IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1859 of 2024

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Chanakya Shree Son of Trisul Dhari Prasad Sinha Resident of Banshi Apartment, R. K. Bhattacharya Road, P.S.- Gandhi Maidan, District- Patna, Partner of R.N. Singh and C.O. Chartered Accountants- 208 Hem Plaza, Fraser Road, Patna-800001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary Panchayati Raj, Department, Govt. of Bihar, Patna.
2. The Additional Secretary Panchayati Raj Department, Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mirgank Mauli, Sr. Advocate Mr.Raju Prasad, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-07-2024

The petitioner is the partner of a firm of Chartered Accountants who applied under Annexure-P/1 for empanelment of the Firm to carry out the statutory audit of schemes/programmes under the three tier Panchayati Raj Institutions and Gram Kutcheries across all the districts of the State of Bihar for the financial year 2022-23.

2. The technical bid was opened on 01.11.2023 and by Annexure-P/2 the petitioner was informed that the petitioner has been disqualified during Evaluation of Cover-1. A detailed

representation was filed which was not considered but again by Annexure-P/4 the petitioner was disqualified in Evaluation Cover 2 also. The petitioner's contention based on the marks awarded as produced at Annexure-A is that despite the petitioner having been granted 99 points, which is the highest amongst the various firms, they were disqualified. It is also contended that the petitioner was not informed of the exact reason for the disqualification.

3. Mr. Mrigank Mauli, learned Senior Counsel appearing for the petitioner has contended that there was no reason for disqualifying the petitioner.

4. Mr. P.K. Shahi, learned Advocate General on the other hand would submit that the representation given by the petitioner would itself indicate that the grounds were communicated and both Annexure-P/2 and Annexure-P/4 specifically indicated the reasons which have been highlighted; which is also clear from Annexure-A which document was uploaded. Learned Advocate General would also refer to Clause (iv) and (vii) in the 'Eligibility Criteria (pre-evaluation criteria)' at paragraph no. IX of Notice Inviting Tender. The petitioner not only failed to file the audit report of the earlier years, when they were empaneled, within time but also made a false submission

in the affidavit dated 28.03.2024.

5. Mr. Mrigank Mauli, learned Senior Counsel, however submitted that Annexure-P/11 specifically indicated that the last date for filing of audit of the petitioner for the year 2021-22 was 01.04.2024.

6. Clause-(vii) under paragraph no. IX of Annexure-P/1 reserves the right on the respondent authority, the Panchayati Raj Department of the Government of Bihar, to not consider the firms who were removed due to past audit performance. The Chartered Accountant Firms as per Clause-iv were also obliged to give an affidavit with respect to their conduct in the last three years. As is seen from Annexure-A, the disqualification was only because of the past performance having been not satisfactory. It is also clearly indicated that the report of Bhojpur for the financial year 2021-22 and Nalanda district for financial year 2019-20, 2020-21 and 2021-22 has not been submitted till 05.12.2023.

7. Learned Advocate General has also relied on a decision of the Hon'ble Supreme Court in the case of ***Kusha Duruka Vs. the State of Odisha*** reported in ***2024(1) PLJR SC 380***. The cited decision of the Hon'ble Supreme Court deprecated suppression of material facts from the Court of Law

which amounts to expression of falsehood and leads to playing a fraud on the Court. Here there is clear expression of the falsehood in the affidavit filed is the contention.

8. We find absolutely no reason to interfere with the disqualification made on the basis of past performance of the petitioner, in the prior years when they were empanelled as a Chartered Accountant Firm for conducting statutory audit.

9. We specifically notice the contention of the learned Advocate General which arises from the petitioner's affidavit dated 28.03.2024, the affidavit which was filed in reply to the counter affidavit produced as Annexure-A. In paragraph no. 12 it is specifically stated that regarding Bhojpur for the financial year 2021-22 audit was delayed due to the non co-operation of the department and in any event audit report is filed after generating UDIN. Annexure-P/12 produced by the respondents is the covering letter of submission of the audit report which is dated 20.04.2024 which also has UDIN generated; which is required for all the certificates issued by Chartered Accountants. The specific reference of the learned Advocate General was to the Covering Letter through which the audit report dated 20.04.2024 was filed and produced alongwith Annexure-P/12. The said letter is dated 29.04.2024 and the subject referred to is

"*letter regarding submission of final consolidated audit report of Bhojpur for the financial year 2021-22*". Hence, obviously when the affidavit dated 28.03.2024 was filed, the audit report, though prepared, was not submitted before the local body.

10. It has to be noticed that what is indicated in AnnexureP/11 is only the last date of audit which was 01.04.2024 and the submission of report which was on 29.04.2024. This indicates that the petitioner has finished the audit only on 01.04.2024. This again runs counter to the specific averments made in the affidavit in reply filed by the petitioner dated 28.03.2024. We cannot but find that the petitioner has attempted to mislead this Court.

11. We also notice that the uploaded document at Annexure-A clearly indicated reasons for disqualification which was based on past performance; a power conferred on the respondent authority by the notice inviting tender. We also see that a reply has been filed by the petitioner to the supplementary counter affidavit which is produced as Annexure-P/11 and Annexure-P/12. There is nothing stated as to the discrepancy pointed out of the audit report having not been submitted as on 28.03.2024, contrary to the assertion made in the affidavit of even date, but again merely finds fault on the department for not

having cooperated.

12. We find absolutely no reason to cause interference in the evaluation and we dismiss the writ petition imposing cost of Rs. 5000/- on the petitioner payable to the Bihar State Legal Services Authority. The said amount will have to be paid within a period of two weeks and if not, the Bihar State Legal Services Authority shall be entitled to proceed for recovery by taking measures similar to recovery of arrears due on land through the District Magistrate, in which event the petitioner shall be liable for the charges incurred for making such recovery, which have to be recovered by the State.

13. Let a copy of this judgment be transmitted to the Member Secretary, Bihar State Legal Services Authority.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.07.2024
Transmission Date	NA