

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9052 of 2016**

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Babban Prasad Singh Son of Late Bindeshwari Singh, Proprietor of Hitesh Engineering, resident of Variety Complex, Sheopur, Mahendru, P.S.- Pirmahore, District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Director-in-Chief, Health Department, Government of Bihar, Patna.
3. The Superintendent, Patna Medical College and Hospital, Patna.

.... .... Respondent/s

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**Appearance:**

For the Petitioner/s : Mr. P.K. Shahi, Sr. Advocate with  
Mr. Rakesh Kumar Sharma, Advocate

For the Respondent/s : Mr. Anjani Kumar, A.A.G.-6  
Mr. Deepak Sahay Jamuar, A.C. to AAG-6

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 14-07-2016**

The petitioner while praying for cancellation of the tender bearing No. S.J.S.V. (Health)16-17 published on 14.5.2016, a copy of which has been impugned at Annexure-10 to the writ petition has also prayed for a direction to the respondent authorities to take a final decision on the tender bearing No. PT-11323 (Health) 15-16 published on 03.1.2016, a copy of which is enclosed at Annexure-8.

Mr. P.K. Shahi, learned Senior advocate has appeared for the petitioner along with learned counsel Mr. Rakesh Kumar Sharma while the State is represented by Mr. Anjani Kumar, AAG-6 who appears with Mr. Deepak Sahay Jamuar, learned Assisting Counsel to

AAG-6.

Mr. Shahi, learned senior counsel appearing for the petitioner while fairly admitting to the legal position as regarding the scope of intervention in contractual matters by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India submits that insofar as the present case is concerned, an attempt has been made by the respondent authorities more particularly the respondent Superintendent of the Patna Medical College and Hospital to unfairly reject the petitioner's qualification to the contract even when he was found to be the lowest bidder. It is the submission of Mr. Shahi that of the three tenderers participating in response to the tender floated by the respondent no. 3 published on 03.1.2016, only two qualified in the technical bid held on 03.2.2016. He submits that the financial bid took place on 22.2.2016 and although the petitioner was found to be lowest tenderer but yet no decision was taken. He submits that it is in these circumstances that the petitioner filed an application by invoking the 'Right to Information Act' on 04.5.2016 but no information was given to the petitioner as to the outcome of the tender process and in the meantime the respondents floated fresh tender on 02.5.2016 which was published on 14.5.2016, a copy of which is present at Annexure-10. According to Mr. Shahi the petitioner was neither informed about the decision taken in the first



round exercise nor was intimated about the fresh tender and it is on gathering such information that the present writ petition was filed which was heard on 30.5.2016 and was adjourned to 02.6.2016 for filing of counter affidavit. He submits that the counter affidavit was filed only on 24.6.2016 and it is for the first time that the respondents came out with an order bearing Memo No. 4009 dated 25.2.2016 which was addressed to the petitioner and two others who had participated in response to the tender dated 03.1.2016 and whereby they were informed that the tender process has been cancelled since the minimum bid was found to be abnormally high than the market rate. A copy of the order has been enclosed at Annexure-A to the counter affidavit of the State. According to Mr. Shahi, the order dated 25.2.2016 brought on record vide Annexure-A to the counter affidavit is an ante dated document and has been manufactured merely in defence of the tender published on 14.5.2016. According to Mr. Shahi, no final decision was taken on the financial bid held on 22.2.2016 until the floating of the second tender on 14.5.2016 and it is only when the present writ petition was filed that the respondents realized their mistake to come up with the letter dated 25.2.2016. According to Mr. Shahi neither the order was communicated to the petitioner nor the counter affidavit of the State would reflect that it has been served upon the Principal Secretary of the Health



Department. Mr. Shahi turning his argument to the proceedings of the Tender Committee placed on record vide Annexure-B series to the supplementary counter affidavit filed on behalf of the respondents in response to the interlocutory application of the petitioner submits that although the proceedings confirms the presence of the petitioner and one other on 22.2.2016 and also records a presence of no less than 10 members forming the Purchase Committee but the decision to cancel the tender process bears the signature of only six of the ten member committee. According to Mr. Shahi though the document shows that a decision was taken by the Committee to cancel the tender on 22.2.2016 but this is incorrect because neither the petitioner who was present, was informed about such resolution nor the resolution is signed by all the ten members present.

Mr. Shahi next refers to the extract of the Peon Book which has been enclosed at Annexure-A to the affidavit under reference at page-94 of the proceedings to submit that the refusal by the petitioner is incorrect and that no attempt was made for service of the decision taken on cancellation. He again refers to the postal communication brought on record vide Annexure-12 series to I.A. No. 8708 of 2016 to submit that although the cover of the envelop shows that it was marked for being post on 25.2.2016 but the reverse thereof would show that it actually was posted on 02.6.2016 i.e. during the pendency

of the present matter.

It is the argument of Mr. Shahi that even if the respondents are vested with jurisdiction and power to cancel a tender process in case they are not satisfied with the response but insofar as the present case is concerned, it is engulfed with irregularities which are self eloquent and would require an enquiry by a superior authority of the State Government for it gives a poor reflection of the state of affairs prevailing.

