

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8946 of 2024

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Sita Devi Wife of Ram Narayan Rai, Resident of Village - Majhauri
Dharmadas, P.S.- Sadar, District – Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Bihar State Food and Civil Supplies Corporation Limited, Khadya Bhawan, R block, Daroga Prasad Rai Path, Road No. 2, Patna, Bihar.
3. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Bihar, Patna.
4. The District Magistrate, Vaishali, Hajipur.
5. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Vaishali, Hajipur.

.. ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ansul, Advocate Mr. Shyam Kishore, Advocate
For the State	:	Mr. Ashutosh Kumar Upadhyaya, AC to SC-9
For the BSFC	:	Mr. Anjani Kumar, Sr. Advocate Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-08-2024

The petitioner is before us challenging the
cancellation of the work awarded to her as L1.

2. We heard Shri Ansul, learned Counsel appearing
for the petitioner and Shri Anjani Kumar, learned Senior



Standing Counsel appearing for respondent- Corporation.

3. The petitioner had applied under Annexure P/1 issued by the Bihar State Food & Civil Supplies Corporation Limited, Hajipur (Vaishali) for selection of Transporter- cum- Handling Contractor (Main). The bidders were obliged to produce self-attested copies of the registration books of 5 trucks, owned by the bidder and 30 other trucks, which are obtained by the bidder under a separate lease or contract agreement. The petitioner had applied under the Notice Inviting Tender (for brevity 'NIT') which was issued on 27.09.2023. The bid submission due date was 21.11.2023 and the technical bid was opened as per the NIT on 24.11.2023. The petitioner was issued with the offer letter on 30.12.2023 and the petitioner was called upon to sign the agreement before 03.01.2024.

4. The petitioner, on her own submission, was not able to sign the agreement since the trucks owners, whose trucks the petitioner had obtained under lease had cancelled the lease agreements. The petitioner was further granted time by Annexure P/6 dated 23.01.2024 to execute an agreement on 25.01.2024, which was also not complied with.

5. Later to that, the petitioner submitted a list of 30



trucks, some included in the original tender and some replaced after the truck owners refused to continue the lease agreements. The respondent-Corporation refused to accept the same and rejected it by Annexure P/8. The reason stated was that the trucks differed from those which were offered as per the original bid.

6. The learned Counsel for the petitioner relied on Clause 11 (xxv) to contend that the vehicles could be replaced at any time. Clause 11 (xxv) is extracted hereunder :-

“11 (xxv) The vehicle has to be registered/Leased in the name of the bidder/his family members/directors/partners till the end of the agreement and transportation of food grains should be on these vehicles. In case the vehicle is required to be disposed of or replaced for unavoidable reasons during the currency of the contract, the same shall be made on written prior intimation to the District Manager with substitute of a suitable vehicle in the name of the bidder along with its documentary evidence. These vehicles must be like other vehicles with GPS with load shell and sim, texture/colour and written descriptions on the body.”

(Underlining for emphasis by us)

7. A reading of the above extract would clearly



indicate that vehicle replacement is possible only if the same is disposed of or replaced for unavoidable reasons during the currency of the contract. This does not enable a bidder to replace the vehicles which were offered along with the original bid document.

8. We find absolutely no reason to interfere with the order of cancellation.

9. The next contention raised by the petitioner is with respect to the blacklisting for five years. The learned Senior Standing Counsel for the respondent, however, points out that forfeiture of EMD is a consequence of failure to provide the trucks as per the original bid document, once the work is awarded. The blacklisting is a necessary consequence of such forfeiture. Four bidders had challenged the award of the work as per CWJC No. 3024 of 2024 and analogous cases, where this Court found that they withdrew at the time of negotiation. In fact, there were complaints raised against this petitioner also who was declared L1 in the tender process. Therein the writ petition was dismissed finding that the four writ petitioners had either withdrawn at the negotiation stage or failed to furnish the required documents or not turning up for entering into an agreement. As of now, it is also submitted that a new tender



has been issued since all the persons have been disqualified.

10. The learned Senior Counsel for the respondents pointed out Clause 10 (iv) and Clause 10 (xiii), which are extracted hereunder :-

“10 (iv) The bidder, whose EMD has been forfeited earlier by corporation will not be eligible for participating in the tender of SFC for next five year.

(xiii) At the time of agreement, successful bidder/bidders will have to submit self-attested photocopies of updated tax-token, road permit, pollution certificate and insurance certificate of all leased vehicles to District Manager, SFC. Failing this, no agreement will be executed with him/her/them, and he/she/they will be barred for taking part for next five years in the future tender forfeiting the deposited EMD at the same time.”

11. Hence, on failure to execute an agreement providing the necessary documents, there is a provision which brings in the consequence of forfeiture and blacklisting. The petitioner had applied under the NIT with open eyes quite aware of the penalties on refusal to enter into an agreement.

12. In such circumstances, we do not find any reason to interfere with the order passed.



13. The writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	N/A
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