

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14409 of 2024

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M/s Scientific Ayurvedic Research And Production Laboratory Zero Mile,
Jakariapur, Patna - 800007, being represented through its Proprietor, Ajay
Kumar, Male, Aged about 51 years, Son of Sri Arjun Prasad Modi, resident of
C/304, Charminar Apartment, Road No.- 12, Rajendra Nagar, Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Health and Family Welfare, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Health and Family Welfare, Government of Bihar, Patna.
3. State AYUSH Society, Room No.- 347, 3rd Floor, Vikash Bhawan, Baily Road, Health Department, Government of Bihar, Patna being represented through the Executive Director.
4. The Executive Director, State AYUSH Society, Health Department, Government of Bihar, Patna.
5. The State Program Officer, State AYUSH Society, Health Department, Government of Bihar, Patna.
6. The Superintendent (In-charge), Government Ayurvedic College and Hospital, Kadamkuan, Patna.
7. M/s Ayurved Aushadhalay, A proprietorship firm having its office at Angad Plaza, Kadam Kuan, District- Patna through its proprietor namely Awadh Kishore Prasad, male, Aged about 75 Years, Son of Late Moti Lal Saw Resident of House of Ram Pari Devi, E 46, PC Kolony Kankarbagh, P.S. - Kankarbagh, District- Patna.
8. M/s Ruhani Herbal, A partnership firm having its office at Angad Plaza, Kadam Kuan, District- Patna through its authorized representative namely Arvind Kumar, male, aged about 46 Years, Son of Shambhu Sharan Prasad, Resident of Village - Dudhapaniya, P.S. - Kawakol District- Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Avinash Kumar, Advocate Mr. Kumar Satyam, Advocate
For the Respondent/s	:	Mr. P. K. Shahi, Advocate General Mr. Vikas Kumar, Advocate



For the Intervenor : Mr. Abhishek Kumar, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER**

(Per: HONOURABLE THE CHIEF JUSTICE)

6 25-10-2024 The petitioner was concerned with the disqualification in a tender for reason of the Earnest Money Deposit having not been remitted. The petitioner's contention is that the petitioner is entitled to the exemption from deposit of Earnest Money Deposit, as is specified in the policy document of the State of Bihar, produced as Annexure-P5.

2. The translated copy of Annexure-P5 is also produced before us from which clause 3(1)(v) is extracted hereunder:-

In the light of the provision of clause 2.2 of Store purchase Preference Polity 2002 notified by letter no. 2458 dated 14.03.2003 of Government of Bihar, Industries Department, the manufacturing units located within the state will not have to deposit the Earnest Money prescribed in the tender eligibility for participating in the tender. But after the rate is approved/rate contracted on L-1 basis, it will be mandatory to deposit a bank guarantee equivalent to 20 (twenty) percent of the amount of bank guarantee prescribed under the norms.

3. A counter affidavit has been filed by the respondent No.6. The petitioner had submitted the document in



regard to exemption of Earnest Money Deposit physically before the meeting of the Purchase Committee. The reliance placed is on clause 20 of the tender notice from which it is amply clear that no document will be accepted personally or physically, except the document submitted through on-line. It was hence, the Purchase Committee refused to accept the document of the petitioner and rejected his qualification at the technical evaluation stage.

4. Admittedly, the financial bids were opened after the technical qualification of two bidders and both the said bidders have been impleaded as respondent Nos.7 and 8. Respondent Nos.7 and 8 were awarded contract for supply of different drugs as L-1. We have also heard the learned Counsel appearing for respondent Nos.7.

5. Admittedly, there is a policy, as is indicated from Annexure-P5, where there is an exemption granted from Earnest Money Deposit to manufacturers who carry out their manufacturing activity within the State. However, subject to the further condition that if the rate is approved on L-1 basis, it will be mandatory to deposit a bank guarantee equivalent to 20 (twenty) percent of the amount of bank guarantee prescribed under the norms, which is also another benefit extended



under the policy.

6. Despite the policy having been notified by the Government, the 6th respondent, who is the arm of the Government has not specified the certificate which is required to be furnished for the purpose of deciding the exemption, in the notification issued inviting tenders. In the above circumstances, the petitioner cannot be faulted for having not uploaded the certificates/documents essential to look into the claim for exemption. We also see that the petitioner has produced his drug license, which is produced as Annexure-P/1. The only objection with respect to the drug license produced as Annexure-P/1, as raised by the 7th respondent is that there is a list of drugs attached to the license, which has not been produced in the writ petition.

7. Admittedly, there is a drug license produced before the authorities. There are also further documents produced to prove that the petitioner is a manufacturer within the State of Bihar, as is evident from the counter affidavit of the respondent No.6; not uploaded with the documents, but produced subsequently. In the above circumstances, it is only proper that the petitioner's exemption claim be considered on the basis of the documents uploaded and also subsequently



produced. The award as against the L-1 shall be subject to such consideration.

8. If the petitioner is found to be exempted then despite the Earnest Money Deposit not having been deposited, the petitioners financial bid shall be opened. If the petitioner’s bid is lower than that of respondent No.7 and 8, to that extent necessarily the tender shall be finalized in favor of the petitioner.

9. With the above observations and directions, the writ petition stands disposed off.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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