IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12254 of 2024

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1. M/s Jay Mata Di Enterprises a proprietorship firm having its registered office at Village- Kansara, P.O. - Kochhasa, P.S. - Kinjer, District - Arwal, Bihar - 804426 through its proprietor namely Sri Ved Narayan Singh (male), aged about 52 Years, son of Sri Rajendra Singh, resident of Village- Kansara, Kochahsa, District- Arwal, Bihar - 804426.
2. Ravi Ranjan Kumar, son of Sri Uday Raj, resident of Sri Krishnapuri Colony, P.S. and District - Jehanabad, Bihar, PIN - 804408.
3. M/s Maa Kali Engineering Works a partnership firm having its registered office at Village- Tenibigha, P.S. and District - Jehanabad through its Partner namely Sri Anil Kumar (male), aged about 43 years, son of Sri Sudama Prasad, resident of Village - Tenibigha, P.S. and District- Jehanabad.
4. M/s Kanaudi Constructions Pvt. Ltd. a registered company having its registered office at Village- Kanaudi, P.O. - Muther, P.S. and District- Jehanabad through its Director namely, Sri Janmajay Kumar (male), aged about 52 years, son of Sri Parmeshwar Singh, resident of Village - Kanaudi, P.O.- Muther, P.S. and District - Jehanabad.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Additional Principal Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
5. The Chief Engineer-2 (Gaya) Rural Works Department, Bihar.
6. The Superintending Engineer, Work Zone Aurangabad, Rural Works Department, Government of Bihar, Patna.
7. The Secretary to the Engineer in Chief - 2 (Gaya), Rural Works Department, Bihar Patna.

8. The Executive Engineer, Work Division Jahanabad, Rural Works Department, Bihar Patna.

9. The District Transport Officer, Jahanabad, Bihar.

10. The District Transport Officer, Patna, Bihar.

11. M/s Aditya Shree Engicon Pvt. Ltd. having its registered office 31, Shakti Niwas, West Gandhi Maidan, Court Area, P.O., P.S. and District - Jehanabad, Bihar - 804408, through its Managing Director namely Sri Ranjeet Ranjan (male), son of Late Vijay Narayan Singh, resident of 31, Shakti Niwas, West Gandhi Maidan, Court Area, P.O., P.S. and District - Jehanabad, Bihar - 804408.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate
		Mr. Sarveshwar Tiwary, Advocate
		Ms. Pragati Patra, Advocate
		Mr. Sumit Kumar Jha, Advocate
		Ms. Riya Giri, Advocate
For the Respondent/s	:	Mr. P. K. Shahi, Advocate General
		Mr. Ramakant Sharma, Sr. Advocate
		Mr. Vikas Kumar, Advocate
		Mr. Sourav Suwan, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-10-2024

The petitioners are all contractors, registered under the Bihar Contract Registration Rules 2007, having certificate of registration of the Rural Works Department; the respondent tendering authority. All the petitioners along with the 11th respondent, applied under the Notice Inviting Tender (NIT) dated 13.12.2023 produced as Annexure-P/1.

2. The averments in the writ petition indicate that the petitioners had applied under the various works under the NIT, which works are indicated in the NIT from Serial No. 1-11. The petitioners are only aggrieved with the contract for works at Serial No. 1 and 8, being awarded to the 11th respondent.

3. Against the work advertised as per Serial No.1, petitioner Nos.1, 2 and 4 participated while that advertised under Serial No.8 was participated in by the petitioner Nos. 1 and 3. Some of the petitioners along with the 11th respondent were declared successful in the technical bid. Not all of the petitioners were successful in the technical bid, in every advertised work under which they applied. However, the petitioners do not challenge their disqualification, if any, in the various works and are only concerned with the award of the work to the 11th respondent, that too, confined to the award of works under Serial No.1 and 8.

