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**(2012) 08 MP CK 0043**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 7209 of 2012**

Smt. Kalabai Jaiswal

APPELLANT

Vs

District Collector, Jhabua and Another

RESPONDENT

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**Date of Decision :** 28-08-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2013) ILR (MP) 50 : (2013) 1 MPHT 314

**Hon'ble Judges :** Shantanu Kemkar, J;Prakash Shrivastava, J

**Bench :** Division Bench

**Advocate :** A.K. Sethi and Mr. Harish Joshi, for the Appellant; Mini Ravindran, Dy. Govt. Advocate, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Shantanu Kemkar, J.—With consent heard finally.

This order shall also govern disposal of Writ Petition No. 7210/2012 as the facts and question of law involved are common in both the cases.

For the sake of convenience the facts are taken from Writ Petition No. 7209/2012.

In pursuance to the NIT dated 21-5-2012 issued by the respondent for establishment, operation and maintenance of Public Service Centre at various places in Jhabua District the petitioner submitted her tender for the said work. Her technical bid was not accepted on the ground that she did not file Power of Attorney along with the tender document and that the request for proposal (RFP) document was not signed on each page. Feeling aggrieved the petitioner has filed this petition.

2. During the course of the argument, learned Senior Counsel for the petitioner did not dispute that neither the Power of Attorney was attached with the tender nor RFP document was signed on each page. He, however, contended that it was

not necessary to have attached the Power of Attorney and to have signed the RFP document on each page. He has taken us to the tender conditions to show that filing of the Power of Attorney, could not have been insisted at that stage. He has argued that the non-signing of the RFP document would not vitiate the petitioner's tender as it was the document downloaded from the respondent's website itself. He further argued that it was not an essential condition on the basis of non-compliance of which the tender was liable to be rejected. He placed reliance on the judgment of the Supreme Court in the case of M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others,

3. Ms. Mini Ravindran, learned Dy. Govt. Advocate on the other hand argued that Power of Attorney was necessary in view of Clause 2.3.2 (i) of the tender conditions. She argued that in view of Clause 2.3.2 (e) of the tender conditions it was also necessary for the petitioner to have signed on each page of RFP document. She submits that the petitioner having not complied with the requirement of Clause 2.3.2 (e), her tender was rightly rejected. She also pointed out that not only the petitioner's tender, but all the tenders have been rejected on same or similar grounds. She also stated that after cancellation of all the tenders, the fresh tenders have already been invited. In the circumstances, the State Government having cancelled all the tenders and having invited fresh tenders nothing survive in this writ petition.

4. We find that in the tender document a condition of signing by tenderer on each page of the RFP documents exists. The petitioner having accepted the conditions of the tender and having submitted the tender document cannot subsequently come forward to say that signing of each page of RFP document was not an essential condition. The RFP document was a document through which the bidder was supposed to provide all the information sought from him and if for such an important document the respondents have put a condition that it is to be self attested on each page and the annexures duly certified, the non-compliance of which can certainly entail the rejection of the tender and the tenderer cannot be allowed to say it was not an essential condition. Thus, in view of the admitted position that the RFP document was not signed on each page, even assuming that filing of Power of Attorney was not necessary at that stage, we decline to interfere in the matter for non-compliance of Clause 2.3.2 (e).

5. The judgment of the Supreme Court in the case of M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others (supra), is on different facts and has no application to the facts of the present case. The Supreme Court while interpreting Clause No. 6 of the NIT, which was the subject matter for consideration, requiring the tenderer to deposit the earnest money by cash or by demand draft drawn on State Bank of India has held that in submitting its tender accompanied by cheque of the Union Bank of India and not of the State Bank, Clause No. 6 of the tender notice was not obeyed literally but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. In the circumstances, the

Supreme Court said 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 his case, the authority issuing the tender may be required to enforce them rigidly. In the other case, it must be open for the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.

6. However, in the present case, it is clear that through RFP document the tenderer was required to provide all the information sought from her. If for such an important document, a condition is imposed in the tender document to the effect that it should be self attested on each page and the annexures are required to be duly certified the petitioner tenderer cannot be allowed to flout the same and to contend that it is a condition which can be waived and no literal compliance of it can be insisted.

7. Having regard to the aforesaid and also keeping in view the subsequent development that not only the petitioner's tender has been cancelled but tenders of all the tenderers were also cancelled by the respondents leading to a situation that even if this petition is allowed, the petitioner will remain a single tenderer in the field, as a result of which there would not be any fair competition, we are not inclined to exercise the discretionary jurisdiction under Article 226 of the Constitution of India. In the circumstances, the petition deserves to be and is hereby dismissed.