

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7874 of 2017

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M/s Ganadhi Pati Construction Pvt. Ltd. through its Managing Partner
namely Janardan Prasad Son of late Gulab Prasad, 401 Capital Tower,
Block-B, Fraser Road, District-Patna.

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Public Health & Engineering Department,
Vishwesaraiya Bhawan, Patna.
4. The Principal Secretary, Urban Development and Housing,
Department, Vikas Bhawan, Patna
5. The Managing Director, Bihar Rajya Jal Parshad, Patna.
6. The Special Secretary, Urban Development and Housing Department,
Vikas Bhawan Patna,
7. The Chief Engineer, Urban Development and Housing Department,
Vikas Bhawan, Patna
8. The Superintending Engineer, Urban Development and Housing
Department, Vikas Bhawan, Patna.
9. The Executive Engineer, Urban Development and Housing
Department, Vikas Bhawan, Patna.
10. The Executive Engineer, Technical Cell, Bihar Rajya Jal Parshad,
Patna.
11. The Superintending Engineer, Bihar Rajya Jal Parshad, Ganga Project,
Circle No.1, Patna
12. The Superintending Engineer, (Headquarter), Bihar Rajya Jal
Parshad, Patna.
13. The Executive Engineer, Bihar Rajya Jal Parshad, Ganga Project, Div.
No.1, Saidpur, Patna.
14. The Chief Engineer, Bihar Rajya Jal Parshad, Patna.
15. The Tender Committee through its President i.e. Managing Director,
Bihar Rajya Jal Parshad, Patna.
16. The Tender Revaluation Committee through its Managing Director,
Bihar, Rajya Jal Parshad, Patna
17. The Urban Development & Housing Department Committee through
its Special Secretary.
18. The RCM Infrastructure Ltd., 8-2-622/5/82, Indira Chambers 2nd
Floor, Avenue-4, Road No.-10 Banjara Hills Hyderabad-500034.
19. M/s Nalanda Engicon Pvt. Ltd, 14, Shri Ram Tower, West of Jalan
Shop, Main Road, Kankarbagh, Patna-800020.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 8051 of 2017



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Nalanda Engicon Pvt. Ltd. through its Managing Director Bibekanand Kumar, son of Late Sachidanand Prasad having its Registered Office at 14, Shri Ram Tower, West Of Jalan Shop, Main Road, Kankarbagh, P.S.- Kankarbagh District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.
3. The Special Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Urban Development and Housing Department, Govt. of Bihar, Patna.
5. The Managing Director, Bihar Rajya Jal Parshad, Patna.
6. RCM Infrastructures its Registered Office at C2-622/5/A2, Indira Chambers, Second Floor, Avenue-4, Road No.10, Banjara Hills, Hyderabad - 500034.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 11320 of 2017

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R C M Infrastructure Ltd., 8-2-622/5/82, Indira Chambers, 2nd Floor, Avenue- 4, Road No. - 10 Banjara Hills, Hyderabad- 500034, through its authorized signatory Ajit Kumar Nayan, S/o Late Rambriksh Maharaj, resident of Mohalla- East Patel Nagar, Road No. 6, Plot No. 36 'Uma Bhawan', Town and District- Patna, presently posted as General Manager (Projects).

.... Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Vikas Bhawan, Patna.
3. Special Secretary, Urban Development and Housing Department, Government of Bihar, Vikas Bhawan, Patna.
4. The Managing Director, Bihar Rajya Jal Parshad.
5. Chief Engineer, Bihar Rajya Jal Parshad.
6. Superintending Engineer, Circle No.-2, Bihar Rajya Jal Parshad.
7. Tendering Committee, Bihar Rajya Jal Parshad, through its Chairman.
8. M/S Ganadhi Pati Construction Pvt. Ltd. through its Managing Partner namely Janardan Prasad son of Late Gulab Prasad, 401 Capital Tower, Block- B, Fraser Road, P.S.- Kotwali, District- Patna.