4. On opening of the financial bid, those of the petitioners who qualified in the technical bid failed to get the rank of L1; which was obtained by the 11th respondent. The contention against the award of the works to the 11th respondent are four in number. One, the 11th respondent has not uploaded an affidavit to the effect that they are not in-eligible to participate in the tender; which is mandatory, as per clause 20 of the NIT. The next contention is with respect to non-consideration of a complaint submitted, as per clause 30 of the NIT, which speaks of any bidder being entitled to make a complaint within five working days of the result of evaluation of the technical bid being made public on the e-procurement portal. The complaint had to be considered, before opening of the financial bid, which was not done. The third & fourth allegations are based on the Model Bidding Document (MBD), produced as Annexure-P/13 produced along with the writ petition.

5. Learned Counsel Sri Ashish Giri, appearing for the petitioners took us to clause 4.4B(b)(i), wherein a number of equipments are listed out, with their type and characteristics, along with the minimum number required for qualification. The learned Counsel would specifically refer to the documents uploaded by the 11th respondent with respect to two numbers of 10 ton Tipper trucks and three numbers of Tractor/Rubber Tyred Dozer with adjustable Black-Blade/grader, as required under the aforesaid clause. It is argued that the vehicles put forth, from the documents produced along with the bid documents, clearly indicate the fitness validity period of the said vehicles having expired. One of the trucks which was proffered, was actually sold by the 11th respondent long back.

6. In answer to the contention raised by the respondents that clause 4.4B(b)(i) only required procurement of such machinery within 30 days of issue of LOA, it was argued to be not applicable to the minimum required number, as specified in the afore-mentioned clause. It was also argued that the affidavits produced were stamped with judicial stamps, which makes it un-workable and un-enforceable under the Stamp Act, 1899.

7. The learned Counsel for the petitioner relied on ***Ramana Dayaram Shetty v. International Airport Authority of the India and Others; (1979) 3 SCC 489*** to contend that the standard of eligibility laid down in the notice for tenders, cannot be departed from, arbitrarily. Reliance was also placed on two decisions of different Division Benches of this Court, in C.W.J.C. 4139 of 2024, ***M/s Ashok Construction v. The State of Bihar*** dated 05.03.2024 and C.W.J.C. No.13539 of 2024, ***Sona Engicon Private Limited v. The State of Bihar*** dated 10.09.2024. The first of the aforesaid decisions was relied on to contend that the very same clause came up for consideration, wherein, in the absence of documents or papers relating to the apparatus required to be used in the work; only affidavits in relation to the apparatus having been proffered, resulted in the cancellation of the technical bid, which was upheld by the Division Bench. ***Sona Engicon Private Limited (supra)***, was again a case, in which a Letter of Bid, as required by the NIT, when not submitted by the petitioner-bidder, was found to be a valid reason for disqualification at the stage of the opening of technical bid. The mandatory requirement of certain documents cannot be arbitrarily departed from, is the compelling contention.

8. The learned Advocate General appearing for the official respondents points out from clause 4.4B(b)(i) that though the minimum number of equipments are listed out, the clause specifically speaks of the bidder having access to such machinery by ownership, lease or hire and even permits future procurement, which has to be done within 30 days of the issuance of LOA. The learned Advocate General specifically referred to the supplementary affidavit filed by the State to argue that there were sufficient documents of trucks and tractors produced by the 11th respondent. An affidavit, undertaking such deployment of machineries, on lease or hire basis was also submitted as per Annexure-R/4. A further affidavit regarding no disqualification having visited the bidder was also proffered, as per Annexure-R/5. The affidavits were stamped but with court fees, as is seen from the affidavit produced along with the writ petition itself. Even if the affidavit is not properly stamped, what is required is impounding of the same and transmission to the appropriate authority for proper stamping with penalty, if any, decided on the discretion of the authority under the Stamp Act. The same can be relied on for collateral purposes.

9. Reliance is placed on ***Poddar Steel Corporation v. Ganesh Engineering Works and Others; (1991) 3 SCC 273,*** to contend that the deviation from non-essential or ancillary/subsidiary requirements is permissible and minor technical irregularities can be waived in the larger public interest of ensuring expeditious completion of work and ensuring that multiple tender proceedings are not initiated, with further expense to the State exchequer. Reliance is also placed in ***B.S.N Joshi and Sons Limited v. Nair Coal Services Limited and Other; (2006) 11 SCC 548,*** which dilated upon the extent to which variation of tender conditions is permissible and the scope of judicial review in interfering with such variation, which are not of essential conditions *'going to the root of the matter'*. The discrepancy pointed out, if at all, are possible of being cured. It is also pointed out that the petitioners did not submit a complaint within five clear days of the technical bid evaluation. The complaint was filed only on 23.07.2024 after the financial bid was opened and the 11th respondent was declared as L-1.

