

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8442 of 2023

Indramani Kumar Singh Son of Uttam Prasad Singh Resident of Mangwar,
Near Hospital, Ward No. -04, Police Station- Saharsa (Town), District-
Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Food and Civil Supply Department, Government of Bihar, New Secretariat, Patna.
3. The District Transport Committee, Saharsa, through its Chairman District Magistrate, Saharsa.
4. The District Transport Committee, Saharsa,
5. The District Magistrate, Saharsa.
6. The Deputy Inspector General of Police, Koshi Division, Saharsa.
7. The Superintendent of Police, Saharsa.
8. Deputy Superintendent of Police, Saharsa.
9. Bihar State Food and Civil Supplies Corporation Limited, Khadya Bhawan, Daroga Rai Path, R- Block, Road No. 2, Patna- 800001 (Bihar).
10. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Khadya Bhawan, Daroga Rai Path, R- Block, Road No.- 2, Patna- 800001 (Bihar).
11. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	None
For the State	:	Mr. Alok Kumar Rahi, AC to AAG-4 Mr. Utkarsh Bhushan, Advocate Mr. Arvind Ujjwal, SC-4 Mr. U.P. Singh, AC to SC-4
For the B.S.F.C.	:	Mr. Aanjani Kumar, Sr. Advocate Mr. Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 28-02-2024

There was no representation on the part of the



petitioner and, as such, the matter was kept aside. Again when the matter was called out, there was none to represent the petitioner. Mr. Anjani Kumar, learned senior counsel appears on behalf of Bihar State Food and Civil Supplies Corporation (in brevity BSFC).

2. The petitioner on being ousted from the consideration of his selection as Transporter-cum-Handling and Delivery Contractor in pursuance of the tender bearing NIT No. 408 dated 16.04.2022 had filed CWJC No. 14009 of 2022 which was disposed of vide order dated 30.09.2022 with a direction to approach before the appropriate authority by filing a representation for redressal of his grievance(s). Pursuant thereto, the petitioner filed an application before the Managing Director BSFC and the same came to be rejected on 06.12.2022, which order is put to challenge in the present writ petition.

3. The petitioner also sought quashing of letter no. 2156 dated 18.08.2022 issued under the signature of the District Manager State Food Corporation, Saharsa whereby it has been informed to the petitioner that the District Transport Committee, Saharsa in its meeting held on 08.08.2022 has ousted him from the consideration of his selection as Transporter cum Handling and Delivery Contractor on the ground of his character



certificate being cancelled by the Superintendent of Police, Saharsa. Thus challenge has also been made to the letter dated 02.08.2022 whereby the character certificate bearing no. BCHF/2022/294861 issued in favour of the petitioner has been cancelled.

4. The petitioner inter alia also prays that the respondent District Transport Committee, Saharsa be directed to consider the case of the petitioner for his empanelment as Transport cum Handling and Delivery Contractor for the district of Saharsa against the NIT no. 408 dated 16.04.2022.

5. The NIT-cum-SBD discloses that in terms of clause 8 of the tender notice, he was required to furnish an affidavit with a clear stipulation that he has not been convicted by any Court of law or no Court of law has taken cognizance or any FIR has been lodged against him or his family member/ director/ partner in any matter related to transportation, handling, pilferage and black-marketing etc of foodgrains.

6. In pursuance of the aforesaid requirement the petitioner obtained a character certificate by the office of the Superintendent of Police, Saharsa and the same was annexed with the tender documents.

7. On a complaint being made, an enquiry was conducted



and a report was submitted to the Superintendent of Police, Saharsa disclosing therein that the petitioner is facing a criminal case bearing Basnahi P.S. Case No. 61 of 2020 registered under section 341, 323, 448, 385, 354(A) and 34 of the Indian Penal Code.

8. The report also discloses that the allegation levelled against the accused persons including the petitioner has been found true in the investigation and thus, the character certificate issued in favour of the petitioner has been found incorrect.

9. On the basis of the aforesaid report, a request was made to the District Magistrate, Saharsa to cancel the tender. Accordingly, a show-cause notice was issued to the petitioner vide letter no. 2043 dated 21.07.2022 (annexure 9). The explanation of the petitioner has been negatived, leading to filing of the CWJC No. 14009 of 2022.

10. Learned senior counsel drawing the attention of this Court to the terms and condition of the NIT submitted across the board that under clause 8(iii)a of the NIT the petitioner was required to file an affidavit, showing him to be not convicted by any Court of law or no Court of law has taken cognizance or FIR has been lodged against him or his family member/director/partner in any matter related to transportation,



handling, pilferage and black marketing etc of food grains. The condition; as we pertinently observe is, not of disclosure of a conviction alone but also of an FIR lodged or cognizance taken.