9. M/S Nalanda Engicon Pvt. Ltd., 14 Shri Ram Tower, West of Jalan Shop,
Main Road, P.S.- Kankarbagh, District- Patna.

.... Respondents

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Appearance:

(In CWJC No.7874 of 2017)

For the Petitioner : Mr. Y.V. Giri, Sr. Advocate

Mr. Mithilesh Kumar Rai

Mrs. Vandana Kishore, Advocates

For the Respondents: Mr. Kinkar Kumar-SC9

Mr. Sushant Praveen, AC to SC 9

For the Jal Parshad : Mr. Rai Shivajee Nath, Sr. Advocate

Mr. Indrajeet Singh, Advocate

For Respondent No.18: Mr. Ashish Kumar Lal

Mr. Krishna Chandra, Advocates

(In CWJC No.8051 of 2017)

For the Petitioner : Mr. P.K. Shahi, Sr. Advocate

Mr. Shekhar Singh

Mr. Sumit Kumar, Advocates

For the Respondents: Mr. S.P. Singh- GA3

Mr. Indeshwari Pd. Mandal, AC to GA 3

Mr. Dilip Kumar, AC to GA 3

For the Jal Parshad : Mr. Rai Shivajee Nath, Sr. Advocate

Mr. Indrajeet Singh, Advocate

For Respondent No.6: Mr. Ashish Kumar Lal

Mr. Krishna Chandra, Advocates

(In CWJC No.11320 of 2017)

For the Petitioner : Mr. Krishna Chandra

Mr. Ashish Kumar Lal, Advocates

For the State : Mr. Shankar Kumar, AC to AAG 7

For the Jal Parshad : Mr. Rai Shivajee Nath, Sr. Advocate

Mr. Indrajeet Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 12-03-2018

These three writ petitions involve common issues and,
with the consent of parties, are accordingly being taken up for disposal
together at the stage of admission itself. The main relief sought in all
three writ petitions is for quashing the order/decision communicated
vide letter No. 1148 dated 15.05.2017 issued under the signature of



respondent no. 3, whereby tenders relating to design and construction of Drinking Water Supply scheme for Arrah, Biharsharif, Begusarai, Darbhanga and Kishanganj under the AMRUT Scheme have been cancelled and it has been decided to initiate the process to re-tender for the said Scheme; and for a direction to the respondents to award the concerned work in pursuance of the relevant tender notices.

2. The broad facts of the cases are being adopted from CWJC No.7874 of 2017 for the sake of convenience. Under Atal Mission for Rejuvenation and Urban Transformation ('AMRUT') Scheme, a Water Supply Scheme was approved for five cities, namely, Arrah, Biharsharif, Begusarai, Darbhanga and Kishanganj for which the Bihar Rajya Jal Parshad (hereinafter referred to as "BRJP") invited tenders. The three writ petitioners participated in the bid, pursuant to which, in course of verification of the documents, enquiry was made by the concerned authority with regard to the experience certificates produced by the bidders. It was found that the experience certificate of the petitioner-R. C. M. Infrastructure Ltd (for short, "RCMIL") was forged in view of letter no. 4783 dated 16.01.2017 issued by the Executive Engineer, PHE, Silchar Division No. 1, Silchar. The Tender Bid Evaluation Committee in its meeting held on 24.01.2017 thus found the experience certificate of RCMIL not in accordance with Clause 4.5A(b) of the Standard Bidding Document and therefore the financial bids of only the petitioner-Ganadhi Pati Construction Pvt. Limited (for short,



“GPCPL”) and the petitioner-Nalanda Engicon Pvt. Limited (for short, “NEPL”) were recommended for opening. The Tender Committee in its meeting held on 30.01.2017 accordingly decided to open financial bid of only two successful tenderers, namely, GPCPL and NEPL. The unsuccessful tenderer RCMIL then filed a complaint before the BRJP on 30.01.2017 with copies to various other authorities alleging that GPCPL and NEPL had submitted wrong documents. In this regard a Five-Men Committee came to be constituted by the Urban Development and House Department (for short, the “UDHD”) which submitted its preliminary enquiry report dated 27.02.2017 (Annexure-6) (“the first report”) finding that material irregularities had been committed by the BRJP because of having acted in undue haste in the tender process, as it was found that GPCPL and NEPL had also not submitted proper documents and ought to have been disqualified at the stage of technical bid itself.

