

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7305 of 2024

Rosmerta Technologies Limited having its registered office at 402, 4th Floor, World Trade Tower, Barakhamba Lane, New Delhi- 110001, and corporate office at Vatika Tower, Plot no.- 66, Sector- 44, Gurugram- 122003 (Haryana), represented through its authorised Signatory namely Rajeev Kumar Jha, Male, aged about 52 years, Son of Manoranjan Jha, working Professional in Rosmerta Technologies Limited having his residence at Supaul near Sadar Hospital, Ward No.- 19, Supaul- 852131 (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Transport Department, Vishwesaraiya Bhawan, Bailey Road, Patna- 800015.
2. Secretary, Transport Department, Govt. of Bihar, Vishwesaraiya Bhawan, Bailey Road, Patna- 800015.
3. State Transport Commissioner, Transport Department, Govt. of Bihar, Vishwesaraiya Bhawan, Bailey Road, Patna- 800015.
4. Deputy Secretary, Transport Department, Govt. of Bihar, Vishwesaraiya Bhawan, Bailey Road, Patna- 800015.
5. M/s Ecartes Technology Private Limited, through its Managing Director, having its office at 2nd Apna Nagar, Near Mandi Samiti, Transport Nagar, Mathura- 281001 (U.P.).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Anju Kumari @ Anju Narain, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 01-05-2024

We have heard Mr. Rajendra Narayan, learned
Senior Advocate for the petitioner and the learned Government
Advocate for the State.

2. The petitioner, a registered company
represented through its authorized signatory, on being aggrieved



by the communication dated 12.04.2024 produced as Annexure P5 has preferred the present writ petition seeking quashing of the same. By the impugned order the respondent Transport Department, Government of Bihar declared the petitioner disqualified and rejected the technical bid. The petitioner is also seeking a direction upon the respondent to accept the technical bid and opening of the financial bid of the petitioner company and award the tender as the petitioner is L1 bidder, having quoted the lowest bid.

3. Learned Senior Counsel while questioning the impugned order vehemently contended that the official respondents rejected the technical bid of the petitioner on the petty and flimsy ground without affording/giving any opportunity to offer and explain about the typing error of one digit at one place.

4. It is further contended that the mistake, if any that occurred in the certificate of Human Resource Declaration, in relation to man power, a minor typographical error had crept into as instead of date 30.03.2024, wrong date as 30.03.2023 was erroneously typed/written this was clearly due to oversight and thus the mistake was ignorable. The respondent authorities ought to have followed the principles of natural justice, before declaring the petitioner company disqualified.



5. The defect if any, was a rectifiable defect at the time of evaluation of the technical bid, specially when there is a special clause, whereby clarification could have been asked by the respondent authorities on such ignorable minor typographical error before deciding against the petitioner, is the contention of the petitioner.

6. Learned Senior Counsel also took this Court to the relevant provisions of the NIT, specially clause 3.18 and 3.19, which in sum and substance stipulates that if deemed necessary, the Transport Department, Government of Bihar may seek clarification on any aspect from the bidder. However, that would not entitle the bidder to change or cause any change in the substance of tender submitted or price quoted. Transport Department, Government of Bihar may, if then so desire, ask the bidder to give a presentation for the purpose of clarification of the tender. Further clause 3.19 mandates that only a bid determined as not substantially responsive, will be rejected by the Transport Department, Government of Bihar and it may not subsequently be made responsive by the bidder, by correction of the non-confirmity. The Transport Department, if necessary, can waive any minor infirmity or non-confirmity or irregularity in a bid which does not constitute a material deviation, provided such a waiver does not prejudice or affect the relative ranking of



any bidder.

7. Referring to the afore-noted clauses, learned Senior Counsel would thus submit that the declaration of giving certificate through its Human Resources regarding the fact of existence of more than hundred persons working on its pay roll, is not a material requirement, nor would it prejudice or affect any relevant ranking of the bidder. The respondent authorities ought to have considered the fact at the time of perusing the technical bid which was submitted by the petitioner. However, the Transport Department neither sought a clarification in this matter, nor waived off the error.

8. If in the tender process this practice is allowed to be followed it would always end in hurried and hasty opening of financial bids, in which event both clause number 3.18 and 3.19 becomes obsolete and redundant. It is also the contention of the petitioner that the petitioner's company stood to be the lowest in the bidding process, saving atleast INR 4 crores as compared to the leading bidder at present in the absence of the petitioner.

9. Adverting to the aforesaid facts, Mr. Narayan, learned Senior Advocate, relied upon a decision of the Supreme Court in the case of *Poddar Steel Corporation vs. Ganesh Engineering Works*, AIR 1991 SC 1579 which held that as a



matter of general proposition it cannot be found that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous details and is not entitled to waive even a technical irregularity of little or of no significance. The requirements in a tender notice can be classified into two categories, those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly and in the other cases, it would be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.

