

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4850 of 2022

1. M/s JMD Services Pvt. Ltd. Plot No. - 60, Nandanpuri, Khajpura, Maurya Path, Patna - 800014, through its Director (authorized signatory), Rakesh Kumar Singh, aged about 38 years, son of Shri Gautam Singh, Resident of Defence Colony, Shahpur, P.O. and P.S. - Shahpur, Behind Army Family Quarter, District - Patna, PIN - 801503.
2. M/s Impression Services Private Limited, Plot No. 603, Udyog Vihar, Phase-V, Gurugram, Haryana, PIN - 122016, through its Manager Operations (authorized signatory), Vijay Sinha aged about 51 years, son of Late Vikramaditya Sinha, resident of House No. 38, Road No. 5 B, Indirapuri, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Urban Development Department, Bihar, Patna.
2. The Municipal Commissioner, Patna Municipal Corporation, Second Floor, Block- C, Maurya Lok Complex, Budhha Marg, Patna, Bihar - 800001.
3. The Tender Committee, through its Members, Patna Municipal Corporation, Second Floor, Block - C, Maurya Lok Complex, Budhha Marg, Patna, Bihar - 800001.
4. M/s Mauryan Kars Auto Services LLP, Tyagi Bhawan, New Bailey Road, Saguna, Danapur, Patna- 801503. Email- m4solutions2009@yahoo.com.
5. M/s Good Year Security Service, A-75, Upper Ground Floor, (Near CRPF Camp), Sector 8, Dwarka, New Delhi, Delhi 110077. Email- gyssdwarka@gmail.com

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Navendu Kumar, Advocate
For the Resp No. 4	:	Mr. Mrigank Mauli, Sr. Advocate
		Mr. Rajesh Ranjan, Advocate
For the Resp. No. 5	:	Mr. Saket Tiwari, Advocate
For PMC	:	Mr. Prasson Sinha, Advocate

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

Date : 19-09-2023

In the instant petition, petitioners have prayed for the
following relief(s):-

“1. i) For quashing setting aside the minutes of



the tender committee held on 14.03.2022 as contained in Annexure- 7 of this writ petition, by which the petitioner were declared disqualified in financial bid or alternatively.

For issuance of a direction to the concerned authorities to consider the petitioners for the financial bid and upon consideration of the entire process, award the tender in the favour of the petitioners' company, if eligible in other respects.

ii) For issuance of a writ in the nature of certiorari for quashing the corrigendum contained in Letter No. 772 dated 19.01.2022 (annexure - 3), whereby, apart from other changes, the clause 5.5.1 of the RFP was changed and working day of sanitation labour was reduced from the entire month to 26 days in a month, meaning thereby, the sanitation labour were to be paid for 26 days only in a month, which was in the teeth of the provisions of the labour laws.

iii) For quashing/ setting aside the entire process of selection of contract in pursuant to the NIT NO: 01/CME/PMC/2022 dated 05.01.2022 be quashed and direction be issued for re-tendering of the contract afresh, if, it is found that the process of selection of contract has been finalized.

iv) For restraining the concerned respondents from finalising the contract and executing agreement of acceptance in favour of any bidder during the pendency of the writ petition.

v) For issuance of such other writ(s)/ order(s)/ direction(s) as your Lordships may deem fit and proper.”

2. The Patna Municipal Corporation issued a NIT titled as ‘**REQUEST FOR PROPOSAL**’ for Empanelment of Agencies for Providing Outsourced Manpower for Performing and Managing Day to Day Activities At Patna Municipal Corporation. The petitioners were two of the bidders and their bid was rejected, since, it was not in terms of Clause 5.5.1 read with 5.5.2, which is part and parcel of 5.5 – Working Hours of Manpower. 5.5.1 was revised vide Corrigendum dated