3. The Tender Committee of the BRJP in turn submitted its report dated 11.03.2017 (Annexure-8) (“second report”) offering its comments, explanations and clarifications on all the issues raised in the first report of the UDHD, and in conclusion, it disagreed with the findings of the UDHD Committee. All these aspects were then examined in detail by the Five-Men Committee of the UDHD which submitted its final report dated 13.04.2017 (Annexure-J to the counter affidavit filed on behalf of the respondent-UDHD) (the “third report”), inter alia,



finding material irregularities in the documents submitted by all the three tenderers whose bids ought to have been rejected at the first stage of the technical bid itself.

4. In this backdrop of facts, the impugned letter No. 1148 dated 15.05.2017 (Annexure-9) came to be issued by the UDHD directing cancellation of the tenders and the issuing of fresh tenders in respect of all the five cities.

5. Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioner-GPCPL, submits that the impugned order dated 15.05.2017 (Annexure-9) is wholly arbitrary and without jurisdiction. It is submitted that the UDHD has acted far in excess of the jurisdiction vested in it in terms of Section 55 of the Bihar State Water and Sewage Board Act, 1982 ("the Act") which merely contemplates issuance of orders and directions to the Board by the Government in respect of policy matters. It is submitted that the UDHD had usurped the powers and functions of the BRJP and wrongly interfered in its day-to-day affairs and functioning. It is submitted that the tender had been issued by the BRJP and it was for the BRJP to finally decide the matter of awarding the contract work pursuant thereto, at its own discretion. The Tender Committee of BRJP had in its second report completely disagreed with the observations of the UDHD Committee as contained in its first report and had dispelled each and every allegation of irregularity having been committed in the tender process. In this view



of the matter, the UDHD could not have gone into the nitty-gritty of the tender process which was a routine matter and a function falling in the exclusive domain of BRJP. It is submitted that that BRJP had evolved its own procedure to be followed by it in the matter of awarding of tender contracts and in the evaluation of the technical bids with reference to eligibility criteria, the terms of which had been set out in its two letters both dated 27.08.2014 and approved by its Board of Directors in its meeting dated 21.10.2014. As such, the Tender Committee of the BRJP expressed its opinion in the second report that no irregularities had been committed in the tender process and thus disagreed with the observations of the UDHD Committee's first report. The finding of the Tender Committee had thus to be treated as final and conclusive.

6. Mr. Giri next submits without prejudice to the aforesaid submissions that, in any event, the impugned order dated 15.05.2017 is wholly without authority of law. The solitary provision in the Act which empowers the Government to have a say in matters of the BRJP is Section 55 which contemplates issuance of such orders and directions by the Government which, in their opinion, are necessary and expedient for carrying out the purposes of the Act. It is submitted that the impugned order issued under the signature of Special Secretary, UDHD, cannot be termed as an order or direction of the Government. Article 166 of the Constitution of India specifically requires that all executive actions of the State Government shall be



expressed to be taken in the name of the Governor and in the instant case therefore, the cancellation of the tender with direction for re-tender of the work by the Special Secretary, UDHD cannot be said to be an executive action of the Government of the State.

7. Mr. P.K. Shahi, learned senior counsel appearing on behalf of the petitioner-NEPL, substantially reiterates the submissions made on behalf of the petitioner-GPCPL and has sought to explain the deficiencies pointed out by the UDHD Committee. He has emphasized that the State is not justified in interfering with the day-to-day affairs of the BRJP under the powers contemplated under Section 55 of the Act.

8. It is submitted that the BRJP is an independent and autonomous body created under the Statute and is required to take its own decisions without interference from the State in its day-to-day affairs. It is well settled that wherever an authority is required to take a decision, the same has to be taken independently without interference from any outside agency even if it be a superior authority. It is therefore submitted that the impugned order amounts to interference by the Government in a matter requiring independent decision to be taken by BRJP, which is impermissible.

