

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8370 of 2024

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Brijalkumar Bharatbhai Shah @ Shah Brijal Kumar Bharatbhai Son of Bharatbhai Manilal Shah Resident of Badshahni Khadki, District- Kheda (Gujrat) Pin- 387411, proprietor of M/s Bindiya Enterprise, a proprietorship firm having its office - At - Pipariya, Ta-Matar, Dist- Kheda, Gujarat- 387560, Presently residing at S/C Mangtirka Apartment -A, Near Dharmidhar Derasar, Paldi Ahmedabad.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Education Department Government of Bihar, Patna.
2. The Principal Secretary, Education Department Government of Bihar, Patna.
3. Vice Chancellor, Magadh University, Bodhgaya, District- Gaya, Bihar- 824234.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shiv Pratap, Advocate
For the Respondent/s	:	Mr. Alok Ranjan, AC to AAG-5
For the University	:	Mr. Sriram Krishna, Advocate
		Mr. Prabhat Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-06-2024

The petitioner is aggrieved with his firm's disqualification pursuant to the submission of a tender based on Annexure-P/1. Annexure-P/1 is a Notice Inviting Tender (NIT) issued by the respondent no. 3 (Magadh University), which was for supply of 40 lakh answer sheets. The petitioner had applied under the NIT but was disqualified for reason of the additional terms and conditions having not been satisfied.

2. The learned Counsel for the petitioner submits that



the petitioner had applied and had been successful in the 2019 tender where such additional terms and conditions were not insisted upon. It is also stated that the additional terms and conditions are in violation of the GeM guidelines issued for the purpose of supply of goods and services in the e-market place. The learned Counsel for the respondents resisted the contention and argued in support of the conditions.

3. It is an admitted fact that the NIT uploaded in the GeM portal itself contained the additional terms and conditions. The additional terms and conditions, objected to are of the requirement of the tenderers to have an office/branch located in Bihar at least since three years for which an authentic document had to be attached and production of a character certificate. The terms and conditions were available in the GeM portal when the notice inviting tender was issued.

4. Merely because in the 2019 tender a condition now insisted upon was not available, cannot be a ground to challenge the condition now insisted upon, if such condition is otherwise valid. Admittedly, in the present tender the petitioner did not satisfy two of the additional terms and conditions, which led to the disqualification; which is now challenged in the writ petition.

5. There are two conditions objected to by the



petitioner and we will deal with the contention one by one. The first one is that of a character certificate to be produced, which should be issued by the Superintendent of Police.

6. The condition cannot be said to be either invalid or onerous. It only ensures that the tenderer is a law abiding citizen. The insistence that the certificate should be from the Superintendent of Police is only because of the wider jurisdiction exercised by the Superintendent of Police which covers the entire district in which the tenderer has his business.

7. The petitioner has produced Annexure-P/4 which is issued by an Inspector of Police. The petitioner has a contention that the said clause, numbered as 13, is against Section 3 of the Oaths Act, 1969. We do not see any application of the Oaths Act or the provisions therein in the issuance of a character certificate by the Superintendent of Police.

8. The next condition objected to is that the office/branch of the tenderer should be located since the past three years within the State of Bihar. It does not totally exclude the entrepreneurs from outside the State but only requires that a tender would be accepted only if it is issued by an entrepreneur who has at least a branch office within the State of Bihar. This would ensure that the tenderer on committing any default can be easily proceeded against. We find the said condition also to be



valid and reasonable.

9. The next contention is that the requirement of an office branch is not a requirement under the general terms and conditions on GeM portal. The petitioner specifically refers to the definition of sellers/service provider as available in the GeM portal. The GeM portal is an e-market place where both the purchaser and seller and the service provider and recipient are to be registered. Merely because GeM portal permits registration of entrepreneurs without reference to their location; it is not a restriction on the purchaser or the service recipient that tenders should be accepted from all the persons registered as a seller/service provider. It is perfectly within the authority of the awarder to decide as to the conditions which are to be satisfied by a prospective seller/service provider.

10. We find absolutely no reason to interfere with the tender opening process and reject the writ petition *in limine*.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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