
(2018) 02 PAT CK 0102

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 174 Of 2018

Arjik Carrier Pvt. Ltd. Through

APPELLANT

Vs

Chairman And Managing Director And Ors

RESPONDENT

Date of Decision : 22-02-2018

Acts Referred:

Citation : (2018) 3 PLJR 785

Hon'ble Judges : Vikash Jain, J

Bench : Single Bench

Advocate : Alok Ranjan, Sanjay Singh

Final Decision : Allowed

Judgement

1. The present writ petition has been filed for the following reliefs â?

â??(i) For issuance of a writ or writs in nature of Mandamus for direction to the concerned respondent to consider the tender of the

petitioner along with other bidders pursuant to NIT No. BPC/ER/BR/POL/BULK/BNI/2017-21/01 and award the same in accordance with

law.

(ii) For any other relief or reliefs for which the petitioner is entitled under law in the facts and circumstances of the present case.

(iii) For quashing of letter dated 30.12.2017 which was signed on 01.01.2018 and sent on mail on 03.01.2018 evening, by which the

respondent authority has been pleased to reject the Tender document of the petitioner on a hyper technical, ancillary and subsidiary

ground being that the Tender document which was submitted to the respondent was stapled instead of being pasted.â??

2. The short facts of the case according to the petitioner are that pursuant to an

NIT, it participated in the e-tender process for supply of seven tank lorries and submitted the requisite tender documents through e-tender process. These documents were also sent to the respondent authorities in physical form. By the impugned order dated 30.12.2017(Annexure-4), however, the petitioner was informed that its tender had been rejected on the ground that the Tender Envelope {Technical (Pre-Qualification) Bid} had been submitted in a stapled condition in violation of the following term of the NIT â?

â??All the documents of the Technical (Pre-Qualification) bid are to be submitted in an envelope super scribed as Tender No.

BPC/ER/BR/POL/BULK/BNI/2017 -21/01 and marked as â??Technical (Pre-Qualification) Bid â?" BARAUNIâ?. The envelope is to be

closed and sealed by gum/adhesive, tender received in open condition will be rejected. Tender envelop {Technical (Pre-Qualification)Bid}

shall be put in the designated tender box before the closing time and date at Location; BPCL Barauni TOP.

Note: Tender Envelope {Technical (Pre-Qualification) Bid} should contain Tender Name/Address/E-mail ID/Contract Phone Nos. and seal

of the tender. Stapler pins should not be used to seal tender envelop or else tender shall be rejected.â??

3. Learned counsel for the petitioner submits that the respondents have acted arbitrarily in rejecting the technical bid of the petitioner on a hyper

technical ground. It is submitted that the bid documents had already been uploaded online through the e-tender process and hence there was no

chance of manipulation in the documents furnished in physical form. The furnishing of the tender documents in a stapled envelope was a minor

deviation from the terms of the NIT which required the same to be closed and sealed by gum/adhesive. It is submitted that the tender had not been

submitted in open condition but had been stapled. It is therefore submitted that the petitionerâ??s technical bid ought not to have been rejected by

reason of such a minor deviation, moreso when admittedly there was no discrepancy or infirmity in the tender documents.

4. Reliance is placed by the petitioner on the decision of the Apex Court in Mangalore Chemicals and Fertilizers Limited Vs. Deputy Commissioner of

Commercial Taxes & Ors. reported in 1992 Supp (1) Supreme Court Cases 21,

which in turn has been relied upon in the decisions of this Court in

CWJC No. 17779 of 2008 (M/s Binda Prasad Vs. The State of Bihar & Ors.) and CWJC No. 9067 of 2011 (M/s Kumar Construction Vs. The State

of Bihar & Ors.). Reliance is further placed on the order dated 22.03.2013 passed in CWJC No. 6518 of 2013 (M/s Mahadev Enclave Pvt. Ltd Vs.

The State of Bihar & Ors.).

5. Learned counsel for the respondents on the other hand relies on the counter affidavit to oppose the writ petition, and submits that the technical bid

of the petitioner has rightly been rejected as it had violated a specific term of the NIT which required the envelope to be sealed with gum/adhesive,

while making it clear that stapler pins were not to be used, otherwise the tender would be rejected. It is further submitted that such condition in the

NIT was a mandatory one and could not be treated as a mere hyper-technicality. The object and purpose of such condition was to ensure secrecy. It

is specifically submitted that the use of stapler pins to seal the envelope had been prohibited inasmuch as the stapler pins do not seal the envelope and

would be indicative of the tender being received in open condition. The insistence on properly sealing the envelope with gum/ adhesive was made with

a view to ensuring secrecy which was obligatory both on the tenderers as well as the Corporation. In other words, the respondents submit that

secrecy is necessary in order to protect the Corporation also from its own unscrupulous officials who may connive with other tenderers and tamper

with the stapler pins in order to illegally secure undue advantage to other interested persons. The consequence of using stapler pins was clearly spelt

out in the NIT.

