

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5212 of 2018

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Ramakant Singh, Son of Late Ram Khelawan Singh, Resident of Flat No. 101,
Lotus Apartment, New Patliputra Colony, P.S. Patliputra, District & Town Patna
..... Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Tourism, Bihar Old Secretariat, Patna.
 2. The Secretary, Department of Tourism, Bihar Old Secretariat, Patna.
 3. The Director, Department of Tourism, Government of Bihar, Old Secretariat, Patna.
 4. The Bihar State Tourism Development Corporation Limited (A Govt. of Bihar undertaking) through its Managing Director, Birchand Patel Path, Patna.
 5. The Managing Director, Bihar State Tourism Development Corporation Limited (A Govt. of Bihar undertaking), Birchand Patel Path, Patna.
 6. The General Manager, Bihar State Tourism Development Corporation Limited (A Govt. of Bihar undertaking), Tourist Complex, Bodhgaya, (Bihar)
 7. The Manager, Bihar State Tourism Development Corporation Limited (A Govt. of Bihar undertaking), Tourist Complex, Bodhgaya, (Bihar)
- Respondents

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Appearance :

For the Petitioner	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Lal Babu Singh, Advocate
For the State	:	Mr. Sita Ram Yadav- GP16
For the BSTDC	:	Ms. Anukriti Jaipuriyar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 22-03-2018

Heard learned senior counsel for the petitioner, learned
counsel for the State as well as learned counsel for the respondent-
Bihar State Tourism Development Corporation Limited.

2. The present writ petition has been filed for the
following reliefs –

*“(i) For quashing of the Short Tender Notice dated
09.03.2018, bearing no. 03/26/H&C/Esstt./12-13 Part -
1/286/18, for allotment of Hotel Vishnu Vihar, Gaya for
operation and maintenance for 10 years (contained in
Annexure-P/8).*



(ii) For a direction to the Respondents to grant extension/renewal of licence in favour of the Petitioner for operation and maintenance of Hotel Vishnu Vihar, Gaya in terms of allotment order dated 04.01.2013 and the licence agreement.

(iii) For appropriate declaration that :

(a) During the continuance of licence period for the operation and maintenance of Hotel Vishnu Vihar, Gaya as per the Allotment Order dated 04.01.2013 and Licence Agreement between the Petitioner and the Respondent, the floating of fresh short notice tender is arbitrary, unreasonable and against all canons of justice.

(b) The respondents cannot publish fresh Notice Inviting Tender for operation and maintenance of Hotel Vishnu Vihar, Gaya during licence period without cancelling the existing licence and without giving notice to the Petitioner.

(c) The Respondents are obliged to renew the licence/extension of the period for operation and maintenance of Hotel Vishnu Vihar in terms of the Allotment Order and Licence Agreement as a matter of right particularly when the Petitioner is fulfilling and complying with all the terms and conditions provided and paying the requisite fee.

(d) The entire action of Respondents of publishing fresh Short Term Notice for operation and maintenance of Hotel Vishnu Vihar is illegal, arbitrary, malafide, and violative of principles of natural justice.

(iv) For restraining the Respondents from taking any further action in the impugned Short Term Notice dated 09.03.2018 bearing no. 03/26/H&C/Esstt./12-13 Part-



1/286/18.

(v) For any other relief or consequential reliefs to which the Petitioner may be found entitled to in the facts and circumstances of this case.”

3. Mr. S.D. Sanjay, learned senior counsel appearing on behalf of the petitioner, submits that the action of the respondents in issuing the impugned short tender notice dated 09.03.2018 is completely arbitrary and illegal. It is submitted that the allotment letter as well as the license agreement, both dated 04.01.2013, clearly mentioned that the period of lease was initially for two years and thereafter extendable for one year at a time for a total period of not more than five years. In other words, it is submitted that total period of allotment/agreement was for seven years. It is submitted that the subject property comprising of Hotel Vishnu Vihar was handed over to the petitioner on 04.02.2013 and hence the petitioner was entitled to continue running the business for a maximum period of seven years upto 03.02.2020. The impugned short tender notice dated 09.03.2018 issued even prior to expiry of the term of the lease of the petitioner is thus unsustainable and is fit to be quashed.

4. It has further been pointed out that the petitioner has made considerable investment at the time of allotment/agreement in various assets such air-conditioners, furniture etc. as required and, therefore he had a legitimate expectation of extension of term of the agreement every year for a total period of 7 years on successful and



satisfactory performance.

