

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8256 of 2016

- =====
1. M/s Corporate Creation, through its Proprietor Noorul Arefin, East Boring Road, Gorakhnath Complex, Patna.
 2. Noorul Arefin, son of Late Faizul Arefin, Resident of Mohalla- Barbidalpura, P.O. & P.S.- Khagaul, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through its, Principal Secretary, Department of Environment & Forest, Government of Bihar, Patna.
2. The Principal Chief Conservator of Forests, Department of Environment & Forest, Government of Bihar, Patna.
3. The Additional Chief Conservator of Forests (Wildlife), Department of Environment & Forest, Government of Bihar, Patna.
4. The Director, Ecology & Environment, Department of Environment & Forest, Government of Bihar, Patna.
5. The Director, Sanjay Gandhi Biological Park, Patna, Department of Environment & Forest, Government of Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Singh
For the State : Smt. Binita Singh, G.P.-31

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-05-2016

Heard Mr. P.K. Shahi, learned senior counsel appearing for the petitioner and Ms. Binita Singh, learned G.P. 31, for the State.

With the consent of the parties this writ petition is taken up for consideration with a view to its final disposal at the stage of admission itself.

A counter affidavit has been filed, by learned counsel appearing on behalf of the State. Let it be kept on record.

The writ petition was filed questioning the order bearing



memo no.757 dated 28.4.2016 passed by the Director, Sanjay Gandhi Jaivik Udyan, Patna addressed to the Director General, Information and Public Relation Department, Bihar, Patna inviting fresh tenders for settlement of four food stalls situated on the ground floor of the Mayur Restaurant existing within the Sanjay Gandhi Jaivik Udyan at Patna. The petitioner also questions the recommendations made by the Additional Chief Conservator of Forests (Wildlife), Bihar to the Director, Ecology and Environment requiring for inviting fresh tender as according to him the bid received was low.

It is after filing of the writ petition that the respondents have also come out with an advertisement inviting tenders which is stated to have been published on 6.5.2016, a copy of which is placed on record vide Annexure-10 to interlocutory application bearing I.A. No.4244 of 2016 which also contains a prayer at paragraph 1(b) seeking permission to question the validity of the advertisement.

In consideration of the nature of the mandamus prayed for in the back drop of the original prayer in the writ petition, the prayer made in I.A. No.4244 of 2016 is allowed and the petitioner is permitted to question the advertisement bearing no.3 of 2016-17 impugned at Annexure-10 to the Interlocutory Application.

I have heard Mr. P.K. Shahi, learned senior counsel appearing for the petitioner and Ms. Binita Singh for the respondents.

The facts of the case briefly stated is that the four food counters existing on the ground floor of the Mayur Restaurant situated within the Sanjay Gandhi Jaivik Udyan, Patna was earlier settled with a firm called New Down City for a period of 2 years and an agreement was also executed but the said allottee refused to continue with the agreement *inter alia* on grounds of low returns as canvassed by Mr. Shahi and which prompted the respondents to come up with a fresh tender as is manifest from the letter dated 14.3.2016 of the Director, Ecology and Environment placed at Annexure-1 to the writ petition. A fresh notice inviting tender was published on the official website as well as in the daily newspapers, a copy of which is placed at Annexure-2 and which was responded to by four applicants inclusive of the petitioner. The technical bid offered by the applicants was opened on 4.4.2016 and while the tender filed by one M/s S. N. Raj Enterprises is stated to have been rejected on grounds of incomplete documents, the other three bidders qualified for the financial bid inclusive of the petitioner. The financial bid was opened on 4.4.2016 in the presence of the tender committee consisting of seven senior officials of the State

Government and the offer given by the petitioner was found to be the best at Rs.1,67,001/- per month. The Tender Committee recommended for settlement with petitioner, a copy of the proceedings of the tender committee on the financial bid held on 4.4.2016 is placed at Annexure-3.

It is the case of the petitioner that the auction settlement having attained finality on the recommendation of the tender committee that a complaint was made by the unsuccessful bidder to the Director, Ecology and Environment, a copy of which is placed at Annexure-4 and which was forwarded to the Director, Sanjay Gandhi Jaivik Udyan for disposal. The Director, Sanjay Gandhi Jaivik Udyan on the other hand vide letter dated 7.4.2016 present at Annexure-5 informed the Director, Ecology and Environment regarding the proceedings and recommendation of the Tender Committee for the settlement of the stalls in favour of the petitioner and that follow up steps for settlement is being taken in the light of the decision of the tender committee. The Director, Sanjay Gandhi Jaivik Udyan again vide his letter dated 13.4.2016 addressed to the Director, Ecology and Environment rubbished the complaint filed by the unsuccessful bidder not finding any merit therein and again recommend for approval for settlement in favour of the petitioner in the light of the decision of the tender committee.



The favourable recommendation for the petitioner continued in the letter of the Director, Environment and Ecology in his letter dated 20.4.2016 addressed to the Additional Principal Chief Conservator of Forest –cum- Additional Wild life Warden, Bihar, Patna. The Director while being critical of the allegations made in the complaint, has recommended for finalization of the tender in the light of the decision of the Tender Committee. He has further mentioned that it won't be proper for interference in the decision of the Committee. It is at this stage that the Additional Principal Chief Conservator of Forest -cum- Additional Wild life Warden has exercised influence to direct the Director, Ecology and Environment vide his letter dated 26.4.2016 to go ahead with fresh tender *inter alia* on grounds that the previous tender was on a higher bid. This objection/suggestion of the Additional Principal Chief Conservator of Forest -cum- Additional Wild life Warden has been acted upon by the Director, Sanjay Gandhi Jaivik Udyan to recommend to the Director General, Information and Public Relation Department, Bihar, Patna for inviting fresh tenders in the matter and has resulted in the Advertisement impugned at Annexure-10 to the Interlocutory Application. The petitioner being aggrieved is before this Court.

