

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6898 of 2020

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Santosh Kumar Sahi, Son of Bhagwan Prasad Sahi, Resident of Ward no. 31,
Sapahi Devi Mandir Road, Near Trilokinath Mandir, Agarwa, P.S.-Town
Motihari, District-East Champaran (Motihari).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, East Champaran, Motihari.
3. The Chairman, District Health Society, East Champaran, District East
Champaran.
4. The District Health Society, through the Civil Surgeon-cum-Member
Secretary, East Champaran at Motihari.
5. The Civil Surgeon-cum-Member Secretary, District Health Society, East
Champaran at Motihari.
6. The District Programme Manager, District Health Society, East Champaran
at Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sumeet Kumar Singh, Advocate
For the Respondent/s : Mr. S. D. Yadav, AAG-9

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

6. 16-10-2020 Heard Mr. Sumeet Kumar Singh, learned
counsel for the petitioner and Mr. S. D. Yadav, learned
AAG-9 for the State.



The writ petition was initially filed for quashing of the entire e-tender bearing notice no. 2387/BHS dated 06.03.2020, issued by the District Health Society, East Champaran for outsourcing of cleaning services, diet services and laundry services in selected Government Health Care Facilities.

The challenge was basically on the ground that the documents which were supposed to be downloaded by the prospective bidders had not been uploaded on the website and therefore the petitioner, as an aspiring bidder, could not participate.

By order dated 06.07.2020, this Court directed the Government counsel to inquire into the matter and report.

An affidavit was filed on behalf of the respondent / State stating that all the documents were uploaded on the website and many prospective bidders had downloaded the same.

During the pendency of the writ petition, the



petitioner filed an Interlocutory Application, *vide* I. A. No. 1 of 2020, in which reference was made of a subsequent development with respect to the letter dated 06.03.2020 issued by the Civil Surgeon-cum-Member Secretary, District Health Society, East Champaran. Short-term tenders were invited *vide* letter dated 13.09.2020 and tender dated 14.09.2020 for outsourcing of cleaning services, health care facility, diet services, and laundry services and two other facilities, *viz.*, electric supply through silent generator and guard services, which was a deviation from the e-tender dated 06.03.2020.

It has been argued that these two items were never part of the tender dated 06.03.2020.

Apart from this, it has been urged that for the work of supply of electrical services and security guard services, the tender document did not specify the estimated cost.

The petitioner claims that he had been working



in the district concerned and was providing silent generator of 10, 15 and 25 KVA from 2016 to 2019 and had also been providing cleaning and maintenance work in the district of East Champaran and presently is working on extension. He, therefore, infers that the Civil Surgeon-cum-Member Secretary, District Health Society, East Champaran has acted in a *mala fide* manner and only in order to harass the petitioner and prevent him from participating in the short-term tender, the two extra items have been introduced which was not part of the tender document dated 06.03.2020.

Another limb of argument of Mr. Sumeet Kumar Singh, which is only being noted to be rejected, is that a new tender cannot be called upon in which a few items were advertised by the earlier tender.

In the aforesaid short-term e-tender, certain conditions, namely, of providing 100 staff for ESI and 100 staff for EPF as a necessary pre-requisite for applying for the tender and an experience of five years



have also been introduced which was not there on the earlier occasions. According to the petitioner, these conditions had been introduced only for the purposes of ousting the petitioner.

After having heard learned counsel for the parties, this Court is of the view that the present writ petition is absolutely misconceived.

In the first instance, the claim of the petitioner that the bid-documents were never uploaded on the website was found to be incorrect.

The new short-term tender, which too has been challenged by way of I. A. No. 1 of 2020, clearly indicates that the tender *vide* letter dated 06.03.2020 for various services has been cancelled and a fresh short-term tender has been advertised. No infirmity can be perceived or read in the cancellation of an earlier tender and calling for a fresh e-tender with respect to services which are required by the District Health Society, East Champaran. That two new items were introduced in this



fresh short-term e-tender cannot be a ground of challenge on the ostensible plea that those two items were not advertised in the tender issued under letter dated 06.03.2020. The entire tender process by virtue of letter dated 06.03.2020 was cancelled and a fresh short-term e-tender has been issued.

The petitioner does not appear to have applied in the fresh e-tender and his assessment of the fresh tender with two additional items being *mala fide* in order to oust him from the process, is without any basis.

For reasons which are not explicable to this Court, several judgements have been cited by the learned counsel for the petitioner, viz, ***R. D. Shetty Versus The International Air Port Authority of India & Ors. [(1979) 3 SCC 489]; Montecarlo Limited Versus NTPC Limited [(2016) 15 SCC 272]; Shri Gopal Bhagwan Das & Anr. Versus The Bihar State Text Books Publishing Corporation Limited & Ors. [2009 (2) PLJR 6]; Umesh Kumar Paswan & Anr. Versus Union of India & Ors. [2009 (4) PLJR 61]; Reliance Energy Limited & Anr. Versus***



Maharashtra State Road Development Corporation Limited & Ors. [(2007) 8 SCC 1]; Tata Cellular Versus Union of India [(1994) 6 SCC 651]; B. S. N. Joshi and Sons Limited Versus Nair Coal Services Limited & Ors. [(2006] 11 SCC 548]; and Jagdish Mandal Versus the State of Orrissa & Ors. [(2007) 14 SCC 517].

The afore-noted judgements do not at all help the case of the petitioner as the ratio in these cases are that the cause of action should be borne immediately after the alleged grievance has taken place; the authority issuing tender ought to be allowed to carry out the purpose and there has to be allowance of free play in the joints; a bidder ought not be permitted to challenge the terms of a tender in which he has participated (perhaps the petitioner wanted to convey that since he has not participated in the new short-term tender, he could raise such issue in the legal forum); lack of *bona fides* in the tender permits of interference by the Courts; Article 14 of the Constitution of India embodies the principle of non-discrimination, though the same is not a free-



standing provision and has to be read in conjunction with rights conferred by other Articles like Article 21 of the Constitution; the tender issuing authority has a right to choose from amongst the bidders which cannot be considered as an arbitrary powers; the Courts should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record and that power of judicial review shall not be invoked to protect private interest at the cost of public interest or to decide contractual disputes, and that the High Court cannot sit in appeal over any technical assessment by the authorities issuing the tender etc. etc.

As noted above, all the judgements cited by the learned counsel for the petitioner do not improve the case of the petitioner in any way.

The short-term tender notice cannot be faulted on the grounds suggested by the learned counsel for the petitioner.



There is no merit in this writ petition and therefore the same is dismissed. The Interlocutory Application is dismissed as well.

Cost easy.

(Ashutosh Kumar, J)

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