

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1804 of 2016

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Jang Bahadur Singh, S/o - Late Bhagrasan Singh R/v - Ram Krishna Colony, near
at Bakari Bazar, Bazar Samiti, P.S. - Bahadurpur, Distt. - Patna. At present
publisher of Bharti Prakashan, Khajanchi Road, Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Bihar School Examination Board, Patna.
3. The Law Officer, Bihar School Examination Board, Patna.
4. Mr. Neeraj Kumar, the proprietor of M/s General Offset Pvt. Ltd., Allahabad,
Local Office, Piyush Book Center, Budha Plaza, Patna - 800001.
5. The Proprietor of Kiran Publication, B.M. Das Road, Patna - 800004.
6. The Proprietor of Bidya Bharti Publication, B.M. Das Road, Patna - 800004.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 26-02-2016

Heard learned counsel for the parties.

The petitioner has moved the Court for a direction
to the respondents to cancel the tender for publication of model
paper-cum-marking scheme book of Annual Examination, 2016 of
Matriculation and Intermediate by the Bihar School Examination
Board, Patna (hereinafter referred to as the 'BSEB').

The brief facts of the case are that pursuant to
initial tender for the said purpose the first N.I.T. No. 53 of 2015,
having been cancelled and in the second tender, the petitioner
though qualified, his financial bid was not opened on the
ostensible plea that he was the sole tenderer left after rejection of
the technical bid of the other tenderers, the third N.I.T. was issued
in which respondent no. 4 has been allotted the work.



Learned counsel for the petitioner submits that for the same work in the previous year, the petitioner was the successful bidder and had performed the job to the satisfaction of the parties and thus for the current year also he had applied and just because he was the sole tenderer left after rejection of the technical bids of other tenderers, the same could not have been a ground not to open his financial bid moreso, in view of the fact that the publication had to be made sufficiently in advance to safeguard the interest of the students as the model papers are for them to prepare for such examination. It is submitted that the petitioner not wanting to start a fight with the B.S.E.B., pursuant to the third tender notice had also applied but in the meantime due to certain unfortunate developments the B.S.E.B. has targeted him and also set in motion proceedings which are not justified. He submits that prior to publication of the third tender notice, the B.S.E.B. itself uploaded in the website the said model papers which were to be published and thereafter petitioner also under *bona fide* impression and keeping in mind the requirement of the students published the same but he was not the sole agency to do so as there were three others, but, in a collusive manner, on the application of one Rajesh Kumar, who himself was the authorized agent of the respondent no. 4 which has ultimately been given the contract, an F.I.R. was lodged on 05.01.2016 on the basis of complaint by the respondent no. 2 dated 04.01.2016 and on the same day i.e., 05.01.2016, the contract was awarded to the



respondent no. 4. It is submitted that the said dates and the background of the events clearly show that there was a pre-meeting of mind and the concerned respondents had favoured the respondent no. 4 in a manner which was not fair and rather arbitrary which is reflected from the fact that the tender submitted by the petitioner was not even opened. Learned counsel submits that had the conduct of BSEB been *bona fide*, they should have opened the tender of the petitioner and as he was more than Rs. 50 lakhs above the donation which the successful tenderer has given to B.S.E.B., it would have been in public interest that the petitioner be given the work moreso, as he would then have become the highest offerer at Rs. 1.61 crores after the original highest bidder of Rs. 2.15 crores had backed out from accepting the work. He submits that because the tender of the petitioner was not opened, the work was allotted to the respondent no. 2 at for about Rs. 1.05 crores and thus there was a huge difference which ultimately has caused loss to the public exchequer. Learned counsel submits that even if it is assumed for a moment that there may have been some fault on the part of the petitioner, but if the same has resulted in providing help to the students as they had the opportunity to study from the model paper prepared for the examination, only on mere technicalities, in the background of the petitioner having successfully discharged the same responsibility in the previous year and had a clean track record without being involved in any criminal activity, in the



larger public interest BSEB ought to have resorted to some other means and even got financial compensation from the petitioner if it felt that loss had been suffered, but in the present case, on the one hand taking stringent and punitive action against the petitioner and on the other hand willingly becoming party to a loss to the State exchequer of a substantial amount. Learned counsel submits that the petitioner being targeted is also reflected from the fact that besides the petitioner, three other publications had also printed the model papers but only against the petitioner such action of lodging F.I.R. has been taken.

