

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4435 of 2024

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Kumar Ram Ranjan Singh Son of Late Parmeshar Singh Resident of Village-
Jitt Jhingoi, Police Station- Khaira, District- Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Minor Water Resources Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Minor Water Resources Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Minor Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Minor Water Resources Department, Bhagalpur.
5. The Superintending Engineer, Minor Water Resources Department, Munger.
6. The Executive Engineer, Minor Irrigation Division, Jamui.
7. The Tender Committee through its Chairman, Group No. 17 of the Tender No. 08/2023-24, Bhagalpur.
8. The Chairman of the Tender Committee, Group No. 17 of the Tender No. 08/2023-24, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Shekhar, Advocate
For the Respondent/s : Mr. Standing Counsel 3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 12-03-2024

Heard the parties.

2. The petitioner who runs a proprietorship firm has invoked the prerogative writ jurisdiction of this Court, seeking quashing of the decision as contained in letter no. 356 dated 18.02.2024 whereby the technical bid of the petitioner has been disqualified and; consequent upon quashing of the same, he prays for a direction upon the respondents to consider the financial bid.

3. Learned counsel for the petitioner contended



that in response to the NIT bearing no. 8/2023-2024 in relation to execution of various works, issued under the Minor Water Resources Department, Government of Bihar, the petitioner alongwith others participated in the said tender. It is informed that the petitioner has only concerned with Group no. 17 i.e. “Renovation work of Rajbandha Ahar”.

4. After completion of necessary paraphernalia, the technical bids of the bidders were evaluated however, the petitioners technical bid has been disqualified on the ground of non-submission of affidavit in terms of clause 20 of the NIT. The said decision is under challenge herein.

5. It was argued by the learned counsel for the petitioner that evidently the requirement of signing undertaking in proper words cannot be considered an essential condition of eligibility. The respondents have rejected the technical bid of the petitioner on hyper technical ground and the disqualification is based upon non-essential condition. The submission of undertaking in proper words are definitely ancillary and subsidiary conditions and thus, the same should not have been enforced by the respondents with the same strictness.

6. The learned counsel for the petitioner also made reliance upon judgment of the Apex Court in the case of **M/s Poddar Steel Corporation vs. M/s Ganesh Engineering Works & Ors. 1991 (3) SCC 273, C.J. Fernandez vs. State of**



Karnataka & Ors. 1990 (2) SCC 488 and Ramana Dayaram Shetty vs. International Airport Authority of India & Ors. 1979 (3) SCC 489.

7. Referring to the afore-noted judgments, it is vigorously argued by the learned counsel representing the petitioner that an authority inviting tender is not bound to give effect to every term mentioned in the notice in meticulous detail and is entitled to waive a technical irregularity of little or no significance. It is the mandate of the law that in all tender process, the requirements can be broadly categorized as those which lay down essential conditions of eligibility and others which are merely ancillary or subsidiary to the main object. In the case of essential condition of eligibility, the authority issuing the tender would be required to impose it rigidly while with respect to other ancillary or subsidiary conditions, it is open to the authority to deviate from and not to insist upon a strict literal compliance of such condition in appropriate cases.

8. Per contra, learned counsel for the State referring to the affidavits which have been produced as a part of Annexure P/4 to the writ petition, submitted that the affidavits are clearly not in terms with clause 20 of the NIT and thus, the disqualification of the petitioner in technical bid has no infirmity.

9. This Court before parting with the final



outcome thinks it apt and proper to quote the relevant clause no.

20 of the NIT which reads as follows:-

“20. निविदाकारों द्वारा निविदा कागजातों के साथ संलग्न सभी कागजातों की सत्यता के सम्बन्ध में घोषणा पत्र/शपथ पत्र (जो निविदा सूचना प्रकाशन के बाद का हो) मूल में दिनांक-30.01.2024 को 5.00 बजे अपराह्न तक सम्बन्धित कार्यालय में निम्नवत् रूप में जमा करना अनिवार्य होगा।

"I , the undersigned, do thereby certify that all statement made in the require attachments are true and correct, and if found fake/forged, the undersigned will be liable for infliction upon the F.I.R. and lawful punishment as well as black listing."

10. Admittedly, the petitioner has not submitted the affidavits, which are four in number, in terms with the clause 20 of the NIT which have been reproduced hereinabove.

11. The affidavit is a vital part of any proceeding(s), since they provide a written undertaking of the details submitted alongwith the tender, which has an inextricable link with the work awarded. In other words the affidavits are often used as a form of documentation typed to a specific person in the proceeding and if it contains false information, the author of it may be proceeded appropriately in accordance with law. Therefore, affidavits filed were not mere sheet of paper but a solemn statement made before a person authorized to administer oath or to accept affirmation.

12. It is pertinent that every tendering authority is bound by its own terms and conditions. The Court, while exercising jurisdiction under Article 226 of the Constitution, is



only called upon to review the decision making process in the light of the terms and conditions of the tenders. If the terms of the tender are clear, the Courts are bound to enforce the same. The case in hand is more glaring, when in the NIT, itself a clear wording has been prescribed to be formed a part of the affidavit(s), no discretion is left with the bidder.

13. In the aforesaid premise undoubtedly this document is essentially of utmost importance, when an authority or government agency needs to confirm the accuracy of the information they are receiving. Thus, the affidavit being vital and important document, no stretch of imagination can be said to be an ancillary or subsidiary condition from which the authority can deviate and its strict compliance is not necessary, that being so the decisions relied upon by the petitioner would not come to his succor and the same shall not be applicable in the present case.

14. Considering the admitted case of the petitioner and also the facts available on record, the affidavits filed on behalf of the petitioner is not in terms with clause 20 of the NIT, this Court does not find any infirmity in the impugned order of disqualification. The defect is so palpable and it could definitely have been avoided, since it required only incorporation of the words in the NIT. This raises a suspicion as to the conduct of the tenderer to absolve himself of the consequences arising on a



breach committed.

15. Accordingly the present writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.03.2024
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