

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8822 of 2022

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Ragho Singh Son of Ram Chandra Singh, Resident of Main Road, Sareya Ward No. 11, Manikpur, P.S.-Gopalganj, District-Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar through Secretary Food and Consumer Protection Department, Government of Bihar, Patna.
2. The State Food and Civil Supplies Corporation Limited through its Chairman-cum-Managing Director, Government of Bihar, Patna.
3. The Director, Consumer Protection Directorate, Bihar, Patna.
4. The Chief General Manager (Procurement)-cum-Member Bihar State Food and Civil Supplies Corporation, Bihar, Patna.
5. The Bihar State Food and Civil Supplies Corporation Limited Gopalganj through its District Manager at Yadopur Road, Tirbirwa, Gopalganj.
6. The District Magistrate, Gopalganj-cum-President of District Transport Committee, Gopalganj.
7. The Deputy Development Commissioner, Gopalganj-cum-Vice President of District Transport Committee, Gopalganj.
8. That District Manager, State Food and Civil Supplies Corporation, Gopalganj-cum-Member and Secretary of District Transport Committee, Gopalganj.
9. The Additional Collector, Gopalganj-cum-Member of District Transport Committee, Gopalganj.
10. The District Transport Officer, Gopalganj-cum-Member of District Transport Committee, Gopalganj.
11. Lal Babu Singh son of Rambadan Singh, resident of Village-Pachnerui, P.O.-Talli, P.S.-Guthni, District-Siwan.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Y.V.Giri, Senior Advocate Mr. Ashish Giri, Advocate
For the Respondent BSFC:		Mr. Shailendra Kumar Singh, Advocate
For Respondent No.11	:	Mr. Ranjan Kumar Srivastava, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 28-03-2023



Short undisputed facts, necessary for adjudication of the dispute raised by the petitioner in the present writ application filed under Article 226 of the Constitution of India, are as under;

2. The Bihar State Food and Civil Supplies Corporation Limited, Gopalganj (BSFC Gopalganj), is the sole agency nominated by the Government of Bihar to carry out storage and transportation of food grains and other civil supply items meant for distribution through Targeted Public Distribution System (TPDS), which involves movement of food grain intra-district and inter-district. Transportation-cum-handling contractors were to be selected to transport food grains from FCI depot/ BSFC CMR godown to BSFC TPDS godowns. For the purpose of selection of two transportation-cum-handling contractors, BSFC Gopalganj came out with a Notice Inviting Tender (NIT) No. 3/2021-22. The petitioner amongst others had submitted his bid. The petitioner's technical bid was rejected by the competent authority, i.e., District Transport Committee on 12.01.2022. The petitioner did not raise any objection against rejection of his technical bid. The District Transport Committee accordingly considered financial bid. Two bidders including respondent no. 11 (L-01) qualified. The second lowest bidder (L-02), however, refused to work. As the L-02 had refused, L-01 (Respondent no. 11) was asked to place 70 trucks for



carrying out the work i.e., 35 of his own and 35 for carrying out work of L-02, also. As the respondent No. 11 expressed his incapacity and unwillingness to provide 70 trucks, the District Transport Committee declined to award the contract in favor of respondent no. 11 and decided for canceling the said NIT no. 3/2021-22. Respondent No. 11 preferred appeal against the said decision of the District Transport Committee dated 12.01.2022 before the Managing Director, BSFC. In the meanwhile, a re-tender, NIT no. 4/2021-22 for the same work was published on 21.03.2022, apparently because respondent no. 11 had expressed his inability to provide 70 trucks for carrying out the work, which was required to be done by two successful bidders. The NIT no. 4/2021-22 was also canceled subsequently due to certain reasons.

3. The appellate authority, by an order dated 24.05.2022 allowed the appeal of respondent no 11 by setting aside the decision of the District Transport Committee dated 12.01.2022 with a direction to the District Manager, BSFC Gopalganj to execute the agreement and issue work order in favour of respondent no. 11. Complying with the direction of the appellate authority, the District Manager, SFC, Gopalganj, executed an agreement with respondent no. 11 on 05.08.2022 and accordingly work order was issued on the same date, i.e., 05.08.2022 in his



favour. Respondent No. 11 is, thus, carrying out the work of transportation cum handling of the food grains in accordance with the requirement under NIT no. 03/2021-22.

4. The petitioner, whose technical bid was rejected by the District Transport Committee, has filed the present writ petition putting to challenge the appellate order dated 24.05.2022 passed by the State Transport Committee issued under the signature of the Managing Director cum Chairman, BSFC, Bihar, and the Chief General Manager (Procurement) cum-Member, BSFC, Bihar. The petitioner claims that he has filed a representation on 14.01.2022 before the State Transport Committee BSFC alleging irregularities committed by the District Transport Committee in the process of award of tender. The said representation was, however, overlooked, according to the petitioner. The petitioner is seeking a direction from this Court to the BSFC to float a fresh tender as the re-tender floated on 21.03.2022 came to be cancelled.

5. The facts noted above are the foundational facts based on which the petitioner is seeking the above mentioned reliefs.

