IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12687 of 2023

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Parik and Company Through its Partner Lalit Kumar (Male aged about 44 Years) son of Late Ravindra Mistry office at 1ST Floor, Grand Shere-II, Exhibition Road, Patna Bihar-800001 residing at Flat No.3C, Block-A Anshuman Kutir RN Hospital Khajpura Patna 800014.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Secretary Rural Development Department Bihar Patna office at Main Secretariat Punaichak Patna 800015.
2. Secretary, Rural Development Department Bihar Patna office at Main Secretariat Punaichak Patna 800015.
3. Joint Secretary Rural Development Department Bihar Patna office at Main Secretariat Punaichak Patna 800015.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Diwakar Prasad Singh, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh (GA-2)
		Mr. Kunal Tiwary, JC to GA-2

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

10 08-05-2024 The petitioner is aggrieved with his non-empanellment, as per a Notice Inviting Tender (for brevity 'NIT'). The learned counsel for the petitioner also specifically draws our attention to the interim order passed on 08.11.2023 by another Division Bench. As per the interim order, the learned Judges noted that Annexure-1 invited applications from eligible Chartered Accountant Firms and that bids were to be submitted

with necessary enclosures to reach the Secretary, Rural Development Department, Government of Bihar before 3:00 p.m. on 24.04.2023, whereas Corrigendum-II is dated 27.04.2023. Corrigendum-II is not applicable to the case in hand for reason that as on 24.04.2023 there was no prescription of 5 year certificate, is the contention raised. This was the specific ground on which the Division Bench directed the concerned authority to reconsider the petitioner's name for empanellement.

2. The learned counsel for the respondent, however, points out that the Corrigendum did not modify the condition which the petitioner failed to satisfy, which also led to disqualification.

3. The Notice Inviting Tender is produced as Annexure-1, which was in January 2023. The last date of submission of tenders was on 08.04.2023, which was extended to 08.05.2023. The Corrigendum was issued on 27.04.2023. The specific ground on which the petitioner's firm has been disqualified is the fact that they have not proved that they had a Branch Office within the State of Bihar for the last 5 years.

4. We have looked at the NIT which indicates; in the pre-evaluation criteria of empanelment of Chartered Accountant Firms at clause (6)(b) relating to Head Office of CA Firms not

situated in Bihar. It is specified that if CA Firms applying under the tender has its Head Office out of the State of Bihar, but has a Branch Office in Bihar, such Branch Office must be situated continuously in Bihar since more than 5 years (as per ICAI Records) and such branch must be registered under GST laws in Bihar, for a minimum 3 years i.e. since last 3 financial years on the date of publishing of RFP and TOR and have bank accounts of the firm in Bihar. Such branch must also submit bank statements of 12 months of the bank account of the firm in Bihar, was the stipulation.

5. The Corrigendum changed the above stipulation with the following modifications, which is extracted hereinbelow:-

> If CA Firms has its Head Office out of the State of Bihar but have a Branch Office in Bihar since last 5 years continuously without break
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> Such Branch Office muse be situated continuously in Bihar since more than 5 years (As per ICAI Records: Firm Constitution Certificates of each calendar years) and have Bank Accounts of the firm in Bihar. Such branch must submit sufficient proof of Bank Accounts / Banker certificate or Bank Statements showing existence of Bank Accounts in Bihar since last 12 months as on 01.01.2023.

6. In fact, the modification was beneficial to the tenderers since it did not specify for registration under GST laws in Bihar for minimum 3 years. It only required that the CA

Firms having Head Office out of the State of Bihar should have a Branch Office in Bihar for the last 5 years continuously without break, as per ICAI Records and that it should submit sufficient proof of bank accounts in existence in Bihar, since the last 12 months as on 01.01.2023. The 5 year period was stipulated in the original NIT as also in the amended Corrigendum.

7. The petitioner had submitted his tender on the last date, i.e. 08.05.2023. As we noticed even the original NIT contained the stipulation that the branch office should have been working for the last 5 years, so the date of submission of tender is not relevant.

8. The learned counsel for the petitioner refers to Annexure-P2 to establish that the petitioner was working for 5 years within the State of Bihar. Annexure-P2 indicates the name of the firm and also its Head Office address which is at Guwahati. The year of establishment is said to be on 13.03.1961 and the same is continuing as a partnership firm. The constitution of the firm under GST IAN is said to be 01.01.2019 but specifically with respect to the Head Office. The address of the Branch Office at Patna is also shown in the order but, however, there is nothing to indicate that as per ICAI Records

the Branch Office was situated continuously in Bihar since more than 5 years.

9. The learned counsel for the respondent also points out from the counter affidavit that the disqualification is made on 06.06.2023. Annexure-D produced along with Supplementary Counter Affidavit dated 29.11.2023 indicates the specific reason for disqualification of the petitioner who figures at Serial No.94. The reason stated is *"Proposal has been not evaluated due to last five year FCC has been not attached."* The petitioner obviously had produced a Firm Constitution Certificate evidencing their presence in Bihar for only the past one year. We find absolutely no reason to entertain the writ petition and dismiss the same.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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