

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.385 of 2024

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Nishant Kumar Singh S/o Anil Singh, Resident of Village- Anwari, P.S.-
Raghunathpur, District - Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Siwan.
2. The District Magistrate- cum- Chairman, District Transport Committee (SBFC), Siwan.
3. The Managing Director, Bihar State Food and Civil Supplies Corporation, Khadya Bhawan, R. Block, Patna.
4. The District Manager, SFC, Siwan.
5. Amrendra Kumar Srivastav, District Manager, SFC, Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate
For the Respondent/s : Mr. Shailendra Kumar Singh

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 10-01-2024

Heard the parties.

2. The writ petition has been filed for:

- (i) the issuance of writ/writ, order, direction upon respondent no. 2 to produce both the proceeding i.e. Technical Bids & Financial Bids relating to selection of Transport-cum-Handling Contractor (DSD) SFC, Siwan and*
- (ii) for setting aside the decision or recommendation as the petitioner's*



financial bid has been cancelled though he was the lowest bidder and is ready to work at lower rate i.e. 28 percent for quintal;

(iii) any other relief or reliefs for which the petitioner is entitled in the facts and circumstances of the present case.

3. The facts relating to the case is/are as follows:-

4. The District Manager, BSFC, Siwan issued NIT No. 1273 dated 25.08.2023 for selection of Transport cum Handling & Delivery Contractor (Door Step Delivery), SFC, Siwan.

5. The petitioner participated in the aforesaid NIT and submitted both Technical & Financial bids along with documents in the light of terms & conditions of NIT.

6. The District Transport Committee headed by District Magistrate, Siwan, opened the Technical bids and found the petitioner and others having qualified in it.

7. Thereafter, the financial bids were opened and the District Manager, SFC, Siwan issued letter vide memo no. 1826 dated 28.12.2023 regarding meeting of District Transport Committee on 29.12.2023 at 4.00 pm. The other qualified bidders including the petitioner were called for the negotiation



of rates.

8. As per the claim of the petitioner, on the oral instruction by the District Magistrate, Siwan, the petitioner submitted application on 12.12.2023 stating that he is ready to work at Rs. 28/- per quintal.

9. It is the case of the petitioner that vide memo no. 1760 dated 14.12.2023, the District Supply Officer, Siwan issued show cause notice to him informing that a case vide Siswan (Chainpur O.P.) P.S. Case No. 153 of 2016 was lodged against him on 12.10.2016 and suppressing the said facts, he procured a character certificate and in that background having violated the terms and conditions of the tender so issued, why steps be not taken against him (Annexure P/6 to the writ petition). The petitioner submitted his show cause on 15.12.2023.

10. However, the petitioner claims that despite he being the lowest bidder at Rs. 28 per quintal, the committee recommended the name of other bidders who had quoted the rate at Rs. 36 per quintal. Learned Senior counsel as such submits that the State exchequer has been put to a loss on the basis of fictitious allegation made against him despite he being the lowest bidder. In that background, the submission is that the



High Court need to interfere in the matter.

11. By way of supplementary affidavit, the petitioner has brought on record the minutes of meeting dated 29.12.2023 held under the chairmanship of the District Magistrate, Siwan in which after recording the fact that while others have quoted the tender at Rs. 36.99 per quintal, the petitioner has quoted it at Rs. 28 per quintal. However, in view of the complaint that was received against him, the District Magistrate, Siwan directed the Committee to make an inquiry into the matter.

12. Further, as per the letter no. 1803 dated 23.12.2023, the report of the Superintendent of Police, Siwan and the Officer In-charge of Raghunathpur, indicates that he is an accused in Siswan (Chainpur O.P.) P.S. Case No. 153 of 2016, a fact that was suppressed by him and also, a character certificate was procured and submitted before the Committee. It was further recorded that the petitioner was called on his phone number provided by him to be present but it was informed by him that he is in Ranchi and that his representative will be attending the meeting. However, no such representative ever appeared.

13. The District Transport Committee thereafter took decision stating therein that he suppressed the fact relating to his



criminal case and procured Character Certificate. The Committee took note of the relevant terms and conditions of the NIT which read as follows:

“ 10 (III) Suppression of any fact/any misleading act/declaring false information as regards former selections in any district to the other bided district/s will amount to mala-fide Indention of the bidder to mislead the District Tender Committee In such case, contract, whether executed or not with the bidder in any district shall be terminated forthwith along with forfeiture of EMD/Security Deposit. Further she/he shall be banned/blacklisted and not allowed to participate in any tender for next five years).