10. Further reliance has also been placed on a decision in the case of *B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Service Ltd. & Ors.*, 2006 (11) SCC 548, on a similar issue as noted hereinabove; that if a party fails and neglects to comply with the requisite conditions which are merely ancillary or subsidiary to the main object to be achieved by the condition, the same can be ignored by the authority.

11. On the other hand learned Counsel for the State countering the submission of the learned Senior Advocate for the petitioner submitted that admittedly an insufficient



certificate in relation to man power declaration was submitted and, as such, even if it is an inadvertent error it is a material requirement which cannot be waived of or rectified. There is no reason for seeking any clarification since there was no anomaly and the self-declaration made was existence of hundred personnel an year back.

12. We have carefully heard the submissions advanced on behalf of the respective parties and perused the materials on record.

13. The petitioner company in response to the NIT No. 02/Samagri-01/2024/1301 dated 27th February, 2024 for selection of agency for supply and printing of laminated cards without chips for issuance of vehicle registration certificate and driving license, has submitted his response through online mode alongwith other eligible bidders. The last date for submission of proposal was 20.03.2024. The date of opening of technical bid was fixed as 20.03.2024. The date and time of technical presentation and proof of concept was fixed on 21.03.2024 and the date of opening of financial proposal and declaration of result were to be intimated later. Subsequently the date and time for submission of proposal by bidders were revised by the corrigendum dated 16.03.2024, marked as Annexure-P3 extending the last date and time of submission of



proposal from 20.03.2024 to 04.04.2024 and as regards opening of pre-qualification and technical proposal, it was revised from 20.03.2024 to 04.04.2024 and as regards opening of technical presentation and proof of concept it was revised from 21.03.2024 to 05.04.2024.

14. It would be worthy to note that Clause 5 of the NIT, which deals with Evaluation Criteria contemplates basic requirement that a bidder has a minimum of hundred professionals on its payroll as on bid submission date and a certificate from HR was/is necessary, as documentary proof for it. The term of the NIT also speaks of filing one declaration on employee's strength on letter head of the bidder, addressed to the State Transport Commissioner as provided in Annexure 10 at page 54, containing the number of professionals in the organization's pay roll, as on the date of submission of the tender.

15. The petitioner company submitted its bid documents on 04.04.2024 in relation to the aforesaid tender of the Government of Bihar. All the bids of the candidates were duly verified and in course of the verification it was noticed that the HR declaration was effective as on 30.03.2023, whereas, as per the NIT (Annexure 2 to the writ petition) it was to be on the date of submission of the bid. Having noticed the aforementioned



mistake, the tender documents/bid of the petitioner came to be rejected and a communication in this regard was sent to the petitioner through mail on 12.04.2024. From the reading of the relevant terms of the relevant clauses of the NIT, there is no ambiguity that the declaration of employee's strength must be of the date on which the bid was submitted. This was also very material in qualifying the bidder on the technical evaluation.

16. Even as per the NIT, the last date for submission of proposal was 20.03.2024 and the opening of the technical bid was fixed on the very same date. The corrigendum further revised the date of submission of proposal by bidders from 20.03.2024 to 04.04.2024 and further the opening of the technical bid was also revised from 20.03.2024 to 04.04.2024. In both the NIT or the corrigendum, the date of only opening of the financial bid and declaration of the result were to be intimated later.

17. From the aforesaid facts, it is crystal clear that the last date for submission of the proposal by bidder was either as per the NIT on 20.03.2024 or as per the corrigendum 04.04.2024. However, even as admitted by the petitioner, the HR declaration was of 30.03.2023 and he submitted the bid on 04.04.2024 which in any view of the matter, cannot be said to be a mere oversight. It is negligence of the grossest nature, which



results in the bidder being disqualified at the threshold of technical evaluation. The condition of furnishing HR declaration of more than hundred personnel was an essential condition being part of the basic requirement as indicated under clause no. 5 of the NIT. The capacity and strength of the company, in producing the required materials as per the work order, is dependent upon the man power and thus, by no stretch of imagination, such condition can be said to be ancillary.

18. The submission of the learned Senior Counsel that the Transport Department, Government of Bihar should seek clarification on any aspect from the bidder would not come to his rescue as that would certainly amount to change in the substance of the tender submitted, thus, certainly not permissible even as per clause no. 3.8. It would result in an allegation of nepotism of having procured a declaration in consonance with the tender, after the technical bid evaluation, which is contrary to and in variance to that submitted originally by the bidder. Clause 3.9 though empowers the Transport Department, Government of Bihar to waive any minor infirmity or non-conformity or irregularity in a bid, the instantly alleged mistake of submission of the declaration certificate in relation to man power of a far earlier date, would substantially make the bid non-responsive. The alleged mistake would certainly



constitute a material deviation and cause prejudice by affecting the relative ranking of the bidders. Thus, even clause no. 3.19 of the NIT would not help the petitioner.

