

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12587 of 2023

1. Md. Istyaque Ahmad son of Md. Shafat Ahmad, resident of Village-Dharmpur, P.s. Samastipur Town, Dist-Samastipur.
2. Badrul Hasnain, son of Late Tahzibul Hasnain, resident of Azad Chowk, Tajpur Road, P.S. Samastipur Town, Dist-Samastipur, proprietor of Hasnain Trader.
3. Raju Isar, Son of Saroja Nand Isar, Resident of Village-Konaila, P.S. Dalsing Sarai, Dist-Samastipur.
4. Parwej Ahmad, son of Jafar Ahmad, P.S. Muzaffarpur Town, Dist. Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Jail) Department, Bihar, Patna.
2. The Inspector General, Prison and Correctional Services, Home (Jail) Department, Bihar, Patna.
3. The Assistant Inspector General, Prison and Correctional Services, Home (Jail) Department, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Adv.

Mr.Satish Kumar Sinha, Adv.

Ms. Anu Priyadarshni, Adv.

For the Respondent/s : Mr.Sheo Shankar Prasad (Sc8)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
Date : 23-02-2024

1. The petitioners have filed the present writ application being aggrieved by the order dated 14.08.2023 contained in letter no. 7099 (Annexure-6) issued under the signature of



Assistant Inspector General, Prison and Correctional Services, Bihar, Patna by which all the District Magistrate- cum- Chairman, District Jail Purchase Committee of the State of Bihar have been directed to initiate the tender process for the financial year 2023-2024 *inter alia* with the condition that earnest money would be 3.5% of each article as estimated with further direction that the said condition would be applicable to those jails where tender notices were published on and / or after 01.02.2023.

2. The petitioners have been engaged in the work of supplying food grains and other perishable articles in different jails of the State of Bihar for the last several years.

3. Mr. Rajendra Narain, learned senior counsel for the petitioners submits that earlier also the respondent / State attempted to fix the earnest money as 3.5% of the estimated yearly cost of the food grains and perishable item as tender conditions which resulted in filing of writ application by similarly situated aggrieved persons bearing C.W.J.C. No. 2530 of 2023. In the said writ application the notification dated 01.02.2023 prescribing 3.5% of the yearly estimated value of the food grains was under challenge.

4. The respondent-State in the counter affidavit specifically



took the point that supply of articles in jails is not based on package system. For supply in a jail, a supplier can apply for supply of any item or a bunch of items in one category or more categories so it is very difficult to ascertain the value of supply for whole year for one bidder.

5. A Division Bench of this Court taking note of the specific stand of the State in the counter affidavit held that the impugned action of the respondents dated 01.02.2023 whereas the final bid was opened on 30.01.2023, therefore, Annexure- 3 dated 01.02.2023 is not applicable to such of those tenders which have already been floated prior to 01.02.2023.

6. The Court further held that, in other words, for the present case, the respondents cannot invoke Annexure- 3 dated 01.02.2023.

7. The petitioners had earlier filed C.W.J.C. No. 8558 of 2023 challenging the notification dated 01.02.2023 fixing 3.5% of the estimated annual value of the food grains and perishable items as earnest money.

8. Learned senior counsel pointed out towards the prayer made in the aforesaid writ application from Annexure-5, which is quoted hereinbelow:-

“(A) A writ in the nature of certiorari or any other appropriate writ/s, order/s for quashing the followings:-



(i) The order, contained in Letter No. 923, dated 01.02.2023, issued under the signature of Assistant Inspector General, Prison and Correctional Services, Bihar Patna, by which certain amendment is done in the Letter No. 2380, dated 30.03.2020, fixing the amount estimated cost of each article of the bid

(Annexure -3 to the petition)

(ii) The order dated 24.05.2023, contained in Letter No. 4318, issued under the signature of Inspector General, Prison and Correctional Services, Home (Jail) Department, Bihar, Patna, by which all the District Magistrate- Cum- Chairman of District Jail Purchase Committee of the State, have been directed to take step to conclude the process of tender in all the jails of State forth with for the financial year 2023-24, in the light of order dated 05.05.2023, passed in C.W.J.C. No. 2530 of 2023, by Hon'ble High Court, as well as, in the light of amendment, made in departmental Letter No. 2380, dated 30.03.2020 (Annexure-1), by Letter No. 923, dated 01.02.2023 (Annexure-3) with a further condition that the earnest money shall receive item wise.