6. We have heard Mr. Y.V. Giri, learned Senior Counsel assisted by Mr. Ashish Giri, learned counsel for the petitioner, Mr. Shailendra Kumar Singh, learned counsel for the BSFC and Mr.



Ranjan Kumar Srivastava, learned counsel for the private respondent No.11. Counter affidavits have been filed on behalf of the respondents. The petitioner has filed rejoinder to the counter affidavit.

7. Apparently, it is an undisputed fact that the petitioner's technical bid was rejected by a committee competent to take a decision in this regard. After opening of the financial bids, respondent No.11 was found to be the lowest bidder, whereas Munna Kunwar, is the second lowest bidder (L-02). It is also not in dispute that in terms of the tender notice, the selected bidders were required to provide 35 trucks each for carrying out the work. Against the two vacancies for selection of transporting and handling agents, two bidders were selected, i.e. L-01(respondent No. 11) and L-02 (Munna Kunwar). As L-02 had declined to perform the work as per the work order despite his selection, L-01 (respondent No.11) was asked to perform the work also which could have been given to L-02. Since respondent No. 11 expressed his inability, the District Transport Committee, Gopalganj, cancelled the very NIT in its decision taken on 12.01.2022, which was set aside by the order of the appellate authority with a direction to execute an agreement with respondent No.11.



8. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner, has argued that on the one hand respondent No.11 has refused to offer the minimum required trucks for transportation of the food grains and at the same time approached the Managing Director, BSFC, by filing an appeal against the decision of the District Transport Committee to cancel the tender notice and issue fresh tender. The appellate authority directed the District Transport Committee to enter into an agreement with respondent No. 11 on the condition that he would provide 35 trucks within one month of the agreement. He has argued that the decision of the appellate authority to set aside the decision of the District Transport Committee to cancel NIT No. 3/2021-22 was arbitrary, illegal and discriminatory. He has submitted that the petitioner has *locus standi* to maintain the present writ application against the respondents for the dispute arising out of NIT No.3/2021-22 despite his technical bid having been rejected. To support his submission he has relied on the Supreme Court's decision in case of ***Ramana Dayaram Shetty v. International Airport Authority of India***, reported in (1979) 3 SCC 489, with special reference to paragraph 9 of the said decision. The said decision, in our opinion, is not of any avail for the petitioner. In the said case, a grievance was raised by the appellant of that case that



he was differently treated and denied equality of opportunity in submission of a tender. In case of *Ramana Dayaram Shetty* (supra), the grievance of the appellant was that if it were known that non-fulfillment of condition of eligibility would be no bar to consideration of a tender, he would have submitted a tender and competed for obtaining a contract. He was, however, precluded from submitting a tender and entering into the field of consideration by the reason of condition of eligibility, while so far respondents in the said case were concerned, their tender was entertained and accepted even though they did not satisfy the condition of eligibility and this resulted in inequality of term, which was constitutionally impermissible. In the said background, the Supreme Court observed in case of *Ramana Dayaram Shetty* (supra) that if his grievance was well founded, the appellant would be entitled to maintain a writ petition.

9. In the present case, on the other hand, the petitioner had participated in the tender process. His technical bid was rejected and, thus, was found to be non responsive. The petitioner did not prefer any appeal against rejection of his technical bid though he had the opportunity to do so.

10. Mr. Giri has also placed reliance on the Supreme Court's decision in the case of *West Bengal State Electricity*



Board v. Patel Engg. Co. Ltd., reported in (2001) 2 SCC 451, referring to paragraph 24 thereof. Reliance has also been placed by Mr. Giri on yet another Supreme Court's decision in case of *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)*, reported in (2016) 8 SCC 622, to submit that though respondent No.11 did not have the requisite number of trucks for executing the work, the respondents have illegally awarded the work to him. The Supreme Court's decisions relied on by Mr. Y.V. Giri, learned Senior Counsel do not apply in the facts and circumstances of the present case. In this case, the petitioner accepted rejection of his technical bid, submitted against NIT No.3/2021-22 on 12.01.2022. As has been noted above, a decision was taken subsequently to cancel the tender and issue retender notice. It is not the petitioner's case that soon after re-tender, NIT No.4/2021-22 was issued, the petitioner had submitted his bid. In the meanwhile, the appellate authority found illegality in the decision of the District Transport Committee in declining to award the work in favour of respondent No.11 though he was found to be L-01 and was ready to execute his part of the work. The work was not allotted to him because he was not ready to take on himself the work of two agencies.

11. In our considered opinion, in the facts and circumstances noted above, the petitioner cannot maintain this writ



petition in relation to NIT No.03/2021-22 in which he had participated and his technical bid itself was rejected.

12. We do not find any merit in this writ application, which is accordingly dismissed.

13. Let the original documents, which have been produced before this Court for perusal under the orders of this Court be returned.

14. There shall be no order as to costs.

(Chakradhari Sharan Singh, ACJ)

Partha Sarthy, J : I agree.

(Partha Sarthy, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	08.02.2023
Uploading Date	28.03.2023
Transmission Date	28.03.2023