19. In view of the aforesaid discussion, the contention of the petitioner that he has not been given opportunity of hearing before declaring him disqualified and rejecting its technical bid cannot arise. That there is a special clause whereby clarification could have been asked by the respondent authorities, would not be applicable on the facts of a declaration submitted which substantially does not comply with the technical requirements. This Court finds that the declaration of employee's strength; through the HR declaration in relation to man power, is a basic document necessarily required to be furnished, which declaration should also be as on the date of submission of the bid. Non-furnishing of the basic required documents would lead to rejection of the bid by treating it as non-responsive.

20. The reliance of the learned Senior Counsel on the decision in case of *Poddar Steel Corporation (supra)* as well as *B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Service Ltd. & Ors.(supra)* are not applicable. This Court accepts with respect the proposition of law as mandated by the Hon'ble Apex Court, that in appropriate cases the authority inviting tender is



entitled to waive even a technical irregularity of little or no significance.

21. In *Poddar Steel Corporation (supra)* under the terms of tender notice the earnest money was permitted to be deposited only by cash or demand draft drawn on the State Bank of India, failure in which led to rejection of the tender. The rejection of the tender was upheld by the Hon'ble High Court against which the matter came up for consideration before the Apex Court. The Hon'ble Supreme Court having considered the fact that the payment of earnest money was made by a certified cheque of the Union Bank of India, drawn on its own branch, could be treated as sufficient compliance of the terms and held that it could not be said that the authority inviting the tender could not waive the literal compliance of such a condition and accept the tender especially when it was in its interest not to reject the bid, which was the highest.

22. *B.S.N. Joshi and Sons Ltd. (supra)* was a case in which the award of the work to the successful bidder was challenged on the premise that they failed to fulfill the essential qualifications. The writ petition was allowed by the Division Bench of the High Court which came to be challenged before the Hon'ble Supreme Court. The appeal was allowed with cost of Rs. 50,000/- against the private



respondents holding *inter alia* that the legal principles operating in the filed, though not *res integra*, it would all the same depend upon the facts and circumstances of each case. The terms contained in the notice inviting tender may have to be construed differently having regard to the fact situation obtaining in each case. The Hon'ble Supreme Court drew a distinction between essential conditions and those which are ancillary or subsidiary to the main object. Essential conditions are to be adhered to and if there is failure so to do, then no bidder can supply the details at a later stage.

23. In the case at hand, in the opinion of this Court the requirement of furnishing HR declaration in relation to man power as on the date of submission of tender was a basic or essential requirement which cannot be waived off. There is no reason to seek clarification regarding a declaration made by the bidder; apprehending that it could be an error.

24. On the invocation of power of judicial review in matters relating to Government contracts/ tenders, the Hon'ble Supreme Court in the case of ***Jagdish Mandal vs. State of Orissa, 2007 (14) SCC 517*** has held that in matters relating to tenders or award of contract, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially



commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bonafide and is in public interest, Court will not in exercise of power of judicial review interfere even if procedural abrasion or error in assessment resulting in prejudice to a tenderer is made out. The power of judicial review will not be permitted to be invoked to protect private interests at the cost of public interest, or to decide contractual disputes.

25. The Hon'ble Supreme Court in the case of ***Tata Cellular vs. Union of India, (1994) 6 SCC 651*** referring the limitation relating to the scope of judicial review of administrative decisions and exercise of powers in awarding contracts has enunciated the following principles:-

“(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative action. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have



freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

26. The Hon'ble Supreme Court also highlighted the inherent limitations in the exercise of power of judicial review of contractual powers. It was observed that the duty to act fairly will vary in extent, depending upon the nature of cases, to which the said principle is sought to be applied. The State has the right to refuse the lowest or any other tender, provided the endeavor is to get the best person or the best quotation and the power to choose is not exercised for any collateral purpose or in infringement of Article 14 of the Constitution of India.

27. Admittedly the petitioner failed to satisfy the basic requirement of filing necessary documents in relation to man power as on the date of submission of the bid, leading to disqualification of the petitioner in the technical evaluation, which in the opinion of this Court does not result in any



illegality, infirmity or impropriety.

28. In view of the discussions made hereinabove, this Court does not find any merit in the present writ petition.

29. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

supratim/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.05.2024
Transmission Date	NA

