

(2020) 05 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5607 Of 2020

M/S OMEGA Elevators

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 05 PAT CK 0001

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Bhargav Hasurkar, Nikhil Kumar Agrawal, Aditi Hansaria, S.D. Sanjay, Ramadhar Shekhar

Final Decision : Disposed Of

Judgement

S. No.,Description,Confirmation Required,Remarks Allowed,Documents Uploading

1,"Contractor should have to be registered with

Employee Provident Fund Organization (EPFO). It is

mandatory for contractor to submit PF code provided

by EPFO with their tender offer. Also each

contractor has to submit "UAN of their worker",No,No,Allowed (Mandatory)

,"with their offer and have to mention in tender

document. It is mandatory. Otherwise offer will not

be considered for further action and your offer will

be summarily rejected.",,,

13. As a legal proposition, it has been submitted that when tenders are invited, the terms and conditions ought to indicate the norms and benchmarks",,,,

with certainty and if there is any vagueness in anyone of the terms employed in the tender, the principle of contra proferentem as contained in maxim",,,,,

verba chartarum forties accipiuntur contra proferentem had to be applied. In other words, if a term used in a contract paper is ambiguous and capable",,,,,

of being interpreted in two different ways, the interpretation given by the author or the writer of the contract is not to be insisted upon to the",,,,,

disadvantage of the other party.,,,,,

14. The petitioner urges that in Industrial Promotion and Investment Corporation of Orissa Ltd. v. New India Assurance Company Ltd. : (2016) 15,,,,

SCC 315, the Supreme Court has opined that in the event of ambiguity in the wordings of a policy, it is to be resolved against the party which prepared",,,,,

it. It has further been submitted that in the absence of any communication from respondent no. 4 to the petitioner and not seeking any clarification,,,,,

from the petitioner, makes the decision of cancelling the tender and floating a fresh tender for the same work absolutely suspect and unacceptable.",,,,,

15. After having heard the counsel for the parties, this Court finds that one of the eligibility conditions for the tender was submission of UAN number",,,,,

of the workers of the tenderer along with the original offer, which requirement has been made mandatory in clear and unambiguous terms. The",,,,,

requirement further specifies that in the absence of such UAN number of the workers being furnished, the offer will not be accepted and shall be",,,,,

summarily rejected. The UAN number is referable to the workers of the tenderer and, therefore, there cannot be any ambiguity with respect to its",,,,,

meaning.,,,,,

16. In Industrial Promotion and Investment Corporation of Orissa Ltd. (supra), the Supreme Court has clearly stated that the contra proferentem rule",,,,,

of construction can be used only when there is an ambiguity before a court and because of which it is unable to decide by resorting to ordinary,,,,,

principles of interpretation as to which of the two meanings of a word employed is the correct one. The rule cannot be used to create ambiguity.,,,,,

17. It further appears from the documents supplied and arguments advanced that no contract had been entered into between the petitioner and,,,,,

respondent no. 4. In Rishi Kiran Logistics Pvt. Ltd vs. Board of Trustees of Kandla Port Trust & Ors. : (2015) 13 SCC 233, it has been held that the",,,,,

bidders participating in a tender notice have no other right except the right to

equality and fair treatment in the matter of evaluation of competitive bids,,,,
offered by interested persons in response to the notice inviting tenders in a transparent manner and free from hidden agenda. The terms and conditions,,,,
of the tender cannot be challenged and no bidder will have the authority to insist for any further negotiations unless the terms and conditions of the,,,,
notice so provides. In the absence of any concluded contract, it would not be prudent for a Court to go into such contractual issues as to whether a",,,,
condition in a tender is necessary or it serves any special purpose so as to justify such a stipulation. Under such circumstances, if any petition under",,,,
Article 226 of the Constitution of India is at all entertained, it has only to be seen through a limited aperture.",,,,

18. In State of Jharkhand and Ors. vs. M/S CWE-SOMA Consortium (2016) 14 SCC 172, the Supreme Court has again reiterated that in case of a",,,,
tender, there is no obligation to accept any one of the tenders, even the lowest tender. The decision to enter into any contract with the lowest tenderer",,,,
is solely with the authority issuing the tender. It is also well settled that so long as the bid has not been accepted, the highest or the lowest bidder",,,,
acquires no vested right to have the contract concluded in his favour. The authority is well within its rights to reject a bid without assigning any reason,,,,
thereof.,,,,

19. The terms in the present tender paper clearly stipulate that the railways reserves the right to either cancel the tender or reject any or all of the,,,,
tenders without assigning any reason thereof.,,,,

20. I have also assessed the respective contentions of the parties for satisfying myself whether the decision of the respondent in cancelling the earlier,,,,
tender is discriminatory against anyone. It is relevant to mention here that the other party in the fray has not challenged the decision. On finding that,,,,
the requirement of furnishing UAN number of the workers of the tenderer was mandatory and there being no ambiguity in interpreting the meaning of,,,,
UAN and the petitioner and another not having complied with the same, no fault could be found with the decision of the authority (respondent no. 4) in",,,,
cancelling the tender.,,,,

21. It further appears that the petitioner has not been proscribed from participating in the fresh tender.,,,,

22. For the reasons aforestated, this writ petition fails and is dismissed.",,,,

23. Mr. S.D. Sanjay, learned ASG has informed this Court that the date for opening the tender has been extended to 20th of May, 2020 in view of the",,,,

lock-down because of the pandemic. The petitioner shall be well advised physical furnishing of certain documents, this Court has been informed by",,,,

Mr. S.D. Sanjay, would though be insisted upon but the date of opening the tender shall be extended till the time it becomes possible to furnish the",,,,

documents physically by the tenderers. On that account also, the petitioner ought not to entertain any doubts.",,,,

24. A request, in the last, has been made by the learned counsel for the petitioner that in the earlier tender, the petitioner had deposited an amount of",,,,

Rs. 2,42,000/- as earnest money which is required to be refunded as in the fresh tender also, the earnest money has been deposited by the petitioner.",,,,

25. Mr. S.D. Sanjay, learned ASG submits that the earnest money deposited in the last tender shall be refunded to the petitioner, preferably within a",,,,

period of four weeks from the date of passing of this order.,,,,

26. With the aforesaid direction/observation, the writ petition is disposed of.",,,,