10. Sri Ramakant Sharma, learned Senior Counsel appeared for the 11th respondent. Reference was made to the affidavit filed, from which the trucks are seen to have valid fitness certificate at the time of bid. Insofar as the tractors are concerned, it is the contention of the learned Senior Counsel that tax has been paid up to a future date and in that circumstance, the date of expiry of fitness certificate indicated is, at the first instance after registration; not relevant at the time of bid. It is also submitted that the 11th respondent has time, of 30 days of the issuance of LOA to proffer the required equipments for the contract work; the failure of which can lead to forfeiture of security deposit and cancellation of award.

11. Admittedly three (03) trucks were proffered by the 11th respondent, the fitness certificate of which as per the supplementary counter affidavit filed by the State has registration numbers BR25GA3505, BR25GA3506 and BR25GA3511, all in the name of the 11th respondent. The specific objection taken is that the fitness validity is only up to September 2023 for all the aforesaid vehicles. The certificate of fitness of BR25GA3511 is produced at page 21 of the second supplementary affidavit dated 28.09.2024 filed by the 11th respondent, which indicates the truck having registration number BR25GA3511 with fitness up to 02.10.2025. Likewise, the fitness certificate of truck having registration number BR25GA3506 is produced at page 42 again indicating fitness up to 02.10.2025. The certificate of fitness of BR25GA505 also has been produced at page 65, again indicating fitness up to 02.10.2025. Hence, there are sufficient trucks produced with valid fitness certificates.

12. The next contention is with respect to the tractors produced at Annexure-3 of the supplementary counter affidavit dated 24.09.24 of the State with registration numbers BR25G0860, BR25G0861 and BR1GB4838. The supplementary counter affidavit dated 25.09.2024, indicates the 11th respondent having produced the documents with respect to tractors having registration numbers BR25G0860 and BR1GB4838. Though the fitness validity is shown in the initial registration certificate as 17.10.2013 and 26.04.2013, tax is seen to have been paid up to 17.10.2023 and 02.05.2026, which indicates that the fitness has been validated afterward after its initial expiry.

13. We are further fortified in our observations, by the insurance policies issued for two vehicles for the period between 21.09.2024 and 20.03.2025, in the name of the 11th respondent; which insurance policy would not have been issued, if the fitness was not valid as on the date of insurance. It has to be specified that the documents with respect to the third tractor has not been produced in the supplementary counter affidavit. However, this is taken care of by the affidavit of undertaking, produced along with the supplementary counter affidavit dated 24.09.2024 of the respondents Nos.1-8. The affidavits at Annexure-R/4 indicates the list of machineries attached and also contains an undertaking that apart from those proffered, the bidder would deploy all the machineries, as per lease or hire basis.

14. In this context, we specifically refer to the clause 4.4B(b)(i), which indicates that the bidder should demonstrate with declaration on non-judicial stamp paper along with sufficient proof of document, in support of owning or having access to, by ownership, lease or hire, or to be procured, the key equipments listed underneath the said recital. The list indicates only the minimum required equipments and it is also specified that notwithstanding the list, the contractor would be required to provide all necessary items and numbers of equipment, plant and materials in order to carry out the prescribed works. Note 1 to the above clause reads as under:-

> *If the bidder proposes to lease or hire the machineries, then he will have to commission it within 30 days of issue of LOA. If the contractor fails to do so his bid security shall be forfeited and award shall be cancelled. In that case second lowest bidder may be awarded the work under conditions explained in the bid document.*

15. Hence, the requirement is only to produce the machineries, which the bidder intends to lease or hire within 30 days of issuance of LOA; failing which there shall be forfeiture of the security amounts and cancellation of the award. The learned Counsel for the petitioner also produced the fitness details available in the portal of the Motor Vehicles Department, of the three Tractors; recently downloaded to further assail the lack of fitness of the Tractors proffered by the 11th respondent. We have to observe that the documents proffered unequivocally establish that the 11th respondent has in its possession the equipment required by the NIT, which is in substantial compliance and the fitness, if not available, would have to be obtained within the period provided under clause 4.4B(b) (I).

