021, in which, they have indicated that necessary action would be taken with reference to Clause -1.10(d) of NIT. The petitioner had submitted his reply on 24.07.2021, converting the price bid with reference to Kg to that of Metric Ton while calculating at Rs. 3,00,310/- per Metric

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Ton. This was not acceptable to the NBPDCL in terms of unit of measurement was in Metric Ton and not in per Kg. In the result, they proceeded to take action against the petitioner while suspending him for a period of three years in participating in future tender of NBPDCL for violation of NIT terms and conditions read with Clause-1.10.(d) and further disqualification of petitioner's bid on 05.08.2021, which was the subject matter of CWJC No. 14888 of 2021. This Court disposed of the petition vide order dated 13.07.2022 passed in CWJC No. 14888 of 2021 for revisiting the matter by the concerned Authority-NBPDCL. Para-9 of the order dated 13.07.2022 reads as under:-

> *"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*

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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 tentamounting 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

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NBPDCL 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."

04. In the light of the orders of this Court in the previous paragraph, the concerned authority proceeded to issue show-cause notice on 11.10.2022, for which, the petitioner had submitted his reply on 19.10.2022. Thereafter, the concerned-Authority proceeded to pass order on 26.12.2022 while reiterating the earlier action relating to suspension of petitioner from participating in future tender of NBPDCL for a period of three years.

05. The petitioner feeling aggrieved and dissatisfied with the order dated 26.12.2022, presented this writ petition.

06. Learned counsel for the petitioner submitted that Annexure-3 indicating the price in the unit of measurement-in Kg is a typographical error and not with any intention to mislead the concerned Authority. At the best, it could have been converted into the form of Metric Ton from Kg. Therefore, it is not a serious error, so as to warrant impugned action of suspending the petitioner for a period of three years from participating in the future tender. It is further submitted that

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while passing the impugned order the concerned Authority has failed to appreciate the observations made by this Court in its order dated 13.07.2022 passed in CWJC No. 14888 of 2021. It is also submitted that even assuming if the price is converted from Kg to Metric Ton the petitioner would not be entitled to be treated as a successful bidder. In view of the fact that other bidder namely M/S Susan Electricals India Private Limited quoted Rs. 2,87,802/- with reference to Metric Ton so also Nav Jyoti Metals quoted Rs. 2,82,551/- per metric ton. If the petitioner's price with reference to Kg is converted to that of Metric Ton, it would be Rs. 3,00,310. The same has been highlighted before the concerned Authority and the same has not been appreciated.

07. In support of the aforesaid contentions, learned counsel for the petitioner relied on order(s) passed in CWJC No. 2991 of 2019 ***Aarpee Infra Projects Private Limited Vs. State of Bihar and Ors.*** [Paragraph Nos. 4, 8, 12, 14, 18] and ***Supreme Infrastructure India Limited Vs. Rail Vikas Nigam limited and Ors.*** [Paragraph Nos. 12, 24, 25 and 26]**.**

8. Per-contra, learned counsel for the respondents resisted the aforesaid contentions of the petitioner and supported the impugned order dated 26.12.2022. It is submitted that when

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there is a specific instruction to the bidder that the pricing is required to be assessed and furnished with reference to unit of measurement, namely, in Metric Ton read with the quantity of 434, it is binding on the each of the bidder to adhere to the required material information sought by the respondent. The petitioner has not adhered to the format at Annexure-3 insofar as quoting price with reference to unit of measurement-in Metric Ton. On the other hand, he has quoted with reference to unit of measurement-in Kg. It is a serious error, therefore, proper action has been taken with reference to Clause-1.10(d). Further, it is submitted that if it is only a typographical error, one could have appreciated, on the other hand, requirement is in Metric Tons. However, quoting price in Kg cannot be treated as a typographical error, therefore, Clause-1.10(d) is attracted. That apart, there is no relaxation of any of the Clauses so as to overcome the defect committed by the petitioner, in the absence of any relaxation provisions there is no infirmity in invoking Clause-1.10(d). It is further submitted that the cited decisions do not assist the petitioner since, the first decision is relating to typographical error insofar as furnishing bank guarantee. The second decision do not have an identical clause to that of 1.10(d) as is available in the present case. Therefore, on factual

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aspects, the cited decisions are distinguishable.

09. Heard learned counsel for the respective parties.

10. Among others, petitioner is one of the bidder insofar as supply of DPC Aluminum winding wire of various sizes in Two- Tier (Technical and Financial), pursuant to the NIT No.-14/PR/NBPDCL/2021 issued by the North Bihar Power Distribution Company Limited (NBPDCL). The last date of submission of hard copy of the NBPDCL processing fee and other tender cost was assigned on 07.07.2021, later on by way of corrigendum it was modified to 08.07.2021 while retaining the date of opening of Techno-Commercial bid (Part-I) on 08.07.2021. In this backdrop, the petitioner while filling up of the form Annexure-3 cited (supra), unit of measurement should have been in Metric Ton with reference to quantity of 434. The petitioner has quoted the price in per Kg and not in per Metric Ton. Therefore, the petitioner has not adhered to the requirements of the respondent insofar as furnishing the price with reference to unit of measurement-Metric Ton. On the other hand, he has quoted in Kg at Rs. 300.31 whereas other two bidders have quoted with reference to Metric Ton as is evident from Annexure-3. When things stood thus the petitioner in order to reiterate his stand that whatever the price with reference to

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price per Kg furnished by him could be treated as price per Kg. Such communication was made by him on 23.07.2021. Thereafter, a show-cause notice was issued related to taking action with reference to Clause-1.10(d) on 23.07.2021 at that point of time, the petitioner took a different stand to the extent that, his price could be converted into Metric ton i.e. 300.31x1000=3,00,310 per Metric Ton. The petitioner has not pointed out any Clause which permits for such conversion or such correction or modify could be carried out with reference to Annexure-3 format relating to unit of measurement-Metric ton to that of in Kg. The contention that in Annexure-3 while typing the price in Kg is a typographical error and cannot be appreciated. Typographical error would have been in a different standard, here quoting price in Kg instead of Metric Ton would be a substantial change. Therefore, one cannot draw inference that it is a typographical error, on the other hand, it is material change and it is not curable defect as if it is typographical error. Further, we could have ignored the error committed by the petitioner, since he would be disqualified with reference to quoting of price after conversion from Kg to Metric Ton, at the same time, one cannot ignore Clause-1.10(d). It is necessary to reproduce Clause-1.10(d) which reads as under:-

"d). Withdrawal or modification of bid after bid

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> *submission date and time during bid validity period shall result suspension of the bidder for 3-5 years."*

11. Clause-1.10 is relating to modification and withdrawal of bid. In the present case, there is a proposal by the petitioner to modify the proposed bid, namely, quoting of price with reference to Kg to that of Metric Ton. The same is not permissible, on the other hand, it warrants action like suspension of bidder for a period of 3 to 5 years. In the present case, the suspension is for a period of 3 years which is minimum period prescribed under Clause-10.1(d). Even, we cannot come to the conclusion that suspension for a period of 3 years would be harsh and the same cannot be reduced, for the reasons that the minimum period of suspension is for a period of three years. Learned counsel for the petitioner relied on Clause-1.9 validity period and Clause-1.12 right of NBPDCL to the extent that it could be invoked for the purpose of clarification read with merely rejecting the petitioner's bid instead of taking action. The aforesaid contention cannot be appreciated, for the reasons that this Court cannot read Clause-1.10(d), Clause-1.9 Validity of period and Clause-1.12 Right of NBPDCL in isolation and Clause 1.9 and 1.12 is not attracted in the matter. On the other hand, there is a penal provision under Clause-1.10 with

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reference to the modification and withdrawal of bid. The present case is relating to modification of bid which attracts Clause-1.10(d). Therefore, the aforesaid contention that the respondent could have invoked Clause-1.9 and Clause-1.12 instead of Clause-1.10(d) is not tenable.

12. The cited decisions (supra) do not assist the petitioner's case with reference to factual aspects of the matter, each decision is required to be taken note of with reference to factual aspects of the matter. The first decision is relating to typographical error in mentioning wrong place and in respect of second decision is concerned, there is no identical provisions to that of provisions in the present case like Clause-1.10(d). Perusal of Para-12 of the Supreme Infrastructure India Limited case, there is no penal provision like Clause-1.10(d) in the present case. No doubt, suspension for a period of three years would be too harsh insofar as modification of bid by the petitioner-bidder is concerned. At the same time, the petitioner has not assailed the conditions imposed in Clause-1.10(d), on the other hand, in Clause-1.10(d) the minimum period of suspension is for a period of three years. Therefore, the same cannot be reduced by this Court in order to overcome the hardship faced by the petitioner. In the light of these facts and

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circumstances, the petitioner has not made out a case, so as to interfere with the impugned order.

13. At this stage, it is necessary to take note of the fact that impugned decision dated 26.12.2022 even though it is not happily worded like vaguely the impugned order take note of that there is a *mala-fide* intention or misleading the authorities by the petitioner in quoting price in Kg instead of Metric Ton. In support of such observations made by the authority, there are no material. However, it is a fact that the petitioner has failed to adhere to the instruction insofar as quoting price with reference to unit of measurement-Metric ton.

14. In view of these facts and circumstances and the fact that this is a second round litigation, petitioner has not made out a case. Hence, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Himanshu/-
Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2023
Transmission Date	NA

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