

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2524 of 2024

1. Rajesh Ranjan son of Late Mainekar Prasad, resident of Ward No. 3, Bich Bazar, Biharsharif, Gobar Toli, P.O. and P.S.- Soh Sarai, District Nalanda PIN- 803101.
2. Gopal Kumar, son of Butan Singh, Resident of Mauni Baba Thakurbari, Thakurbari Marg, Ward No.25, Town, P.S. and District Begusarai.

... .. 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.), Vaishali through its Chairman-cum-District Magistrate, Vaishali at Hajipur.
5. The District Manager, BSFCSC Ltd., Vaishali at Hajipur.
6. Arvind Kumar Ray, Son of Jagdish Ray, Resident of Village Aajampur Desari, P.O.- Aajampur, P.S.- Desari, District Vaishali -PIN 844504.
7. Nitesh Kumar, Son of Birendra Singh, resident of Village Jurawanpur, P.O.- Maniyapur, P.S.- Bidupur District Vaishali PIN 844504.
8. Ashok Kumar, Son of Ramchandra Prasad Singh, resident of Ashok Vihar Colony, Ward No.12 Paigambarpur Kolhua, P.S. Ahiyapur, District Muzaffarpur PIN 843108.
9. Manjeet Kumar, Son of Nanhak Singh Resident of Village and P.O.- Chapar, P.S.- Mohiuddin Nagar, District Samastipur PIN 848501.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Uday Kumar, Advocate
For the Respondent/s : Mr.Vivek Prasad, GP-7

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-07-2024

The petitioners are persons who applied under a tender; the Notice Inviting Tender (for brevity 'NIT') of which



is produced at Annexure-P1. The NIT was for selection of Transportation cum Handling & Delivery Contractors for Door Step Delivery issued by the respondent-Food and Civil Supplies Corporation. The petitioners, two in number admittedly applied with ten others, seven of whom qualified and five were disqualified in the technical bid. The contract was eventually awarded to the Respondent Nos. 6 to 9; tenders having been invited for appointing four such contractors.

2. Learned Counsel for the petitioner contended that the Respondent Nos. 6 to 9 were not technically qualified. There were a number of defects in their tenders which were ignored by the respondent-Corporation for obvious reasons; which led to their technical bids being accepted. The District Manager, who looked into the various complaints raised had also attempted to mislead the Committee awarding the tender. The specific points on which disqualification is alleged; in the case of other tenders; the tendering authority made disqualification which was approved by this Court. The decisions in Dheeraj Kumar vs. The State Bihar & Ors.; CWJC No. 6560 of 2024 dated 22.04.2024 and Vikrant Kumar Gupta vs. The State of Bihar & Ors.; CWJC No. 16897 of 2023 dated 21.03.2024 is relied upon.

3. The learned AAG based on the records pointed out



that all the seven persons who qualified in the technical bid were called for negotiations. All of the tenderers had quoted Rs. 36 per quintal whereas in the negotiation Respondent Nos. 6 to 9 agreed to Rs. 28. The petitioners, as is evident from Annexure-P8 did not consent to the lower rate. The petitioners also had no contention regarding the qualification made in the technical bid at the time of negotiations. Only later, when Respondent Nos. 6 to 9 agreed to the lower rate, the petitioners filed the above writ petition. The allegations in the writ petition were considered by the District Manager which has been produced as Annexure-A in the counter affidavit filed. The Respondent Nos. 6 to 9 also refuted the allegations raised against them.

4. Admittedly, the petitioners had not agreed for the lower rate and it is categorically stated in the proceedings accompanying Annexure-P8 that the two petitioners Rajesh Ranjan and Gopal Kumar along with Harsh Ranjan Chakravarty refused to accept the rate of Rs. 28 per quintal and hence the work was awarded to Respondent Nos. 6 to 9. Before the negotiation, the petitioners did not challenge the qualification in the technical bid. The 2nd petitioner claims that a complaint was filed as per Annexure-P6 on 28.12.2023 which was not considered. The fact that the petitioners did not agree to the



reduced rate in the negotiations, where Respondent Nos. 6 to 9 agreed to the same is crystal clear. The petitioners, hence are out of the race for the competitive tender and cannot raise a contention against the award in favour of Respondent Nos. 6 to 9 who agreed to the lesser rate.

5. Be that as it may, for completeness and also for the purpose of ensuring probity in tender matters, we looked at the manner in which the objections were considered by the District Manager. A detailed order has been produced as Annexure-A. Insofar as the 6th respondent is concerned, it has been found that the bank statement had the seal and the signature of the Manager on the first page and the last page. The violation alleged is of Clause No. 8 (xi) of the NIT which only requires attestation of the statement of the bank account for the last six months by the Branch Manager. It does not speak of the signature being required in each of such pages; especially since it is a computer generated statement.

6. We find no parallel with the judgment in CWJC No. 6560 of 2024. In the said case, the bank statement submitted was self-attested which had a round seal and a signature without authentication of the signature being of the Branch Manager. A Division Bench specifically noticed that there was no



authentication of designation of the signatory, who was alleged to be the Branch Manager. The allegation in the present case is quite different.

7. The further contention with respect to the GST return showing the name of one Arvind Traders has also been considered and it has been found that name of Arvind Kumar is seen in the returns. The proprietary concern and the proprietor, for purposes of taxation is a single entity and legally too they are not distinct entities. The 3rd allegation, the allegation of violation of various clauses was found to be unsubstantiated. One other allegation regarding the 6th respondent having trade of foodgrains with Sangam traders was also considered and it was found that it was related to sale of grains grown at home and was not of rice or wheat. The specific restriction in the NIT as is evident from Clause 8 (iii)(d) is that neither the tenderer or their family members should have any relationship with a rice miller/flour mill owner or licensee of a fair price shop or in the business of food grains (rice and wheat). Hence, only a business in rice and wheat would disqualify the tenderer as per the NIT.

8. As far as the objection raised on the UDIN number, it was noticed that the Chartered Accountant had issued it and certified the audit report. The fitness certificates of



vehicles were also found to be proper. The agreement with respect to the vehicle BR-31GA-8808 was found to be proper and the agreement in the name of the 2nd petitioner was found to be not properly stamped. With respect to the 9th respondent, the difference in address in the ITR and the application was because the ITR showed the present address. On the contrary, the Adhar Card indicated the permanent address. The turnover declared by the said respondent was also found to be proper and the turnover was not that of Shivam Enterprises. The other allegations were also dealt with by the District Manager. Considering the manner in which the decision was arrived at, we find no infirmity in the same.

9. Judicial review, as is trite, is not an appeal against the decision but only a review of how the decision was arrived at. As we noticed at the outset, petitioners voluntarily recused themselves from the negotiations, after the financial bids were opened and then as a retaliatory measure challenged the technical bid qualification of persons who participated in the negotiations and accepted a quote lower to their bid and also the bids of the other three; of which two are the writ petitioners. It is also to be noticed that the award is made and the work orders have been issued after the agreements were signed.



10. On the totality of the circumstances, we do not find any merit in the writ petition and dismiss the same.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.07.2024
Transmission Date	

