# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.2936 of 2024**

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Uday Pratap, Son of Late Rajendra Singh, resident of Ward No 4, village Sonar, P.O. Pokharbhinda, P.S. Riga, District Sitamarhi, PIN 843327, at present residing at 39E, Singh Willa, Tiwary Gali, Madhukam, near Galaxia Mall, Hehal, P.S. Sukhdeo Nagar, Town and District Ranchi, Jharkhand, PIN - 834005.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supplies (Consumer Affairs) Department Govt. of Bihar, Patna.
2. The Bihar State Food and Civil Supplies Corporation Ltd. Khadya Bhawan, Daroga Prasad Rai Path, (R. Block), Patna through its Managing Director.
3. The Managing Director, BSFCSC Ltd, Patna.
4. The District Transport Committee (BSFCSC Ltd), Sitamarhi through its Chairman-cum-District Magistrate, Sitamarhi.
5. The District Manager, BSFCSC Ltd. Sitamarhi.
6. Amardeep Kumar, Son of Sri Mahesh Prasad, resident of Maurya Vihar Colony, Transportnagar, P.O. and P.S.- Agam Kuan, District Patna- 800007.
7. Sanjay Kumar Singh, Son of Shri Shiv Prasad Singh, resident of village Mahadeo P.S. Saliyara, District- Sitamarhi, PIN 843327.
8. Prashant Bagla, Son of Late Shiv Kumar Bagla, resident of Old Exchange Road, Ward No. 10, Town, P.S. and District Sitamarhi PIN 843302.
9. Vinod Singh, Son of Deva Singh, resident of village Harsidhi Pakadia, P.O. Harsidihi, District East Champaran PIN 845422
10. Harishankar Kumar, Son of Birendra Prasad Singh, Flat No. 402, R.B. Enclave, Mohalla Kadam Kuan, Town and District- Patna- 800001.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Dr. Mayanand Jha, Sr. Advocate |
| | | Mr. Giridhar Gopal Tiwary, Advocate |
| For the Respondent/s | : | Mr. Dhurjati Kumar Prasad, GP-14 |
| | | Mrs. Jahan Ara, AC to GP-14 |
| For the BSFC | : | Mr. Anjani Kumar, Sr. Advocate |
| | | Mr. Shailendra Kumar Singh, Advocate |
| For the Respondent No.8: | | Mr. Shashi Bhushan Kumar, Advocate |
| | | Mrs. Arti Kumari, Advocate |
| For the Respondent No.9: | | Mr. Ajay Kumar Singh, Advocate |
| | | Mr. Deepak Jamuar, Advocate |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE MR. JUSTICE HARISH KUMAR**
**ORAL JUDGMENT**
**(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)**

**Date : 25-06-2024**

We have heard Dr. Mayanand Jha, learned senior Advocate for the petitioner and Mr. Anjani Kumar, learned Senior Advocate for the Bihar State Food and Civil Supplies Corporation Ltd. (hereinafter referred to as 'the BSFC'). Learned Advocates for the State as well as private respondent nos. 8 and 9 are also present.

2. The petitioner is aggrieved by the decision of the District Transport Committee, Sitamarhi, as contained in Memo no. 1858 dated 23.09.2023 (Annexure-P/3) whereby his technical bid for selection and empanelment as Transportation and Handling Agent for transportation of food-grains has been rejected. The petitioner also sought quashing of E-mail communication dated 16.01.2024 (Annexure-P/5) issued from the portal of Government of Bihar i.e. e-Proc2.0@bihar.gov.in, whereby the petitioner is intimated that he has been disqualified during the evaluation of Cover-1 (Technical Bid) due to non-fulfillment of the requirement of Clause 8(i) and 8(xi) of the Notice Inviting Tender (hereinafter referred to as 'the NIT').

3. The petitioner being proprietor of the firm and a registered Class-I Contractor under the Government of Bihar has submitted his tender in response to NIT No. 1431 (Main) for selection and empanelment of Transportation-cum-Handling and Delivery Contractors. The last date for submission/uploading of offer/bid was scheduled up to 18.08.2023 and the date of opening of the Technical Bid was scheduled to 28.08.2023. The opening date of Financial Bid was fixed on 04.09.2023. The copy of the NIT has been produced as Annexure-P/1.

4. Learned Senior Advocate appearing on behalf of the petitioner contended that the petitioner being eligible offered tender within the stipulated period with all the required and supporting documents, but the same has been rejected on hyper technical grounds. In terms of the NIT, the petitioner submitted the copies of the Income Tax Return for the last three assessment years, as there was no stipulation in the NIT requiring the petitioner to submit Income Tax Return for the current financial year 2023-24. Moreover, at the time of submission of the tender, the financial year was not over and the Firm was yet to file the return after finalization of the account; it was subsequently filed within the time.

5. Learned Senior Advocate further contended that

similarly in terms of the NIT, the petitioner also submitted the copy of the Computer Generated Bank Statement downloaded from the Internet Banking System from his HDFC Bank Account. Referring thereto, he further contended that in the bottom of the statement, there is a categorical assertion that since it was computer generated statement, it did not require signature. The petitioner was under *bana fide* belief that such bank statement is admissible for all practical purposes, hence there was no requirement of the signature of the Branch Manager of the Bank concerned. It is also the contention of the petitioner that he had put his signature on all the relevant pages appended to the NIT-SBD documents. The photograph and the other documents were also self attested. He also submitted the details of trucks owned by him and the trucks on lease.