6. A rejoinder to the aforesaid counter affidavit has been filed on behalf of the petitioner, inter alia, enclosing therewith an extract of the NIT

containing the terms of the price bid. It is submitted that the tender documents to be enclosed in the envelope related to the technical bid and not the

price bid. The successful bidders in the technical bid alone were eligible to participate in the online electronic bidding (reverse auction) for finalizing the

transportation rates to be held on a pre-specified date. It is therefore submitted that secrecy was required only in the price bid and not at the stage of

submission of the technical bid.

7. Having heard learned counsel for the parties and on careful consideration of

the materials available on record, I find merit in the writ petition. It is no doubt true that the NIT in specific terms required the envelope containing the Technical (Pre-Qualification) Bid documents to be sealed with gum/adhesive, making it clear that the use of stapler pins to seal the envelope would render the applicant's tender documents liable to be rejected. However, it is relevant to take note of various judicial decisions which would have a material bearing on the issue at hand.

8. In *Mangalore Chemicals and Fertilizers Limited Vs. Deputy Commissioner of Commercial Taxes & Ors* (supra), while dealing with a matter related to the grant of permission to an industry for withholding the amount of tax payable on raw materials by way of incentive granted under the Karnataka Sales Tax Act, 1957, the Apex Court observed as follows :

There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.

9. In *Poddar Steel Corporation Vs. Ganesh Engineering Works and others*, (1991) 3 SCC 273, the Apex Court held thus :

As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories "those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases."

10. In *United India Insurance Company Limited Vs. The State of Bihar through the Chief Secretary & Ors.*, 2015(1) PLJR 772, this Court has held as follows :

It has also been held that in all tender process the requirements can be broadly categorized as those which lay down essential

conditions of eligibility and the others which are merely ancillary or subsidiary to the main object. In the case of essential condition of

eligibility the authority issuing the tender would be required to enforce it rigidly while with respect to other ancillary or subsidiary condition

it is open to the authority to deviate from and not to insist upon a strict literal compliance of such condition in appropriate cases.â??

11. In CWJC No. 7885 of 2016 (Dhirendra Construction Pvt. Ltd. Vs. The State of Bihar & Ors.), this Court was considering a case involving

disqualification of the petitioner therein from the tender process on the ground that the Bank Guarantee given by it was not in the format as provided in

the SBD and hence in terms of Clause 3.1.2 of the letter dated 14.11.2014 of the Engineer-in-Chief, the petitioner would stand disqualified. Even so,

this Court found the stand of the respondents not legal and valid and allowed the writ petition, directing the respondents to open the financial bid of the

petitioner.

12. Yet again in CWJC No. 6518 of 2013 (M/s Mahadev Enclave Pvt. Ltd. Vs. The State of Bihar & Ors.), the advertisement required the

submission of tender envelope in â??Moharband Lifafaâ? and the petitionerâ??s technical bid was rejected on the ground that the envelope had

been sealed with cello-tape and not with lac. This Court, however, by an interim order directed the respondents to consider the financial bid of the

petitioner.

13. In the instant case, I find that the petitioner had duly sealed the envelope, not with gum/adhesive as required in the NIT but by using stapler pins.

The solitary ground taken by the respondents to reject the technical bid of the petitioner is that a stapled envelope does not ensure secrecy which is

required for ensuring that there is no malpractice on the part of both the tenderer and the Corporation. It is however significant to note that the

envelope was meant to contain only the technical bid of the petitioner which would not involve any element of secrecy.

14. In the above view of the matter, the requirement of using gum/adhesive for sealing the envelope must be held to be only a hyper-technical

requirement which had no bearing upon the main object, namely, the petitionerâ??s ability to perform the work in question. I am therefore of the view

that the respondents ought not to have rejected the petitionerâ??s technical bid

merely on the ground that stapler pins had been used in place of gum/adhesive.

15. From another standpoint too, I find it difficult to accept the submission made on behalf of the Corporation to the effect that an element of secrecy is needed to protect the Corporation from its own conniving officials. Such a stand discloses a singular distrust of its own officials and lack of confidence in them. If the Corporation cannot keep its own house in order, it cannot make this a reason to shift the burden of maintaining secrecy onto the petitioner and reject its technical bid on the plea that a stapled tender document may be tampered with. It is not correct to say that this was indicative of the envelope being submitted in open condition. More significantly, learned counsel for the respondent-Corporation has not been able to satisfy this Court that while stapler pins may compromise secrecy, the use of glue/adhesive would make the envelope tamperproof and would not easily be amenable to misuse. Even on this score, therefore, it must thus be held that the requirement for sealing the envelope by using gum/adhesive and not with stapler pins, is merely a procedural requirement of a hyper-technical nature and any violation of this condition would not lead to rejection of the petitioner's technical bid.

16. At this juncture, a submission is made on behalf of the respondent-Corporation to the effect that while some of the documents were required to be uploaded, there were other documents in addition which had to be submitted in physical form and hence the need for secrecy.

17. This Court does not find merit in this submission. The Corporation has failed to satisfy this Court that such additional documents would in fact involve any element of secrecy as these were in any case also related to the technical bid of the petitioner, nor how they would impact the integrity of the tender process in case secrecy was compromised.

18. The respondents are accordingly directed to open the financial bid of the petitioner and proceed further in the matter in accordance with law.

19. The writ petition stands allowed as above.