

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19261 of 2024

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Shubham Kumar Son of Shri Sanjay Kumar Singh Resident of Mangala
Nagar, Bihar Sharif, Nalanda (Bihar)- 803101.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
3. The Additional Secretary, Food and Consumer Protection Department, Patna, Bihar.
4. The District Magistrate, Muzaffarpur.
5. The Deputy Development Commissioner , Muzaffarpur.
6. The Additional Collector, Muzaffarpur.
7. The District Transport Officer, Muzaffarpur.
8. The District Manager, Bihar State Food And Civil Supply Corporation Limited Muzaffarpur.
9. The Managing Director, Bihar State Food and Supply Corporation Ltd, Patna, Bihar.
10. The District Supply Officer, Muzaffarpur.
11. In-charge State Tax service Commissioner Eastern Zone.
12. District Treasury Officer, Muzaffarpur.
13. M/S Jai Prakash through District Manager, Muzaffarpur.
14. M/S Bhagwati Traders, Proprietor Bir Bahadur Rai through District Manager, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shilpi Singh,Advocate
For the Respondent/s : Mr.Government Advocate (10)

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



Date : 19-12-2024

The contention of the petitioner is that as per clause 8C, a tenderer who does not have experience also can furnish a tender, but however with an undertaking that the additional Performance Guarantee would be furnished, of Rs. 50 lakhs from a Nationalized Bank. The petitioner is said to have furnished such an undertaking which is produced as Annexure-P/3.

2. We specifically extract Clause 7(ii) and Clause 8, which are quoted hereinbelow:-

7(ii) Tenderer should have executed in the immediately preceding three years Work of value:

a. At least 2 crores in the three preceding F.V. in a single contract:

OR

b. At least 4 crores in the three preceding Financial year in combining different contracts.

8. Qualification conditions for Tender:

a) Tenderer should have experience of Rake Handling and/or duly obtained from Manufacturer/PSU/Govt. Dept/Public Ltd. Company/Private Limited Company dealing in the field of Fertilizer, Foodgrains, Cement, Sugar, Coarse grains or similar products. Tenderer should have executed such assignments in any of the immediately preceding five years. In case of Partnership, only the experience of the Firm will be reckoned and for the purpose the



experience of the Individual Partners will not be counted.

b) Experience details in the proforma prescribed at Appendix V shall be furnished by the tenderer. The information furnished in Appendix V shall be supported by experience certificate issued by client(s) on their letter head.

c) Tenderer without the requisite experience may also participate subject to providing an undertaking that an additional Performance Guarantee in the form of Bank Guarantee of Rs 50,00,000 from Nationalized Bank will be given, if selected. The format of the Bank Guarantee to be provided in such cases is at Appendix-IV. The BG will be valid till a period of Forty two(42) months from the date of agreement.

d) If the Tenderer is a partnership firm, there shall not be any re-constitution of the partnership without the prior written consent of the Corporation till the satisfactory completion of the contract.

Note: The year for the purpose of experience will be taken as Financial Year (1^a April to 31st March) excluding the financial year in which tender enquiry is floated.

3. The petitioner's disqualification is under Clause 7(ii) which requirement the learned Counsel for the petitioner admits, the petitioner did not possess. We are of the opinion that Clause 7(ii) and Clause 8 are stand alone provisions. As per Clause 7(ii), the petitioner has to submit documents with the technical bid, which indicate that the tenderer has obtained a



single contract of at least 2 crores in the three preceding Financial Years or in the three preceding Financial Years, the tenderer has executed work of 4 crores, by combining different contracts. The petitioner admits that the petitioner does not have that pre-qualification.

4. Insofar as Clause 8 is concerned, there is an experience provided for Rake Handling/obtained from Manufacturer/PSU/Government Department/Public Ltd. Company/Private Ltd. Company dealing in the field of Fertilizer, Foodgrains, Cement, Sugar, Coarse grains or similar products. Clause 8(c) only provides a relaxation to the experience as provided under Clause 8(a). If the tenderer does not have an experience of Rake Handling, even then the tenderer can participate in the bid, but with an undertaking that an additional Performance Guarantee in the form of Bank Guarantee of Rs. 50 lakhs, from a Nationalised Bank will be furnished. The relaxation from experience of Rake Handling will not apply to the pre-qualification requirement of 2 crores in one contract or 4 crores in combining contracts, in the preceding three Financial Years.

5. On the above reasoning, we find absolutely no reason to entertain the writ petition.



6. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Harsh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	20.12.2024
Transmission Date	