The argument of Mr. Shahi has been contested by Mr. Anjani Kumar, learned AAG-6. According to learned Additional Advocate General, the petitioner has been given the contract of annual maintenance since 2012 and which has been extended from time to time until 12.9.2015 when it was cancelled vide order present at Annexure-7. It is submitted that it is thereafter that the tender present at Annexure-8 was floated on 03.1.2016 and which also did proceed for the technical bid as well as the financial bid but since the rates quoted by the tenderers as manifest from Annexure-B to the supplementary counter affidavit filed on behalf of the respondent no. 3 at page-82 was found to be excessively high that a decision was taken to cancel the tender process and of getting the maintenance of the air conditioners done through the Electrical Works Department of the Government of Bihar which was at a much cheaper rate. Mr.



Anjani Kumar has referred to the rate quoted by the petitioner against the tender dated 03.1.2016 to submit that the petitioner has quoted separate maintenance charges for the air conditioner, the compressor and for gas filling which comes to Rs. 30,700/- annually. He submits that the person coming next to the petitioner has offered his rate which in total comes to Rs. 32,300/-. It is the submission of Mr. Kumar, learned Additional Advocate General that the maintenance charges quoted by these persons was found to be so excessively high that it was decided to get the maintenance work done through the Electrical Works Department who are charging a meager amount of Rs. 4000/- as annual maintenance charge for the air conditioner, the compressor, towards gas filling as well as for maintenance of stabilizers. According to Mr. Anjani Kumar the decision to abandon the tender process was taken in the interest of revenue as also since a decision was taken by the State Government to carry out the maintenance work through the Electrical Works Department of the Government of Bihar itself. With reference to the enclosures at Annexure-B it is argued that huge amount has been spent on maintenance by the State Government. He thus submits that in view of the position explained through the supplementary counter affidavit, the decision taken by the Purchase Committee on 25.2.2016 suffers from no infirmity.



Responding to the argument of Mr. Shahi regarding the ante dating of the order, he submits that there is no occasion for the respondents to ante date the order which was attempted to be served on the writ petitioner as manifest from the Peon Diary report enclosed at Annexure-A to the supplementary counter affidavit at page-94. Responding to the issue raised by Mr. Shahi to question the veracity of the resolution of the Purchase Committee present at Annexure-B series to the supplementary counter affidavit at page-95 to 97 it is submitted that since the decision rests on a valid explanation and majority of the members of the Purchase Committee have put their signature hence the objection has no legs to stand. It is submitted that while a decision is taken by the State to get the maintenance of the air conditioner done through the Electrical Works Department of the State, insofar as the repairing of the air conditioners is concerned, a fresh tender has been floated on 02.5.2016 published on 14.5.2016 impugned at Annexure-10 to the writ petition and which does not call for any interference.

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

The scope of intervention in contractual matters in exercise of jurisdiction vested under Article 226 of the Constitution of India is rather circumscribed and unless the action complained of does not



withstand the test of reasonableness, transparency and fair play in State's action or is found to be in conflict with the statutory requirements or the constitutional guarantee, it need not be interfered with in a routine manner. Insofar as the present case is concerned, the reasons so assigned in the letter dated 25.2.2016 present at Annexure-A to the supplementary counter affidavit when tested in the backdrop of the rates quoted by the tenderers inclusive of the petitioner in comparison to the rate at which the maintenance work is being carried out by the Electrical Works Department of the Government of Bihar reflecting from Annexure-B to the supplementary counter affidavit of the respondent no. 3, no fault can be found in the decision so taken to cancel the tender process. In fact it would be belying prudence if the tender is allowed to reach its conclusion comparing the rate offered by the petitioner as well as the other tenderers in contrast to the rate at which the maintenance work is being carried out by the Electrical Works Department. The decision thus is backed with sound reason and would require no interference.

It is perhaps appreciating this important aspect of the matter that Mr. Shahi directed his energy more towards the alleged irregularities in the decision making process than to the decision itself. In my opinion, if a decision is founded on sound reasoning, then mere hitches reflecting in the process followed to reach such conclusion

would pale into insignificance unless it goes into root of the matter.

Apparently, the Purchase Committee proceeding does not contain the signature of all the ten members and may be the petitioner has not been informed about the decision taken on 22.2.2016 as reflecting from the proceedings present at page-95 to 97 but then two aspects are confirmed and that is; that the proceeding is signed by a majority of the Purchase Committee members and secondly it is founded on sound reasons to cancel the tender process.

In the circumstances so discussed, I am not persuaded with the arguments of Mr. Shahi that the issue at hand requires to be pursued any further.

The writ petition together with the interlocutory application(s) if any, are accordingly disposed of.

**(Jyoti Saran, J)**

S.Sb/-

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| AFR/NAFR          |            |
| CAV DATE          |            |
| Uploading Date    | 14.07.2016 |
| Transmission Date |            |