It is the argument of Mr. Shahi, learned counsel for the



petitioner that the respondents have not learnt from their past experiences where the previous tenderer abandoned the project midway primarily due to poor returns in view of restrictions on cooking. According to Mr. Shahi there is a healthy participation in the auction held for the four food stalls in which of the four applicants three succeeded in the technical bid and in the financial bid it is the petitioner who offered the maximum amount Rs.1,67,001/- per month. It is the argument of Mr. Shahi that initially the situation was different and coking was permitted within the Jaivik Udyan premises but since the said facility has been restricted and now only cooked food is permitted to be sold through the food outlets, it definitely cuts down the sale since now it is only such food which can bear the temperature, can be sold through these counters maintaining its quality. He submits that it is due to such restrictions that the previous tenderer had abandoned the project.

On merits it is the argument of Mr. Shahi that the petitioner is the best amongst the bidders and that the tender committee has recommended for settlement, which view of the tender committee cannot be superseded by any authority simply by hierarchy. It is submitted that there is no occasion for the Additional Principal Chief Conservator of Forest –cum- Principal Wild Life Warden who is a stranger to the tender committee, to

interfere in the tender process.

The argument of Mr. Shahi is contested by Ms. Binita Singh, learned counsel appearing for the State who has defended the action on the anvil of generating more revenue. Learned counsel with reference to the stand taken in the counter affidavit on record submits that since the previous tender was on a much higher rate than the bid offered by the petitioner hence it was thought proper to go for fresh tender. She submits that the opinion of the Additional Principal Chief Conservator of Forest – cum- Principal Wildlife Warden is on the issues raised in the complaint received in this regard and is for the purpose enhancing revenue.

I have heard learned counsel for the parties and I have perused the records.

The challenge to the decision for fresh tender as well as the tender floated pursuant thereto has to be tested on the touchstone whether the Additional Principal Chief Conservator of Forest -cum- Chief Wildlife Warden is possessed with any jurisdiction to supersede the decision of the Tender Committee and whether there can be any turn around after the holding of the financial bid.

In my opinion, once the tender committee has gone ahead with the financial bid then unless there exists extra ordinary



circumstances to abandon the process which is backed by a conscious decision of the tender committee themselves to go ahead for fresh tender, the process cannot be rendered nugatory by a unilateral decision. In fact a decision taken by the tender committee cannot be negated on whims by any authority howsoever high he may be in hierarchy but if he is a stranger to the Committee then his word would only be an undue interference in the arena reserved for the Tender Committee.

Without going into the intricacies of the matter, I would simply refer to Annexure-3 which eloquently expresses the view of the seven member committee on the financial bid assessment. The recommendation of the tender committee stands confirmed in the subsequent letters of the Director, Sanjay Gandhi Jaivik Udyan as well as the Director, Environment and Ecology present at Annexures-5, 6 and 7. These communications while rubbishing the complaint make strong recommendation for approval of the decision of the Tender Committee. Even otherwise a complaint by an unsuccessful bidder cannot be a foundation for setting aside a valid decision taken by the tender committee. There may be circumstances warranting a fresh tender, be it on grounds of single participant or for generating revenue but then this aspect is to be considered by the tender committee at the time of consideration of the financial bids exclusively and not by a



stranger to the proceedings. In my opinion it is the Committee who is best suited with the facts prevailing and unless their decision is perverse, it requires no interference merely because a superior authority is possessed with a different opinion. The tender committee was aware that the previous tenderer abandoned the work midway alleging low returns thus requiring fresh exercise. The tender committee was also versed by the situation prevailing where the allottees were only to serve cooked food and the permission for cooking had since been withdrawn. Now if in these changed circumstances the tender committee was satisfied with the offer of the petitioner and were not persuaded to go in for fresh tender rather the tender committee has recommended for settlement of the stalls with the petitioner, then it is an abuse of authority by the Additional Principal Chief Conservator of Forest –cum- Chief Wildlife Warden to interfere with the process.

Law is well settled and there can be no interference with the decision taken by an authority vested with such jurisdiction by any authority merely on supremacy in hierarchy. The Additional Principal Chief Conservator of Forests –cum- Chief Wildlife Warden could not have assumed jurisdiction which was conferred on and exclusively vested in the Tender Committee.

Reference was rightly made by Mr. Shahi to the judgments

of the Supreme Court reported in **AIR 1970 SC 1896 (The Purtabpur Co. Ltd. vs. Cane Commissioner, Bihar)** and **AIR 1952 SC 16 (Commissioner of Police vs. Gordhandas Bhanji)**.

For the reasons and discussions on the issue raised, the order dated 26.4.2016 by the Additional Principal Chief Conservator of Forest -cum- Chief Wild Life Warden together with follow up action taken by the Director, Sanjay Gandhi Jaivik Udyan vide his recommendation dated 28.4.2016 impugned at Annexures-8 and 9 respectively to the writ petition as well as the advertisement bearing no.3 of 2016-17 impugned at Annexure-10 cannot be upheld and are accordingly set aside. As a consequence the respondents are directed to take consequential steps in furtherance of the recommendation of the tender committee present at Annexure-3.

The writ petition is allowed.

(Jyoti Saran, J)

deepika/-

AFR	
CAV DATE	
Uploading Date	24-5-2016
Transmission Date	