19.01.2022. In terms of these Clauses, the petitioners have quoted rates for various posts like Sanitation Labour – Rs. 12090. Similarly, same price is quoted for Security Guard, Driver for e-cart/e-rickshaw – Rs. 12845.63/-, Driver for small size vehicles – Rs. 12845.63/-, Driver for big size vehicles – Rs. 12845.63/-, Electrician (electric work) – Rs. 12090/-, Plumber (plumbing work) – Rs. 12090/-, Carpenter (Carpentary work) – Rs. 12090/- & Mechanic for vehicle repairing work (for vehicle repairing work) – Rs. 12090/-. However, except Sanitation Labour for the remaining posts read with rates quoted by the petitioners were not in terms of Clause 5.5.2. In other words, except Sanitation Labour for remaining posts, he was required to quote rate with reference to 30 days (on monthly basis), whereas, he has quoted rates for 26 days only in-stead of 30 days and it has been admitted by him in the present petition. Taking note of such violation in respect of quoting rate which was less than rates fixed by the respondent in RFP under the Minimum Wages Act, the official respondents have rejected the petitioners application. The petitioner No. 2 was also disqualified on additional ground for not submitting financial bid in the prescribed format as provided in the RFP.

3. Learned counsel for the petitioners tries to impress



upon this Court to the extent that petitioners are entitled to have the benefit of clarification clause which is part of Clause 3.11(d) to the extent that whether they have quoted rates for 26 days or 30 days. Further, he also relied on Annexure-8 (Corrigendum) dated 05.01.2022 to show that the petitioners complied the Clause 5.5.1 & 5.5.2.

4. Learned counsel for the respondents defended action of the respondents to the extent that the petitioner have violated the Clause 5.5.2 insofar as quoting rate for 26 days instead of 30 days and their rates were less than the minimum rate fixed by the respondent corporation. Therefore, there is no infirmity.

5. Heard the learned counsels for the respective parties.

6. Question for consideration is whether the petitioner has violated Clause 5.5.2 with regard to rates quoted by them and admission of the petitioners in the present petition to the extent that he has quoted the price with reference to 26 days and not 30 days. It is necessary to reproduce Clause 5.5, 5.5.1 and 5.5.2 and they read as under:-

“5.5 Working Hours of Manpower.

5.5.1 In case of sanitation labour/manpower, the working hours for the supplied manpower will be 8 Hours duty shift. However the agency will supply manpower to PMC



on the monthly basis (monthly basis means all days of month including public holidays and Sunday) to complete daily task of PMC. The shift timing and location schedule will be decided by PMC and communicated to the agency. However if any assignment requires more time then the manpower shall have to be present accordingly. PMC will not pay any extra charges for overtimes.

5.5.2 In case of driver/security guard/carpenter/mechanic/plumber/electrician, the working hours for the supplied manpower will be 8 Hours duty shift. However the agency will supply manpower to PMC on the monthly basis (monthly basis means all days of month including public holidays and Sunday) to complete daily task of PMC. The shift timing and location schedule will be decided by PMC and communicated to the agency. However if any assignment requires more time then the manpower shall have to be present accordingly. PMC will not pay any extra charges for overtimes.”

7. Revision of 5.5.1, it reads as under:-

Sl. No	Reference	Particulars(Original)	Particulars(Revised)
1	5 Special condition of contract, 5.2 Obligation of the Agency and 5.5 Working Hours of Manpower , sub-clause- 5.5.1.	In case of sanitation labour/manpower, the working hours for the supplied manpower will be 8 Hours duty shift. However the agency will supply manpower to PMC on the monthly basis (monthly basis means all days of month including public holidays and Sunday) to complete daily task of PMC. The shift timing and location schedule will be decided by PMC and communicated to the agency. if any assignment requires more time then the manpower shall have to be present accordingly. PMC will not pay any extra charges for overtimes.	In case of sanitation labour, the working hours for the supplied manpower will be 8 Hours duty shift and 26 days in a month. The payment shall be made for 26 days in a month. The shift timing and location schedule will be decided by PMC and communicated to the agency. If any assignment requires more time then the manpower shall have to be present accordingly. PMC will not pay any extra charges for overtimes.



8. In the light of above Clause read with the petitioners’ quoted rate for 26 days other than the Sanitation Labour, the petitioners’ quoting such rate for 26 days is not in terms of Clause mentioned in the NIT and it is not a curable defect so as to take note of Clause 3.11(d) of NIT insofar as clarification. Moreover, the reliance placed by the petitioners on corrigendum dated 05.01.2022 is misplaced since it clearly provided change in terms of engagement of Sanitation Labour and not for any other categories. Further, the petitioners admittedly quoted rates below the rates fixed by the respondent corporation.

9. In view of these facts and circumstances, the petitioners have not made out a case. Accordingly, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

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