9. Learned counsel for the petitioners have placed strong reliance on various decisions of the Hon'ble Supreme Court on the issue of interference in decision-making by a statutory authority, as follows —

Association of Selected Candidates Vs. State of Bihar &



others, 1990(2) PLJR 748 —

“No policy decision of the State Government shall prevail upon the statutory power of the Corporation under section 23 of the Act. That shall have to be ignored or struck down if it shall have any effect upon the Corporation's rights acknowledged under section 23 of the Act.”

K.K. Bhalla Vs. State of M.P., (2006) 3 SCC 581 —

“59. Both the State and JDA have been assigned specific functions under the statute. JDA was constituted for a specific purpose. It could not take action contrary to the scheme framed by it nor take any action which could defeat such purpose. The State could not have interfered with the day-to-day functioning of a statutory authority. Section 72 of the 1973 Act authorises the State to exercise superintendence and control over the acts and proceedings of the officers appointed under Section 3 and the authorities constituted under the Act but thereby the State cannot usurp the jurisdiction of the Board itself. The Act does not contemplate any independent function by the State except as specifically provided therein.”

Manohar Lal (D) by Lrs Vs. Ugrasen (D) by Lrs & Ors., (2010) 11 SCC 557 —

“23. Therefore, the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor can the superior authority mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act.”

Dipak Babaria Vs. The State of Gujarat, (2014) 3 SCC 502 —

“72. ... Dictating him to act in a particular manner on the assumption by the Minister that it is in the interest of the industrial development would lead to a breach of the mandate of the statute framed by the legislature. The Ministers are not expected to act in this manner and



therefore, this particular route through the corridors of the Ministry, contrary to the statute, cannot be approved. The present case is clearly one of dereliction of his duties by the Collector and dictation by the Minister, showing nothing but arrogance of power.”

10. Learned counsel for the State vehemently opposes these writ petitions, submitting that the action of cancelling the tender and directing fresh tender is entirely legal and valid. It is submitted that material irregularities were found in the documents submitted by the tenderers and they were liable to be disqualified at the first stage in the technical bid itself but the Tender Committee of BRJP had acted in undue haste in an attempt to finalize the tender which involved a large magnitude of funds. He has also sought to invite attention of this Court to the nature of the irregularities and deficiencies in the tender documents of the bidders. It is submitted that it therefore became necessary for the Government to step in so as to reign in and control the violations committed by BRJP in respect of the PWD Code and extant circulars.

11. It is further submitted on behalf of the State that on perusal of the language of the provisions of Section 55 of the Act, it is evident that the Government is empowered to issue orders and directions to the BRJP in respect of all matters touching upon the purposes of the Act and is not restricted to merely issuing guidelines on policy matters. Section 55 has been incorporated in the Act for a reason and in a conscious manner with a view to enable the State



Government to have overall supervisory control over the affairs of the BRJP so as to ensure proper implementation of the various schemes of the State Government. The instant case involves the execution of the Government's AMRUT water supply scheme and it is unreasonable to expect the Government to be ousted from having any say in the matter with respect to its own scheme for which it is providing the finance.

12. Learned counsel for the State also submits that the impugned order dated 15.05.2017 is undoubtedly an executive action of the Government and the submission made to the contrary on behalf of the petitioners is thoroughly misconceived. He invites attention to the notification dated 20.03.2007 published in the Bihar Gazette (E), amending the Rules of Executive Business, 1979 ("the Rules" for short) formulated under Article 166(3) of the Constitution of India. Attention is invited to Article 3(i) of the 4th Schedule read with Rule 21 of the Rules, which specifies that if a matter requires to be considered by the Government in its original jurisdiction under an Act or Rule and no specific authority is specified, such power would be exercisable by the Departmental Secretary on behalf of the Government. It is pointed out that the matter of cancellation of the subject tender and re-tendering of the work was approved by the Hon'ble Minister pursuant to which the draft letter was prepared and approved by the Principal Secretary, UDHD. It is submitted that the impugned order dated 15.05.2017 has been passed in accordance with the Rules of Executive Business with



due approval of the concerned authorities. It is submitted that it is under the orders of the Principal Secretary of the Department who approved the draft letter on 15.05.2017 that the impugned order was issued on the same day “as directed” and it has merely been communicated by the Special Secretary, and is thus an executive act of the Government for the purposes of Section 55 of the Act.

