

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W. P. (C) No. 244 of 2024

S. G. Print-N - Pack Industries Private Limited through its Director Shri Krishna Murari Agarwal @ Kishan, Adityapur, Seraikela-Kharsawan, Jharkhand Petitioner

Versus

1. The State of Jharkhand through the Chief Secretary, Ranchi, Jharkhand
2. The Special Secretary, The Information and Public Relations Department, Bariatu, Ranchi, Jharkhand
3. The Director, The Information and Public Relations Department, Bariatu, Ranchi Jharkhand Respondents

**CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
: HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner : Mr. Harsh Preet Singh, Advocate
For the Respondents : Mr. Gaurav Raj, AC to AAG II

2/24.01.2024 Defects as pointed out by the office are ignored.

2. Heard Mr. Harsh Preet Singh, learned counsel for the petitioner and Mr. Gaurav Raj, learned AC to AAG II for the State.
3. The petitioner in this writ application has prayed for a direction upon the respondents for considering the objection raised by the petitioner in relation with Bid No. 570560 in connection with Tender Id 2023_IPRD_79720_1 issued by the Department of Information and Public Relations for printing and supply of Stand Calendar. The petitioner has further prayed for a direction upon the respondents to issue a corrigendum to extend the entire timeline with regard to aforesaid tender and to stay the entire process in relation to the tender and not to create any third party interest. A further prayer has been made by the writ petitioner to command upon the respondents to remove/amend the eligibility criteria relating to prior experience as mentioned in Clause 10 Sub-clause 'ka' and 'kha' of the tender document.
4. It has been submitted by Mr. Harsh Preet Singh, learned counsel for the petitioner that the petitioner had participated in the tender and in fact he fulfills the conditions laid down in Clause 10 (ka) as well as Clause 10 (kha). Learned counsel for the petitioner while taking us

through Clause 10 (ka) of the tender document has stated that the petitioner had already obtained work order with respect to supply of printing of one lakh calendar, but the same is related to a private firm and since Clause 10 (kha) does not at all indicate that such experience has to be of supply of one lakh calendar in a government/semi-government/public enterprise, the respondent could not have rejected the technical bid of the petitioner. Learned counsel has also submitted that Clause 10 (kha) has to be correctly interpreted and if the same favours the petitioner, the same interpretation should be made and in support of such contention, he has referred to a judgment of the Hon'ble Superme Court in the case of "*Bangalore Electricity Supply Company Limited (BESCOM) Vs. E. S. Solar Power Pvt. Ltd. & Others*" in Civil Appeal No. 9274 of 2019 reported in (2021) 6 SCC 718.

5. Mr. Gaurav Raj, learned AC to AG has submitted that Clause 10 (kha) is in continuation of the Clause 10 (ka) and therefore, since the petitioner did not submit any work order with respect to printing and supply of one lakh calendar in any one year out of preceding three years, his technical bid for tender has rightly been rejected by the evaluation committee.

6. Briefly stated the facts reveals that the respondent no. 3 had issued a tender for printing and supply of one lakh calendar vide Tender Id 2023_IPRD_79720_1. The petitioner had participated in the tender process and had submitted the necessary documents. However, the petitioner could come to know about the rejection of his technical bid in the online portal wherein it has been mentioned that "work order evidencing printing and supply of one lakh calendar in any government or semi government or PSU was not attached". This according to the learned counsel for the petitioner is not in consonance with Clause 10 (ka) read with Clause 10 (kha). Since Clause 10 (ka) and 10 (kha), the interpretation of which has been stressed much upon by the learned counsel for the petitioner, we have perused the same and so far as the Clause 10 (ka) is concerned, the participants have to upload the work order made in a government/semi government/PSU for the last three years which the learned counsel for the petitioner submits was duly submitted by the petitioner. However, the dispute seems to be with

respect to Clause 10 (kha) which reveals that in any one year within the preceding three years there should be a work order of printing of one lakh calendar which should also be uploaded. It has also clearly been mentioned that no relaxation shall be made with respect to the experience as enumerated in the Clause 10 of the tender. The petitioner admittedly did not upload the work order of any government/semi-government/PSU and is banking upon the fact that there is no specific intent in Clause 10 (kha) to upload such document and in fact the petitioner would be eligible if the petitioner uploads work order with respect to printing of one lakh calendar with respect to a private firm as well. This in our considered view amounts to misinterpretation of Clause 10 (kha) as Clause 10 (kha) has to be read in consonance with Clause 10 (ka). Mr. Singh, learned counsel for the petitioner has referred to the case of "*Bangalore Electricity Supply Company Limited (BESCOM)* (supra), wherein it has been held as follows:

"17. The duty of the court is not to delve deep into the intricacies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e. to say expressed intentions (Kamla Devi v. Takhatmal Land [Kamla Devi v. Takhatmal Land, (1964) 2 SCR 152 : AIR 1964 SC 859]). In seeking to construe a clause in a contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the court has to prefer one above the other in accordance with the settled principles. If one meaning is more in accord with what the court considers to be the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose the former or rather than the latter. Ashville Investments Ltd. v. Elmer Contractors Ltd. [Ashville Investments Ltd. v. Elmer Contractors Ltd., 1989 QB 488 : (1988) 3 WLR 867 : (1988) 2 All ER 577 (CA)] The intention of the parties must be understood from the language they have used, considered in the light of the surrounding circumstances and object of the contract. Bank of India v. K. Mohandas [Bank of India v. K. Mohandas, (2009) 5 SCC 313 : (2009) 2 SCC (Civ) 524 : (2009) 2 SCC (L&S) 32] . Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause. Bihar SEB v. Green Rubber Industries [Bihar SEB v. Green Rubber Industries, (1990) 1 SCC 731]."

7. Perusal of Clause 10 (ka) as well as Clause 10 (kha) does not indicate any ambiguity in the said clauses with respect to the experience which the petitioner has to upload. The tender which the petitioner has participated has been issued by the Government of Jharkhand and Clause 10 (ka) clearly reveals the experience which must be with respect to government/semi-government/PSU and as an automatic corollary related with the experience necessary in respect to Clause 10 (kha), it has to be read to include a government/semi-government/PSU to which work order of printing of one lakh calendar has to be uploaded. In the judgment which has been referred by the learned counsel for the petitioner, it has been clearly indicated that every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavoring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause.

8. Taking a cue from the observations made, it can safely be assumed that Clause 10 (kha) has to be read in whole with Clause 10 (ka) and the interpretation is categorical to the effect that in both the clauses, the necessary ingredients are of requirement to have participated in supply of calendar in a government/semi-government/PSU and not supply to a private firm.

9. In such circumstances, therefore, the rejection of the bid by the Technical Evaluation Committee cannot be faulted with and considering the aforesaid facts, we are not inclined to entertain this writ application which accordingly stands dismissed.

(Rongon Mukhopadhyay, J)

(Deepak Roshan, J.)