5. It is further submitted on behalf of the petitioner that even otherwise, the fresh short tender notice is discriminatory as it excludes the petitioner from participation in view of the eligibility criteria which have been completely changed to the disadvantage of the petitioner even though he has successfully performed the work for a period of five years. Illustratively, the changes in the new Notice Inviting Tender have been summarized in paragraph 16 of the writ petition as follows –

S. No.	Notice Inviting Tender floated in the year 2012	Fresh Notice Inviting Tender floated on 09.03.2018
1.	The license was for a period of 2 years and was eligible for extension for 5 years subject to fulfillment of terms and conditions.	The license is for a period of 10 years subject to fulfillment of terms and conditions.
2.	The Management fees for the operation and maintenance of the Hotel was subject to enhancement @ 10% year.	The Management fees for the operation and maintenance of the Hotel is subject to enhancement @ 5% year.
3.	Subletting was expressly restricted.	Subletting has permitted.
4.	A registered company, partnership, proprietorship firm, registered society or individual could submit the bid.	Only Public and Pvt. Ltd. Company can submit their bids.
5.	In order to be eligible for bidding it was required to have an average turnover of Rs. 50 lakhs for past 5 years.	In order to be eligible for bidding it was required to have an average turnover of Rs. 5 Crores for past 3 years.



6. Learned counsel for the respondents, on the other hand, opposes the writ petition, submitting that it is evident from the very opening lines of the letter of allotment that the term visualized was only for 2/3/5 years. It is pointed out that the annual charges payable have also been enumerated year-wise for each of 5 years and there is no provision for payment of charges for 6th and 7th year which clearly shows that the contention of the petitioner is ill-conceived. It is further pointed out that the petitioner himself has admitted that the lease period was expiring on 04.02.2018 as evident from his letter dated 30.01.2018 addressed to Hon'ble Minister, Tourism Department, Patna requesting for extension of term of lease. Such extension was granted to the petitioner by letter dated 08.02.2018 (Annexure-P/6) upto 31.03.2018 and for which the petitioner duly made payment of the requisite amount of Rs. 5,60,205/- thereafter. It is pointed that had the lease been for a period of more than five years in the aggregate, the petitioner would have deposited the annual amount of charges for the 6th year three months before expiry of the 5th year as required in the case of the earlier years, but this has also not been done.

7. Learned counsel for the respondent further submits that the short tender notice cannot be said to be discriminatory as the eligibility criteria applies to all persons and is not intended to exclude any one person or another, much less the petitioner.

8. Having heard learned counsel for the parties and on consideration of the materials available on record, this Court finds the



writ petition completely devoid of merit. A bare perusal of the preamble of the allotment letter dated 04.01.2013 clearly states that the license was intended for a period of 2/3/5 years and not for 7 years as contended on behalf of the petitioner. Similarly, the lease agreement dated 04.01.2013 also enumerates annual charges to be paid year-wise from the 1st year upto the 5th year. There is no mention of charges for the 6th year and the 7th year, which supports the contention of the respondents that the lease period stated in Clause 7 of the agreement could only mean an initial period of two years extendable by a further period of one year each for 3 years. In view of the petitioner's own admission in his letter dated 30.01.2018 that expiry of the term of lease was on 04.02.2018, it is hardly open for him now to contend otherwise. Moreover, the term of lease having been extended till 31.03.2018 and the petitioner having duly paid charges of Rs. 5,60,205/- pursuant thereto, the question of legitimate expectation beyond the period of extension cannot arise. Similarly, the mere fact that the petitioner made substantial investment by way of installation of air-conditioner and furniture cannot entitle him to a right to continue under the agreement beyond the period of 5 years contemplated therein. This Court is of the view that there is nothing in the short tender notice to indicate that it was intended to target the petitioner alone, excluding him from participation. The period under the agreement with the petitioner as extended upto 31.03.2018 would be coming to an end soon, and as such the respondents were within their rights to issue a



fresh short tender notice. It is within their exclusive domain to decide the terms on which fresh licence would be granted. Nothing in the short tender notice can be said to be arbitrary and discriminatory.

9. The writ petition accordingly stands dismissed.

(Vikash Jain, J)

B.T/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	27.03.2018
Transmission Date	N.A.