13. Reliance has been placed on a decision of the Hon’ble Supreme Court reported in State of Bihar & anr. Vs. Sunny Prakash and others, (2013) 3 SCC 559, wherein its earlier decisions were taken note of including R. Chitralkha Vrs. State of Mysore, AIR 1964 SC 1823 and Dattatraya Moreshwar v. State of Bombay, AIR 1952 SC 181. In the latter case, it was observed as follows —

“7. ... Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself. ... Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision as to whether the detention order should be confirmed or not under Section 11(1).”

It was thus inferred that the provisions of Article 166 of the Constitution of India are directory and not mandatory in nature and if the procedure had not fully been complied with, it could well be established by other facts that the order in question was in fact issued



by the State Government.

14. Reliance has also been placed on a decision of the Hon'ble Supreme Court reported in Samsheer Singh Vs. The State of Bihar, (1974) 2 SCC 831 to demonstrate that the decision of a Minister or an Officer authorised under the Rules of Business was equivalent to the satisfaction of the Governor.

15. Mr. Roy Shivaji Nath, learned senior counsel on behalf of the BRJP, has supported the stand of the State in so far as the legal interpretation of Section 55 of the Act is concerned. It is submitted that by dint of Section 55 being incorporated in the Act, the Government is legally competent to issue orders and directions on all the matters which must be complied by the BRJP.

16. Before proceeding further, it would be apposite to have regard to the relevant provisions of Sections 10, 11 and 55 of the Act, which are being reproduced below –

“10. Functions of the Board – The functions of the Board shall be the following namely :-

(1) the promotion and operation of schemes for –

(i) Supply of water;

(ii) Sewerage;

(iii) Sewage treatment and its disposal;

(iv) Storage water drainage;

(2) functions connected with or incidental to the functions mentioned in clause (1);

(3) Any other functions entrusted to the Board by the State Government or a Local Authority;



Provided that the Board shall perform such of the above functions as are notified from time to time in the official Gazette.

11. Power of the Board – (1) *The Board shall , subject to the provisions of this Act, have power to do such thing which may be necessary or expedient for performing its functions under this Act.*

(2) *Without prejudice to the generality of the foregoing provision, such power shall include the power –*

(i) *to take over all the existing responsibilities, powers, controls, facilities, services and administration within the areas to which this Act applies from the local bodies having jurisdiction over such areas relating to water supply, sewerage and sewage disposal and to manage them so as to provide the people of those areas wholesome water and efficient sewerage services;*

(ii) *to extend, expand and develop the existing facilities and to provide, maintain and operate facilities for supply of water and for providing sewerage services, in areas not covered by existing facilities; in consultation with the local bodies;*

(iii) *to establish maintain and operate laboratories and experimental and research station;*

(iv) *to establish in service training courses and provide other training for its personnel;*

(v) *to prepare schemes for water supply and sewerage services in urban and rural areas in consultation with local authorities and carry out their execution;*

(vi) *to regulate the drilling of tube-wells, public or private and to control the drawal of*



underground water in notified urban and rural areas;

(vii) to enter into contract or arrangement with any person as the Board may deem necessary for performing its functions under this Act;

(viii) to determine, levy and collect fees and charges;

(ix) to borrow money, issue debentures and manage its own funds;

(x) to incur expenditure and to grant loans and advances to such persons or authorities as the Board may deem necessary for performing its functions under this Act; and

(xi) to entrust execution and maintenance of works to any local authority.