16. ***M/s Ashok Construction (supra)*** was a case in which the petitioner, a bidder in an NIT did not produce any apparatus issued in the work and in place thereof, only affidavits in relation to the apparatus were proffered; which led to the cancellation of the technical bid. In the present case, the 11th respondent had produced the documents from which we have found the same to be complying with, insofar as the number of trucks required and two tractors out of three, also having been proffered. With respect to the third tractor, the only contention is the fitness having not been specified, which evidently is available insofar as the tax having been paid up to 02.05.2026; for BR01GB4829 produced along with the supplementary affidavit dated 25.09.2024 of the 11th respondent.

17. ***Sona Engicon Private Limited (supra)*** was also in the context of a Letter of Bid, which was a mandatory condition, having not been uploaded along with the bid documents; on the premise that there was a misapprehension that it was required only in the case of a joint venture. It was also alleged that one of the persons who had qualified; though was not a joint venture, had uploaded the document; a clear defect which ought to have resulted in disqualification. We found that the 9th respondent, who was not a joint venture, had uploaded the document as a measure of abundant caution, which resulted in the said bidder's technical bid being qualified. Insofar as the writ petitioner, therein, he had not availed of the provision for clarification, regarding any anomaly in the bidding document and had failed to upload the Letter of Bid. On the facts coming out in the instant case, we are of the opinion that the dicta in both the decisions do not apply.

18. ***Ramana Dayaram Shetty (supra)*** held that standard of eligibility laid down in notice for tenders, cannot be departed from arbitrarily, especially since such departure from the standard would amount to denial of equality of opportunity to those who felt bound by the standard of eligibility and therefore, did not submit their tenders. In the present case, there is no departure from the standard of eligibility and we have already found that the essential requirements have been satisfied.

19. We also reckon the decisions in ***Poddar Steel Corporation*** and ***B.S.N Joshi and Sons Limited (both supra)*** which drew a distinction with essential and non-essential or ancillary/subsidiary requirement as also specified the extent to which variation of tender conditions is permissible. In the present case, the very clause relied on by the writ petitioners provides for procurement of equipments within 30 days of the LOA.

20. We find absolutely no reasonable ground to interfere with the tender proceedings, but however, caution the authorities that the tender conditions, if not satisfied by the 11th respondent within 30 days of the LOA, then necessarily there could be forfeiture and cancellation, as directed and provided for in the Model Bidding Document; at the discretion of the authority.

21. We also see from the supplementary counter affidavit filed by respondents Nos.1-8 that clause 20 is satisfied by Annexure-R/5 series of affidavits filed. It specifically speaks of there being no blacklisting or abandoning of work in any government department nor has any contract been rescinded, which is in effect, the declaration of no in-eligibility having been suffered by the 11th respondent.

22. Insofar as the contention with respect to non-judicial stamp paper, obviously the authority will have to impound the said affidavits and send it for proper stamping before the appropriate authority under the Stamp Act. This would not deviate from the fact that an affidavit has been filed; with franking done of judicial stamps by the Stock Holding

Corporation of India Ltd., as permitted in the Stamp Act. The affidavit on being impounded and stamped will have the effect of a valid affidavit, under the Stamp Act and this cannot lead to the cancellation of the tender in favor of the 11th respondent, who has qualified as L1 on the opening of the financial bid.

23. A cancellation of award to L1, in the facts coming out herein would definitely result in loss to the State Exchequer, either by way of awarding of the contract to the next lowest bidder or in proceeding for a further tender, in addition to delay in commencement and completion of work.

24. The writ petition on the above reasoning is found to be devoid of merit and we dismiss the same leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

sharun/-

AFR/NAFR	
CAV DATE	30.09.2024
Uploading Date	04.10.2024
Transmission Date	