6. Adverting to the aforenoted contention, the learned Senior Advocate further argued that despite fulfilling all the requirement, as contemplated in the NIT, the Technical Bid Committee has rejected his tender on a trivial or virtually on hyper technical grounds.

7. The impugned decision of the District Transport Committee, as contained in Annexure-P/3 refers the grounds for rejection: Firstly, the tenderer has not filled up the tender form

completely and on the place of signature of tenderer and the name of the tenderer, the tenderer has neither put his signature nor written his name. The photo affixed by the tenderer has not been self-attested. Secondly; the residential certificate submitted by the tenderer has not been self-attested, which violates serial no.14 of the checklist (Annexure). Thirdly; in terms of Clause 8(i) of the NIT, the tenderer was to submit the income tax return for the last three years, but he failed to furnish income tax return for the assessment year 2023-24. Fourthly; the tenderer has not submitted the statement of Bank account duly attested by the Branch Manager with seal and signature for last six months preceding the publication of tender Call Notice and, as such, it violates Clause 8(xi) of the NIT.

8. Learned Senior Advocate reiterated his argument with all vehemence that as there was no requirement to submit the Income Tax return of the current year, which was not yet over at the time when the tender was submitted, thus the very rejection of the tender by the Technical Bid Committee is not sustainable. Further, the Computer generated bank statement also does not require signature of Branch Manager of the Bank and in any circumstances such Bank statement is admissible even under the provisions of Information Technology Act, 2000.

There is total denial of the grounds of rejection that the petitioner having failed to put his signature on the required place in the tender form. It is also argued that the District Transport Committee in connivance with respondent nos. 6 to 10 has rejected the technical bid of the petitioner in order to extend undue benefit to the private respondents. Averments have also been made that irrespective of various shortcomings and the irregularities committed by the private respondents, the respondent BSFC declared the private respondents as successful bidders and issued work order in a most arbitrary and illegal manner.

9. On the other hand, Mr. Anjani Kumar, learned Senior Advocate representing the BSFC drawing the attention of this Court to the tender form submitted by the petitioner vehemently contended that irrespective of the categorical stipulation that the Technical Bid must contain self-attested copies of Income Tax return for the last three years, the petitioner did not file Income Tax Return for the current year i.e. 2023-24. In terms of Clause (8)(xi), the tenderer was also required to submit statement of Bank account duly sealed and signed by the Bank Manager of the Bank for last six months preceding the publication of tender call notice, but the same has

also not been filed by the petitioner. Moreover, there are various other defects that the tender form has not been filled up fully and neither the signature of tenderer nor his name has been mentioned on the required places. The photograph of the tenderer has also not been self-attested. The aforesaid grounds are sufficient enough to reject the technical bid of the petitioner, was the contention of the learned Senior Advocate.

10. A copy the order of this Court dated 22.04.2024 passed in C.W.J.C. No. 6560 of 2024 (**Dhiraj Kumar Vs. The State of Bihar & Ors.**) has also been placed across the Bar, that in an identical situation where the NIT stipulates that the Bank statement produced by the tenderer should contain the seal and signature of the Branch Manager, this Court did not interfere with the decision of the Tender Committee when the tender was rejected on such ground.

11. This Court has heard the argument of the learned Senior Advocates appearing for the respective parties.

12. Before adverting to the challenge made in the present writ petition, this Court bow down to the settled law that where a decision is taken that is manifestly in conformity with the terms and condition of the tender document, sub-serving the object for which the NIT is issued, the court should follow the

principle of restraint. In a recent judgment, the Hon'ble Supreme Court in the case of ***R.K. Industries (Unit-II) LLP v. H.R. Commercials (P) Ltd. & Ors.*** **[(2024) 4 SCC 166]**, held that in matters relating to commercial transactions, tenders, etc. the scope of judicial review is fairly limited and the Court ought to refrain from substituting its decisions for that of the tendering agency.

13. Considering the scope of judicial review in examining the commercial matter, the Hon'ble Supreme Court reiterating the dictum of **Montecarlo Ltd. v. NTPC Ltd., (2016) 15 SCC 272**, held that where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible.

14. Now coming to the case in hand, from bare perusal of the tender form, this Court finds that neither is the name of the tenderer written in the tender form nor his signature affixed. The photograph of the tenderer has not even been self-attested and, as such, the ground of rejection of tender of the petitioner, as referred in the decision of the Technical Bid

Committee dated 23.09.2023 stands substantiated to that extent.

15. This Court further finds that the petitioner also failed to submit the Income Tax Return for the last three financial year, as was required under Clause 8 of the NIT. Needless to observe that the date of submission/uploading of bid was mentioned as 28.08.2023 and thus the petitioner was required to submit the Income Tax Return for the current assessment year 2023-24; relatable to the financial year 2022-23. The contention of the petitioner that the statement of Bank account was a duly computer generated bank account downloaded from the internet banking system and thus it does not require seal and signature also finds no merit in view of the clear stipulation made in the NIT, especially Clause (xi), which clearly requires a Bank statement for last six months preceding the publication of tender call notice duly attested by the Branch Manager of the Bank with seal and signature.

16. A similar issue has been dealt with by this Court in the case of **Dhiraj Kumar** (supra) wherein this Court did not interfere with the decision of the rejection of Technical Bid when the tenderer failed to produce the bank statement containing the seal and signature of the Branch Manager of the Bank.

17. For the reasons noted hereinabove, this Court does not find any merit; accordingly the writ petition stands dismissed.

**(K. Vinod Chandran, CJ)**

**(Harish Kumar, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 28.06.2024 |
| **Transmission Date** | NA |