

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16569 of 2024

M/s General Offset Printing Press Pvt. Ltd., having its registered address at 42, Industrial Colony, Naini, Prayagraj, Allahabad, U.P. 211008, Through its Director namely, Shri Neeraj Bhargava, Male, aged about 56 years, son of Late K.K. Bhargava, Resident of 11/16, Shashi Puram Colony, Shiv Ram Das Gulati Marg, P.S.- Colonelganj, District- Prayagraj (Allahabad), U.P.- 211002.

... .. Petitioner/s

Versus

1. The State of Bihar, through Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
3. The Bihar State Textbook Publishing Corporation Limited, through Managing Director, Bihar State Textbook Publishing Corporation Limited, Patna, Bihar.
4. The Managing Director, Bihar State Textbook Publishing Corporation Limited, Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-10-2024

The petitioner is a Company registered under the Companies Act, 2013 based in Prayagraj, Uttar Pradesh with GST registration also in the State of Bihar. The petitioner is registered as a small enterprise under the Ministry of Micro Small and Medium Enterprises. The petitioner engaged in the work of printing is aggrieved by the exclusion against the 'non-local enterprises' as brought out by Annexure-P/8, Notice



Inviting Tender (for brevity, NIT) issued by the respondent-Corporation.

2.The learned Counsel for the petitioner would take us through the various clauses in the agreement to contend that there is clear exclusion of a person who is not a local printer which goes against the very policy formulated by the Government under Annexure-P/12 notification. Both local and non-local industrial units/enterprises are defined in the policy thus prohibiting exclusion of the latter and confining consideration to the former. Reference is also made to clause-7(2) which restricts the consideration, to the bids of local enterprises, only on the Nodal department having communicated that there is sufficient local capacity and local competition. There is no such document available with the Government. The petitioner being a printer located outside the State and having sufficient experience in printing and supply of textbooks cannot be restricted from submitting a bid, is the compelling contention. The learned Counsel for the petitioner would also submit that the Corporation cannot deviate from the policy document and impose conditions by itself, for which purpose reliance is also placed on **Krishna Rai (Dead) through Legal Representatives and Ors. v. Banaras Hindu University &**



Ors; (2022) 8 SCC 730.

3. The learned Advocate General on the other hand would point out that the petitioner had not even applied under the NIT. The writ petition was registered only on 26.10.2024 while the last date and time for submission of bid was 20.09.2024. It is further pointed out that the policy document as referred to by the petitioner only speaks of a preference for local enterprises and the definition of non-local enterprise is only for the purpose of determining the manner in which such preference can be given to local enterprises, on examination of the bids as distinguished from the non-local enterprises. The policy document does not restrict the consideration to the local bidders nor does it enable the non-local bidders to apply.

4. The learned Advocate General further submits relying on the counter affidavit filed that the petitioner has no contention with respect to a printing press situated in Bihar or a storage space laid out in a minimum area of 10,000 sq.ft. within the State of Bihar. There are sufficient local enterprises within the State of Bihar to cater to the requirement and enable a healthy competition. While asserting that there is no restriction from participation; without prejudice it is also argued that a policy aimed at industrialization including promotion of MSME



sector within the State, would be one of the avowed objects possible of an exception under Article 14 of the Constitution of India.

5. The Bihar Purchase Preference Policy, 2024 produced as Annexure-P/12, is intended at facilitating growth of local industrial unit/enterprises also with special focus on Bihar Micro And Small Enterprises and startups. The definition of a 'local industrial unit or enterprise' defines it as an entity whose goods or services offered for procurement meets the minimum local content and other related criteria as prescribed under this policy. Local content is defined by clause (6) which would be the total value of the items procured, minus the value of content brought from outside, as a proportion to the total value in percentage. The determination of local content is available under Chapter II in clause (6)

6. As argued by the learned Advocate General, the policy is designed to enable a purchase preference in the procurement of goods and supplies; which preference is conferred on the local industrial units/enterprises as distinguished from a non-local industrial unit or enterprise. We cannot but observe from the policy document that there is no restriction of a non-local industrial unit/enterprise as generally



available under the policy; unless there is a specific finding by the Nodal department that there is sufficient local capacity and local competition restricting the bid to local enterprises.

7. In the context of our interpretation of the policy, we do not think that **Krishna Rai** (supra) has any application, which in any way is relatable to service law and recruitment processes. Paragraph no. 31 specifically pointed out by the learned Counsel for the petitioner deals with suitable criteria for selection to be laid down by the rule making authority and not by the selection board or selection committee. The parallel drawn is insofar as the policy being the essential rule which cannot be deviated by the tendering authority. We do not find such a rule enabling all non-local enterprise to participate in a tender. The restriction can only be when a Nodal Department makes an assessment of the local capacity and there is sufficient competition available. The policy is one for preference and not either of exclusion or inclusion.

8. Looking at the NIT, we do not find any restriction insofar as the bidders from outside the State. However, there is a requirement as available from the NIT that the bidders should have a printing press facility situated in Bihar and that the bidders should operate the printing press facility



along with storage space laid out in an area minimum of 10,000 sq.ft. We notice from the counter affidavit that there are stipulations insofar as the printing machinery to be used, the inspection of which would be very relevant insofar as the issuance of a Letter of Acceptance. The petitioner does not have a contention either of a printing press facility situated within the State of Bihar or a storage facility having an area with minimum of 10,000 sq.ft., again within the State of Bihar.

9. Further, we cannot but observe that the eligibility criteria as available from the NIT, clause-2(1) is that the invitation for bid is open for all bidders established in Bihar fulfilling eligibility criteria as mentioned in clause (2) and clause (6). The last date and time for submission of bid was 20.09.2024, before which the petitioner had not approached this Court.

10. The petitioner is said to have made Annexure-P/9 and P/10 objections on 31.08.2024 and 03.09.2024 respectively, without even an attempt to upload a bid. The petitioner then filed an appeal purportedly under Clause 17 of the policy document which clause refers to complaints relating to implementation of the policy; which we have held to be in the nature of preference to local enterprises and not an exclusion of



non-local enterprises.

11. Without making an attempt to bid under the NIT, the petitioner cannot challenge the eligibility condition. It is also pertinent that the petitioner does not satisfy the eligibility criteria, of having a printing press within the State of Bihar and a storage space as required under the NIT.

12. We find absolutely no reason to interfere with the tender floated and reject the writ petition for the grounds stated above.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	30.11.2024.
Transmission Date	