55. Power of the Government to issue orders and directions to the Board or Local Authorities -- *The Government may issue to the Board such orders and directions as in their opinion are necessary or expedient for carrying out the purposes of this Act and the Board shall give effect to all such orders and directions."*

17. While Section 10 broadly defines the functions of the Board, Section 11 provides necessary powers to BRJP for discharging its functions. One such power is specifically enumerated in Section 11(2)(vii), namely, to enter into contract with any person. Section 55 is couched in wide terms and enables the Government to issue all such orders and directions as are necessary for carrying out the purposes of



the Act, and these are binding on the BRJP. The phrase “for carrying out the purposes of this Act” is required to be read in the context of Sections 10 and 11, and thus read, it would not preclude passing of an order cancelling a tender issued by the BRJP, which order, needless to say, had been issued for carrying out the purposes of the Act. The said phrase cannot be read devoid of context and must be assigned proper meaning. There is nothing in section 55 to warrant an inference that the scope or power to be exercised by the Government thereunder can be restricted only with regard to the policy matters. It stands to reason that the Government would have retained for itself a supervisory role over the functioning of the BRJP to ensure that Government schemes financed and funded by it, such as the present AMRUT Scheme, should be properly implemented in a regular manner.

18. It is also relevant to note that by the impugned order, the UDHD being satisfied that there were irregularities in the tender procedure has merely directed re-tender without invasive interference such as directing the manner in which to take a decision with regard to award of work or mentioning any particular tenderer in whose favour the work ought to be awarded. This Court is of the view that the impugned order dated 15.05.2017 cannot be held as one interfering with the day-to-day affairs of BRJP in an unauthorized manner.

19. While there can be no doubt about the proposition of law that a decision-making statutory authority has to apply its mind



independently, the judicial decisions relied upon by the petitioners are distinguishable on facts and are not of much application here.

20. For example, in the Association of Selected Candidates case (supra), the State Financial Corporation ('SFC') under Section 23 of State Financial Corporation Act ('SFC Act') was required to appoint officers, advisors and employees and determine, by regulations, their conditions of appointment and service and the remuneration payable to them. The State Government had been empowered under Section 39(i) of SFC Act to issue instructions on question of policy to the SFC after obtaining the advice of Development Bank, which in the said case had been done. The case was being considered in the context of the SFC having failed to frame Regulations altogether. The facts of that case, especially in connection with appointments, remuneration and service conditions of officers, etc., are entirely distinguishable from the instant case which is concerned with the nature of power exercisable by the State Government under Section 55 of the Act.

21. The decision in K.K. Bhalla's case (supra) does not also come to the aid of the petitioners, as the MP Nagar Nivesh Act, 1973 under consideration contained a specific provision in Section 73 to the following effect —

"73. Power of State Government to give directions.—(1) In the discharge of their duties the officers appointed under Section 3 and the authorities constituted under this Act shall be bound by such directions on matters of policy as may be given to them by the State Government.

(2) If any dispute arises between the State Government and any authority as to whether a question is or is not a question of policy, the decision of the State Government shall be final."



The power of the State Government was thus restricted to matters of policy alone, unlike in the present case where no such restriction has been imposed in Section 55 of the Act.

22. Coming to the other objections raised on behalf of the petitioners to the effect that the impugned order cannot be treated as an executive action of the Government as contemplated under Article 166 of the Constitution of India, this Court does not find any merit in such submission as well. As pointed out on behalf of the State, the action was duly approved by the Hon'ble Minister, UDHD and the draft letter of the impugned order then approved by the Principal Secretary of UDHD on 15.05.2017. Later the same day, the impugned order was issued "as directed," meaning thereby that such order had merely been communicated under the signature of the Special Secretary on the basis of the orders of the Hon'ble Minister and the Principal Secretary, UDHD. Such action therefore satisfies the requirement of Article 3(i) of the 4th Schedule read with Rule 21 of the Rules of Executive Business, 1979 and must be held to be an executive action of the Government for the purpose of Section 55 of the Act.