11. Further clause 11(xxiii) clearly speaks that suppression of any fact/ declaring false information, detected in the bid or at any stage, amounting to malafide intention of the bidder or an attempt to mislead the District Tender Committee resulting in termination forthwith, alongwith forfeiture of EMD/Security Deposit. Further he shall be banned or blacklisted and consequently barred to participate in any tender for next five years.

12. Learned senior counsel further argued that in identical matter where one of the bidders was found to have indulged in suppression of facts, in relation to character certificate, leading to cancellation of financial bid, this Court in CWJC No. 385 of 2024 vide order dated 10.01.2024 has dismissed the writ petition after having found the action of the respondent authorities in line with clause 11(xxiii) of the terms and condition; which was an integral part of the tender process.

13. This Court having gone through the materials available on record and the orders/judgment placed before this



Court finds that admittedly the character certificate issued in favour of the petitioner has been cancelled by the Superintendent of Police, Saharsa vide letter dated 02.08.2022 after proper enquiry duly conducted by Deputy Superintendent of Police, Saharsa and the factum of petitioner being implicated in connection with Basnahi P.S. Case No. 61 of 2020 had not been divulged at the time of filing of tender documents.

14. Coming to the terms and conditions of NIT, which has also been taken note of by this Court in CWJC No. 385 of 2024. It would be relevant to quote the relevant provisions of NIT. Clause 8(iii)a of the NIT read as follows:

“(iii) Affidavit by the bidder to the following effect issued by the Executive Magistrate /Notary.

(i) She/he/they have not been convicted by any Court of law clearly specifying that: no Court of law has taken cognizance or FIR has been lodged against him/her/them or their family members / director / partner in any matter related to transportation, handling, pilferage and black marketing etc., of food grains.”

15. Further clause 10(iii), 10(xi), with 11(xxiii) and 11(i) which deals with the situation where the committee finds suppression of any fact, any misleading act in the bid or thereafter detected; at any stage. The clause 10(iii), 10(xi), with 11(xxiii) and 11(i) read as follows:-



“10 (III) Suppression of any fact/any misleading act/declaring false information as regards former selections in any district to the other bided district/s will amount to mala-fide intention of the bidder to mislead the District Tender Committee. In such case, contract, whether executed or not with the bidder in any district shall be terminated forthwith along with forfeiture of EMD/Security Deposit. Further she/he shall be banned/blacklisted and not allowed to participate in any tender for next five years.

10 (xi) If any of the document submitted in technical or financial bids of the tender found forged or tampered in the bid will be rejected and appropriate lawful action will be taken against the bidder. At the same time she/he/they will be blacklisted and consequently barred from taking part for next five years in the future tender and EMD will be forfeited.

11 (xxiii) Suppression of any fact/declaring false information in the bid or thereafter detected at any stage will amount to mala-fide intention of the bidder or any attempt to mislead the District Tender Committee will result in his/her termination forthwith along with forfeiture of EMD/security deposit. Further he shall be banned/blacklisted and consequently barred to participate in any tender for next five years.

11 (1) If any selection H&T contractor is found to be Involved in any criminal case, which amounts of moral turpitude or



vigilance case or is blacklisted by any State or Central Government by Central of State Agency or Undertaking during contract period the agreement executed with the H & T Contractor shall be terminated forthwith without prejudice to other rights & remedies”.

16. Going through the aforementioned provisions, there is no doubt that it is couched, in a manner conferring the employer with ample powers to take appropriate legal action, including termination of contract, blacklisting, forfeiture of EMD, etc, against the bidders, if they are found to have indulged in suppression of facts, misleading acts, using forged and fabricated documents in order to obtain tender through unlawful means.

17. Furthermore the order/judgment referred by the respondent BSFC also covers the present case wherein this Court having gone through similar terms and conditions of tender found that the petitioner of the said writ petition, an accused in a criminal case deliberately chose to participate in the tender process by suppressing the fact and also procured a character certificate and, as such, he has to suffer the consequences. The petitioner is a person against whom a criminal case is registered; which is a disqualification. Further the factum of imperative disqualification was not disclosed to



the tenderer. Moreover the character certificate obtained from the Superintendent of Police was after employing subterfuge.

18. In view of the aforesaid facts, this Court does not find any merit in the writ petition.

19. Accordingly the same stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.03.2024
Transmission Date	NA