10 (xi) If any of the document submitted In Technical or financial bids of the tender found forged or tampered in the bid will be rejected and appropriate lawful action will be taken against the bidder. At the same time she/he/they will be blacklisted and consequently barred from taking part for next five years in the future tender and EMD will be forfeited.

11 (xxiii) Suppression of any fact/declaring false Information in the bid or thereafter detected at any stage will amount to mala-fide intention of the bidder or any attempt



to mislead the District Tender Committee will result in his/her termination forthwith along with forfeiture of EMD/security deposit Further he shall be banned/blacklisted and consequently barred to participate in any tender for next five years.)

11 (I) If any selection H&T contractor is found to be Involved in any criminal case, which amounts of moral turpitude or vigilance case or is blacklisted by any State or Central Government by Central of State Agency or Undertaking during contract period the agreement executed with the H & T Contractor shall be terminated forthwith without prejudice to other rights & remedies.

14. Thus, the Committee decided to forfeit the deposit amount of the petitioner while blacklisting him for the next five years in line with the terms and conditions. The decision was incorporated vide memo No. 16 dated 04.01.2024 (wrongly recorded as 04.01.2023). It is important to note that the said document has been brought on record by way of supplementary-affidavit and there is no Interlocutory Application making additional prayer in the writ petition and/or challenging the said decision.

15. This Court has gone through the facts of the case



and submissions put forward by the parties as also the documents that is/are part of the writ petition/supplementary-affidavit. Admittedly, as per the tender notice in case of any FIR lodged against those participating in the tender process relating to transportation, handling, pilferage and black marketing etc., of food grains, he/she/they certainly could not have participated in the process as an affidavit to this effect was to be given by him/her/them that no Court of law has taken cognizance or FIR lodged.

16. The petitioner as also the other tenderers were supposed to submit documents and Clause 8 (iii)a of the NIT read as follows:-

(iii) Affidavit by the bidder to the following effect issued by the Executive Magistrate/Notary.

(a) She/he/they have not been convicted by any Court of law clearly specifying that: *no Court of law has taken cognizance or FIR has been lodged against him/her/them or their family members/director/partner in any matter related to transportation, handling, pilferage and black marketing etc., of food grains.*

17. Further Clause-11 which deals with the terms and conditions of the procedure in sub-clause (xxiii) read as



follows:-

“Suppression of any fact/ declaring false information in the bid or thereafter detected at any stage will amount to mollified intention of the bidder or any attempt to mislead the District Tender Committee will result in his/her termination forthwith along with forfeiture of EMD/ security deposit. Further s/he shall be banned/ blacklisted and consequently barred to participate in any tender for next five years.”

18. In the show cause dated 15.12.2023 submitted by the petitioner, he has accepted that the aforesaid FIR No. 153 of 2016 was lodged on 12.10.2016 which relates to taking away the vehicle No. BR-29-M-1641. The allegation against him was of black marketing of the food grains. However, suppressing the said facts, the petitioner procured a character certificate and submitted his Tender. In that background, the clause-11 sub-clause-xxiii automatically comes into picture that if there has been any suppression of fact/declaration/false information in the bid and detected at any stage, the same will be considered to be an attempt to mislead the District Tender Committee and will result in his/her termination forthwith along with forfeiture of EMD/Security deposit. He shall further be banned/blacklisted and debarred from participating in any tender for the next five



years.

19. The petitioner, an accused in the Siwan (Chainpur O.P.) P.S. Case No. 153 of 2016, having gone through the terms and conditions of the tender, deliberately chose to participate in the tender process by suppressing the fact and also procured a Character Certificate and as such he has to suffer the consequences. The respondent authorities have acted in line with the clause-11 sub-clause-xxiii of the terms and conditions which was an integral part of the tender process.

20. This Court in the aforesaid facts and circumstances do not find any merit in the case so as to interfere with the decision taken by the committee headed by the District Magistrate, Siwan.

21. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

Adnan/Jagdish-

(Rajiv Roy, J)

AFR/NAFR	
CAV DATE	
Uploading Date	16.01.2024
Transmission Date	

