IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 1379 of 2025

M/s Shiv Lal, a Proprietorship concern, having its office at Jharna Colony, Imli Tola, Sahibganj, P.O. and P.S. Sahibganj, District Sahibganj (Jharkhand), PIN 816109, through its Proprietor, Shiv Lal, aged about 33 years, son of Late Anant Prasad, resident of Jharna Colony, Imli Tola, Sahibganj, P.O. and P.S. Sahibganj, District Sahibganj (Jharkhand) PIN 816109 ... ... Petitioner

Versus

1. Sido Kanhu Murmu University, through its Vice Chancellor, having its office at University Road, Dumka, P.O. and P.S. Dumka, District Dumka, PIN 814110 (Jharkhand).
2. The Registrar, Sido Kanhu Murmu University having its office at University Road, Dumka, P.O. and P.S. Dumka, District Dumka, PIN 814110 (Jharkhand).
3. Union of India, through Government e-Market Place (GeM), having its office at 3rd Floor, Tower-II, Jeeven Bharti Building, Connaught Place, P.O. and P.S. Connaught Place, New Delhi, PIN 110001.

... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For Petitioner : Mr. Sumeet Gadodia, Advocate.
For Resp. No. 3(UOI) : Mr. Anil Kumar, A.S.G.I.
For Resp. Nos. 1 and 2 (SKMU) : Mr. Mithilesh Singh, Advocate.

C.A.V. On: 20.03.2025 **Pronounced On:25.04.2025**

M.S. Ramachandra Rao, C.J.(Oral)

Petitioner has filed this writ petition challenging Bid No.GEM/2025/B/5999709 dt. 26.02.2025 issued by the respondents for deployment of manpower service on the ground that certain conditions have been prescribed in the bid document which were tailor-made and intended to favour one or the other bidders and the respondents have thus, acted illegally, arbitrarily and unreasonably.

2. The conditions in respect of which petitioner has a grievance are as under:-

"CHAPTER-1 QUALIFICATION CRITERIA

Sl. No.	Parameter	Pre-qualification criteria description	Evidence required
1	Xxx	Xxx	Xxx
2.	Annual Turnover	The Bidder should have an average annual turnover of INR 8 (Eight) Crore over the last 3 financial years (2023-24, 2022-23, 2021-22) from Manpower Outsourcing activities	. Audited financial statements for the last three financial years .Certificate from the Statutory Auditor/Chartered Accountant with UDIN

"CHAPTER-1 QUALIFICATION CRITERIA

The bidder's Qualification bid will be evaluated as per the following criteria:

Sl. No.	Parameter	Pre-qualification criteria description	Evidence required
1	Xxx	Xxx	Xxx
4.	Years of Experience	The Bidder Firm/Agency/Company must have a Copy of the work order/an experience of Completion Certificate/Proof of EPF of Providing more than 1500 Manpower Services in the last three years out of which more than 1000 manpower should be in Govt. Departments/Govt. Organizations/PSUs., etc.	Copy of work order/Completion Certificates from the client regarding Satisfactory Services

3. As regards the qualification criteria mentioned in the first table, it is alleged by the petitioner that under the bid document, the respondents had

invited for deployment of skilled, semi-skilled and unskilled man power of a mere 96 personnel, but they have prescribed a qualification criteria that the bidder should have provided more than 1500 Manpower Services in the last three years, out of which more than 1000 manpower should be deployed in Government Departments/Government organisations/PSUs., etc.

4. According to the counsel for the applicants, there is no logic in insisting on a bidder having experience of providing more than thousand manpower, if the requirement of the respondents is only of 96 personnel.

5. As regards the other table indicated above, it is the contention of the writ petitioner that though INR 8 (Eight) Crore average annual turnover is mentioned for the last 3 financial years in Chapter I serial no. 2 of the bid document, there is a contradiction in chapter II and that in clause 2, it is stated :-

> *"2. Only registered and bona-fide Service Providers/Agency having experience of providing Manpower service to the Government Departments/Govt. Organisations/Public Sector Undertaking/Autonomous Bodies/Corporate Sector, etc. with a minimum annual average turnover of Rs.15 Crore (Fifteen crore only) during the last 03 years need to apply."*

6. According to the counsel for the petitioner, this is contradictory.

7. As regards the contention about experience of more than 1000 man powers being prescribed as a qualification criteria is concerned, it is settled law that terms of a tender are not open to judicial scrutiny as the same are in the realm of contract, and a bidder/tenderer cannot be permitted to

challenge the bid condition/clause, which might not suit him and/or is inconvenient to him.

8. Also the bidding conditions were applicable to all bidders and therefore, cannot be said to be tailor-made.

9. The Supreme Court in ***Michigan Rubber (India) Limited-Vs.-State of Karnataka and Others***[1], had held that in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers. Only in the later situation is interference by Courts warranted.

The Supreme Court also directed that a court, before interfering in tender or contractual matters in exercise of power of judicial review, should pose a question as to (i) whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or (ii) whether the process adopted or the decision made is so arbitrary and irrational as to be unreasonable; and that the court should also pose an additional question (iii) as to whether the public interest is affected.

10. The Supreme Court had directed that if the answers to the above questions are in the negative, then there should be no interference under Article 226.

11. If we apply the above tests, then in the instant case, we have to all these questions in the negative and therefore, it is not a fit case to interfere with the norms mentioned above in exercise of judicial review under Article 226. We may also point out that a contract is a commercial

[1] (2012) 8 SCC 216

transaction; evaluating tenders and awarding contracts are essentially commercial functions; no person can claim a fundamental right to carry on business with the Government or instrumentality of the Government; and a greater latitude is required to be conceded to the State authorities in formulating conditions of a tender document and awarding the contract.

12. As regards the second plea raised by the counsel for the petitioner is concerned, the counsel for the respondents contended that the applicable turnover is only Rs.8 (Eight) Crore and not Rs.15 (Fifteen) Crore and this would be informed to all the bidders.

13. In any event, how much turnover should be prescribed as a qualification for award of a contract is also for the respondents-authorities to prescribe and the petitioner cannot complain that the turnover prescribed should be such as to be advantageous to the petitioner alone.

14. Therefore, we find no merit in the writ petition. It is accordingly dismissed with cost of Rs.20,000/- (Rupees Twenty thousand) to be paid by the petitioner to the Jharkhand High Court Legal Services Authority within eight weeks.

(M. S. Ramachandra Rao, C.J.)

(Deepak Roshan, J.)

APK