Learned counsel for the B.S.E.B. submits that in the second tender in which the petitioner remained the sole tenderer, as per the financial rules, when such a situation occurs, the authorities are required to go for re-tender which has been done and thus there was no ill motive behind such action. He submits that as far as not moving against the other publishers, it was due to lack of knowledge and now having come to know of the same, the concerned police station has been informed.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is of the opinion that because of passage of time when the respondent no. 4 has been given the contract pursuant to which he has published the book and the exam has also now begun, the petitioner will not be able to benefit from any order in his favour. However, in the opinion of the Court, the authorities could have



proceeded with opening the tender of the petitioner and if they found it to be higher, they could have used the situation to their advantage and in fact prevailed on the petitioner to increase his donation bid for having committed irregularity and which would have been to the advantage of not only the students at large but also would have benefited the public exchequer. The respondents ultimately having to settle with a much lower donation when already they had a bid before them which was of a much higher amount, the hasty action needs introspection by the B.S.E.B. The Court would not like to give a finding either way but can only observe that in the larger public interest and for creating an atmosphere of trust in the stake-holders such matters need to be negotiated across the table before taking extreme punitive action which further create a divide and leads to mistrust and mud slinging.

At this juncture, learned counsel for the B.S.E.B. submits that the authorities have no ill will or bias against the petitioner and are ready to have a dialogue with him so that within permissible limits of the law, a formula can be worked out between the parties which is to the benefit of all concerned. The Court appreciates such stand on behalf of the B.S.E.B.

Accordingly, the writ petition stands disposed off with liberty to the petitioner to move before the Chairman of the B.S.E.B. within two weeks from today along with a copy of this order. Upon the same being done, the parties shall strive to work



out a mutually acceptable and honorable settlement so that the interest of all the stake-holders does not suffer and their public image is not tarnished. Further, the issue having been brought to the notice of the Court, and the exercise being a yearly affair, it would like to lay down the following guidelines for future keeping in mind the foremost requirement of the students whose interest needs to be safeguarded.

Accordingly, the date of publication of advertisement, finalizing and printing of model answer books and marking scheme should be completed within a stipulated time and not later than 15th November of the previous year. Further, the advertisement should be given wide publicity and objective and relevant criteria should be fixed so that the object is achieved and the exercise is not tuned in favour of a few who may be in a better position than those who are trying to enter the field which is to say that there should be a level playing field. The Court leaves it to the discretion of the B.S.E.B. to lay down the criteria but would only advise that the other stake-holders should also be taken into confidence for laying down such criteria so that they are realistic and not discriminatory. The other important aspects which also need to be spelt out in black and white in the advertisement itself relates to better printing and paper quality so that ultimately the students who buy the model papers are not put to any inconvenience. The B.S.E.B. would also be conscious of the fact that maximum selling price fixed should take into account the

ground reality and be reasonable so that it is within the reach of even the weaker sections of society. It is further prudent to have the penal clause in the advertisement itself that either delay in execution of work or poor quality of printing and paper would result in stringent action and further to ensure that only genuine players come and there are no spoilsports, the B.S.E.B. can also ask for the party to furnish Bank guarantee for the purpose of satisfactory performance. Learned counsel for the B.S.E.B. readily agrees to such suggestions of the Court.

The role and conduct of the respondent no. 2 has been the subject mater of submissions of learned counsel for the petitioner but the Court refrains from commenting on the same with the observation that in future if any arbitrary or unreasonable act of the respondent no. 2 is brought to its notice, it may not shut its eye but rather take judicial notice of the same.

The writ petition stands disposed off with the aforesaid observations.

(Ahsanuddin Amanullah, J.)

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