

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7166 of 2020

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Vivek Jha (Male) aged about 46 years, Son of Late Ganesh Jha, Resident of Village and P.O. Haripur, P.S. bahera, District-Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-In-Chief, Health Services, Bihar, Patna.
4. The Principal Secretary, Finance Department, Government of Bihar, Patna.
5. The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna through the Managing Director.
6. The Managing Director, The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.
7. The Chief General Manager, The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.
8. The General Manager (P and D), The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 7846 of 2020

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Raj Tanay Raj Construction Pvt. Ltd., Ray Bhawan, Near Registry Office, Gopalganj through its Managing Director, Manish Ranjan (Male), aged about 42 Years, Son of Bhola Prasad Ray, resident of Ray Bhawan, South to Registry Officer, Marwari Mohalla, Manikpur, P.O. and P.S. Gopalganj, District-Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Bihar, Patna.
4. The Principal Secretary, Finance department, Government of Bihar, Patna.
5. The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna through the Managing Director.
6. The Managing Director, The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.
7. The Chief General Manager, The Bihar Medical Service and Infrastructure



Corporation Ltd., Hospital Road, Shastri Nagar, Patna.

8. The General Manager (P and D), The Bihar Medical Service and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 7856 of 2020

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Randhir Kumar (Male), aged about 41 years, son of Sri Mahesh Patel, resident of village and P.O. Gurmiya, P.S. Kartahan, District- Vaishali at Hajipur.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-in- Chief, Health Services, Bihar, Patna.
4. The Principal Secretary, Finance Department, Government of Bihar, Patna.
5. The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna through the Managing Director.
6. The Managing Director, The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.
7. The Chief General Manager, The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.
8. The General Manager (P and D), The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 7921 of 2020

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Nalin Ranjan (male), aged about 43 years, Son of Late Rajendra Thakur Resident of Mohalla- Bibiganj, Brahmpura Road, Near Dr. R.N. Thakur, Ward No.7, Bhagwanpur, P.O.- Bhagwanpur, P.S.- Muzaffarpur Sadar, District- Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary Health Department, Government of Bihar, Patna.
3. The Director-in- Chief Health Services, Bihar, