

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2530 of 2023

1. Ajay Kumar Singh Son of Jai Nath Singh Resident of Udaypur, P.S. Ara Muffasil, Dist.- Bhojpur (Ara), partner of Balaji Enterprises, Rajeev Nagar, Patna.
2. Amit Kumar, Son of Surendra Kumar Proprietor of M/s Amit Kumar, Mohalla- Hilsa, P.S.- Hilsa, Dist.- Nalanda.
3. Sanjeev Kumar, Son of Rama Kant Sharma Proprietor of M/s Sanjeev Kumar Sharma, Rudra Pharma Park Road, P.S. Kadamkuan, Dist.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Jail) Department, Bihar, Patna.
2. The Inspector General, Prison and Correctional Services, Home (Jail) Department, Bihar, Patna.
3. The Assistant Inspector General, Prison and Correctional Services, Home (Jail) Department, Bihar, Patna.
4. The District Magistrate-Cum-Chairman, District Purchase Committee, Betiya.
5. The Superintendent-Cum-Secretary, District Jail Purchase Committee, District Jail, Betiya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anu Priyadarshni, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, (SC8)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

5 05-05-2023 In the instant writ petition, petitioner has prayed for
the following relief(s):-

“(A) A writ in the nature of certiorari or any other appropriate writ/s, order/s for quashing the order, contained in Letter No. 923, dated 01.02.2023, issued under the signature of Assistant Inspector General, Prison and Correctional Services, Bihar, Patna, by which certain amendment is done in the Letter No. 2380, dated 30.03.2020, fixing the amount of Bid Security



(Earnest Money) as 3.5 % of total annual estimated cost of each article of the bid.

(B) A writ in the nature of mandamus or any other appropriate writ/s order/s direction/s for the followings: -

(i). To hold that order contained in contained in Letter No. 923, dated 01.02.2023, i. e. annexure -3 to the petition, is non-est in the eye of law.

(ii). To hold that any amendment/ changes made in the terms and conditions in the format of the bid during process of the bid is illegal, improper and without jurisdiction.

(iii) To restrain the respondents from making any amendment or changes in the format of tender as incorporated in Letter No. 2380, dated 30.03.2020.

(B) Any other relief/s for which the petitioners are found entitled to.”

2. On 17.02.2023, the following order was passed:-

“In the instant petition, petitioner has assailed the Annexure-3 dated 01.02.2023 insofar as modification of certain clause to the advertisement vide Annexure-2 - NIT dated 16.12.2022.

Learned counsel for the petitioner pointed out insofar as deposit of EMD earlier it was Rs. 40,000/- for District Jail, Bettiah and 10,000/- for Sub Jail, Bagha. Such fixation of EMD amount is without reference to any actual estimated cost. In the absence of determining actual estimated cost, prescription of 3.5% in the impugned communication dated 01.02.2023, prima facie it is arbitrary. Hence, the petitioner has made out a prima facie case for granting interim order.

Accordingly, Annexure-3 dated 01.02.2023 stands stayed till next date of hearing.

In the meanwhile, respondents are permitted to file their counter affidavit, if any.

Re-list this matter on 07.04.2023.”

3. Respondent Nos. 2 and 3 have filed their counter-affidavit. In Paragraph 15 of the counter-affidavit, they have



stated as under:-

“15. That the supply of articles in jails is not based on package system. For supply in a jail, a supplier can apply for supply of any item or a bunch of items in one category or more categories so it is very difficult to ascertain the value of supply for whole year for one bidder.”

4. In the light of these facts and circumstances and the fact that impugned action of the respondents is dated 01.02.2023, whereas the final bid was opened on 30.01.2023. Therefore, Annexure-3 dated 01.02.2023 is not applicable to such of those tenders which have already been floated prior to 01.02.2023 like in the present case. In other words, for the present case, the respondents cannot invoke Annexure-3 dated 01.02.2023. The concerned authority is hereby directed to settle all dues of the petitioner while ignoring Annexure-3 dated 01.02.2023.

5. With the above observation, the writ petition stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Himanshu/-
Ashish/-

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