
(2010) 01 PAT CK 0060
In the Patna High Court
Case No : CWJC No. 10916 of 2009

Yogendra Rai

APPELLANT

Vs

The General Manager and Others

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Citation : (2011) 1 PLJR 445

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—The Petitioner has challenged and has sought quashing of the award of tender to Respondent No. 4 for operating jeep-cum-tempo stand in the railway premises of Shahpur Patori Railway Station for three years. Notice inviting tender is dated 2.3.2009 and is Annexure-1 to the writ application. Notice inviting tenders lays down various conditions and requirements including financial capability of the person participating in the bid. Relevant part of the said notice inviting tender relates to the kind of documents which the tenderer has to provide in relation to his financial capability and other documents like voter identity card, driving license and residence. It is necessary to quote part of the notice inviting tenders since the dispute hinges round the interpretation of that clause:

1. PACKET-A. (TAKNIKI PARASTAV): IS PARASTAV MEIN NIVIDA DATA KO MANGE GAYE AAVASYAK DASTAVEZ DIYE JANE HAIN JO NIMNLIKHIT HAIN--(1) VITTIYE CHHAMTA PRAMAN PATRA JO SURAKSHIT RASHI KE 40% MULYA KA HO. VITTIYE CHHAMTA BANK SECURITY ATHWA CHAL ACHAL SAMPATTI KA MULYA ATHWA SARKARI SANSTHA DWARA KIYE GAYE KARYA SE SAMBANDHIT VARTAMAN VITTIYE VARSH MEIN KIYA GAYA BHUGTAN ATHWA B.D.O./C.O./S.D.O. DWARA JARI PRAMAN PATRA. 2. PAHCHAN HETU MATDATA PAHCHAN PATRA ATHWA DRIVING LICENSE ATHWA PAN SANKHYA ITYADI. 3. AWASIYA PRAMAN PATRA HETU BIJLI BILL ATHWA RATION CARD ATHWA TELEPHONE BILL ITYADI. 4.

AACHRAN PRAMAN PATRA JO ASTHANIYA THANA DWARA JARI HO ATHWA POLICE ADHIKSHAK DWARA JARI PRAMAN PATRA JAHAN NIVIDA DATA KA NIWAS ASTHAN HO. 5. AGRADHAN RASHI Rs. 35,000/-(PAINTIS HAZAR).

2. The stand of the Petitioner is that in support of his financial capability he filed Annexure-2 which is a valuation report furnished by a certified valuer but this valuation report has been rejected on the ground that it is not in conformity with the clauses of the notice inviting tenders. The stand of the Respondents is that this certification should have been by either the Circle Officer, the B.D.O. or the S.D.O. Since the Petitioner's Annexure-2 was not issued by either of the three authorities, his technical bid was rejected and tender was awarded to Respondent No. 4.

3. It may be recorded that notices were issued to Respondent No. 4 by registered post. Neither registered post nor acknowledgement due was returned.- In view of that, notice was deemed to be validly served and there is reflection of the same in the order dated 4.11.2009. As of today, there is no representation on behalf of Respondent No. 4.

4. On the earlier occasion when the matter was taken up for arguments, an ingenious submission was made by the learned Counsel representing the railways that the entire exercise on the legality or otherwise of the tender may not be gone into if the financial bid of the Petitioner was less than that of the successful tenderer because even if the Petitioner succeeded in the writ application on a technical ground based on his bid in the technical bid, he may not have got the tender in his favour. The Court, therefore, directed the Petitioner to state on oath as to what was his financial bid. A supplementary affidavit came to be filed where he stated that he had quoted a figure of Rs. 7,02,001/- but the settlement has been made at Rs. 6,22,347/- which was the rate quoted by Respondent No. 4. The above statement of the Petitioner stands corroborated when the sealed envelope of the financial bid of the Petitioner was opened before the Court on the direction of the Court. In other words, the financial bid of the Petitioner was surely higher than the one settled with Respondent No. 4. If this aspect stands settled in favour of the Petitioner, then the Court is compelled to get into other aspect of the matter whether the rejection of the tender of the Petitioner on the technical bids is a valid rejection or not.

5. The terms and conditions of the notice inviting tenders have to be read by using what is known as golden principle of interpretation. The word used in the advertisement has to be read in the simpler form and the essence which emerges from the language is the interpretation which must be assigned to the terms and conditions. From the terms and conditions which have been quoted in the earlier part of the order, there is significant word which has been used many a time and the word in question is "ATHWA" which means or, Reading of those terms and conditions no way compels this Court to accept the submission of the learned Counsel for the Respondents that there is a mandatory requirement of filing the certificate only obtained from B.D.O., C.O. or S.D.O. If the Petitioner

had furnished Annexure-2 obtained from the duly recognized and certified valuer recognised by various Government Organisations and Corporations and is otherwise not disqualified to issue such certification, then this ingenious method adopted in rejecting technical bid of the Petitioner cannot be allowed to be sustained. Obviously, there is an error in taking decision while making evaluation of the technical bid of the Petitioner vis-a-vis the successful tenderer. The reason for rejection of the technical bid per se is arbitrary, in breach of the terms and conditions laid down in the notice inviting tender. Interpretation sought to be given by the Respondents cannot be sustained on a plain reading of the terms and conditions of the notice inviting tender. The decision, therefore, to reject a technical bid of the Petitioner was arbitrary, to say the least.

6. The award of tender in favour of Respondent No. 4 also stands quashed. The Respondents have freedom to re-advertise and go for a fresh settlement. It will be in the interest of the Respondents to formulate better terms and conditions without any ambiguity as to what they want in the future tender which may be incited.

7. This writ application is allowed accordingly.