(Annexure-6 to the petition)

(B) A writ in the nature of mandamus or any other appropriate writ/s order/s direction/s for the followings:-

(i) To hold that orders impugned are non-est in the eye of law.

(ii) To hold that amendment / Changes made in the terms and conditions in the format of the bid, as incorporated in Letter No. 2380, dated 30.03.2020 is illegal, improper and without jurisdiction.

(iii) To restrain the respondents from making any amendment or changes in the format of tender as incorporated in Letter No. 2380, dated 30.03.2020.

(c) Any other relief/s for which the petitioners are found entitled to.”

9. A Division Bench of this Court in the aforesaid writ



application by its order dated 28.07.2023 allowed the writ application and set aside the impugned letter no. 923 dated 01.02.2023 issued under the signature of Assistant Inspector General, Prison and Correctional Services, Bihar, Patna and letter no. 4318 dated 24.05.2023 issued under the signature of Inspector General, Prison and Correctional Services, Home (Jail) Department, Bihar, Patna.

10. It has been argued that fixing the bid security (earnest money) as 3.5% of the total annual estimated cost of food grains / perishable items in place of consolidated amount of bid security was quashed by this Court but despite the same the respondent no. 3 / Assistant Inspector General, Prison and Correctional Services, Home (Jail) Department, Bihar, Patna issued the impugned letter dated 14.08.2023 containing Clause 4(ii) by which the same condition of bid security (earnest money as 3.5% of the total annual estimated cost of each article of the bid) has been made applicable.

11. Learned counsel submits that once similar condition has been quashed by Division Bench of this Court and the order of Division Bench has not been challenged and the same has attained finality, the issuance of another letter imposing the same condition by the authority is not only contumacious but is



illegal and arbitrary.

12. On the other hand, learned counsel for the State tried to defend the stand of the respondent-authority and submits that the 2nd writ application has been decided on the basis of an order passed in the first writ application bearing C.W.J.C. No. 2530 of 2023 in which this Court gave the verdict that the letter dated 01.02.2023 shall not be applicable to such of those tenders which have already been floated prior to 01.02.2023. As such, the impugned letter fixing the tender conditions of bid security amount @ 3.5% of the annual estimated value of the products is not covered by the judgment of this Court Hon'ble Court.

13. I have heard learned counsel for the parties at length and have gone through the materials on record including the two judgments passed by Division Benches of this Court in C.W.J.C. Nos. 2530 / 2023 & C.W.J.C. No. 8558 / 2023.

14. From perusal of the order dated 28.07.2023 passed in C.W.J.C. No. 8558 of 2023 it transpires that the notification dated 01.02.2023 was specifically challenged by the writ petitioners to the extent of imposing 3.5% of the annual estimated value of each article as the bid security amount. This Court after taking note of the stand of the respondent/State in their counter affidavit in C.W.J.C. No. 2530 of 2023 specifically



quashed the notification dated 01.02.2023. From perusal of the impugned letter at Annexure- 6 it appears that in Clause 4(ii) of the said letter a similar condition i.e. 3.5% of the annual estimated value of each article has been fixed by the respondent as earnest money which has already been quashed by this Court in C.W.J.C. No. 8558/2023.

15. Accordingly, I find force in the argument of learned senior counsel for the petitioners that once the order of this Court has attained finality and similar condition has been quashed by Division Bench of this Court as such the respondents cannot impose the same condition by way of another letter / notification. It is not only contumacious but arbitrary and illegal. If the respondents were aggrieved by the order of Division Bench of this Court quashing the condition of 3.5% of the annual estimated cost of each article as earnest money, they could have challenged the same before superior court but once the respondents have accepted the verdict and did not challenge it and the same has attained finality; imposing similar condition, in my opinion, is not sustainable in law and the same is violative of public policy. Accordingly, Clause 4(ii) of Annexure -6 dated 14.08.2023 is hereby quashed.

16. With the aforesaid observation and direction the



application stands allowed.

17. There shall be no order as to cost.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28-02-2024
Transmission Date	NA