23. This Court is also unable to find any error or infirmity in the decision making process whereby the Five-Men Committee of the UDHD in its report dated 13.04.2017 concluded that none of the bidders had qualified in the first part of the technical bid on the ground



of material irregularities in the tender documents. As a matter of fact, the UDHD had found such irregularities even in its preliminary report dated 27.02.2017 and had called for the comments of BRJP which were furnished in the latter's report dated 11.03.2017, and on detailed consideration of the matter, the UDHD Committee had come up with its final report dated 13.04.2017 which, incidentally, has not even been brought on record by the petitioners, much less challenged.

24. On the other hand, learned counsel for the State has rightly relied on the decision of State of Bihar & anr. Vs. Sunny Prakash and others (supra). In the present case, it has been shown that the findings in the third report of the UDHD were placed before the Hon'ble Minister and duly approved by him before the draft letter of the impugned order dated 15.05.2017 was placed before and approved by the Principal Secretary, UDHD. It must therefore be held that even though the impugned order has not been expressed to have been made in the name of the Governor, the same remains an order of the State Government in terms of Article 166 of the Constitution of India.

25. The decision in Samsheer Singh's case (supra) leaves little room for discussion, and has resolved the issue succinctly in the following terms —

“48. The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution



requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President or the Governor.”

It was explained that “the decision of any Minister or Officer made under the Rules of Business or under Articles 77(3) and 166 is the decision of the President or Governor, respectively. These Articles do not provide for any delegation therefore, the decision of the Minister or Officer under the Rules of Business is the decision of the President or Governor.” In this view of the matter, there is no room for doubt that the impugned order dated 15.05.2017 issued on the direction of the Principal Secretary, UDHD, amounts to an order in the name of the Governor and hence is an order of the Government for the purpose of Article 166 of the Constitution of India.

26. This Court is therefore of the view that the impugned order cancelling the tender and directing steps for fresh tender cannot be faulted and must be held to be valid and in accordance with law.

27. Before parting with this judgment, it is necessary to note that RCMIL in its writ petition in CWJC No. 11320 of 2017 has also



made the following prayer –

“For quashing the order communicated through email dated 30th January, 2017 by the Tendering Authority whereby bid made by the Petitioner for Tender No. BRJP/D3/WS-37/2016-17, BRJP/D5/WS-40/2016-17, BRJP/D2/WS-45/2016-17 and BRJP/D2/WS-46/2016-17, were declared disqualified and reason assigned was “As per decision taken in departmental tender committee on dt. 30.01.2017”.

28. Learned counsel appearing on behalf of the petitioner-RCMIL submits that the petitioner’s technical bid was rejected citing the reasons for disqualification “As per decision taken in departmental tender committee on 30.01.2017” and was communicated to the petitioner in terms of the email dated 30th January, 2017 in respect of each of the four tenders applied for. It has however been stated that the petitioner is not averse to participating in the re-tendering in accordance with the decision taken in the impugned order.

29. Learned counsel for the BRJP has opposed this prayer of the writ petitioner, pointing out that the petitioner’s stand that it has no problem against re-tender of the work runs counter to its prayer. As a matter of fact, it has been admitted by RCMIL that it was filing the writ petition only for the reason that GPCPL and NEPL were doing so. In any event, the reasons for disqualification were made known to the petitioner with reference to the meeting of the Tender Committee held on 30.01.2017 wherein the experience certificate of the petitioner had



been found to be forged.

30. Having regard to the respective stands of the parties, there is no merit in the petitioner’s prayer which is rejected.

31. I.A. No. 9459 of 2017 has been filed by petitioner-RCMIL for a direction to the respondent-State to release the bank guarantee of the petitioner.

32. Considering that no material has been brought on record to show that the petitioner has approached the respondent-State, this Court is not inclined to make any observation in this regard. The interlocutory application stands dismissed with liberty to the petitioner-RCMIL to file an appropriate representation before the concerned authority for redressal of its grievance, if so advised.

33. In the above circumstances, this Court does not find merit in these writ petitions and the same thus stand dismissed.

(Vikash Jain, J)

Chandran/BT

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

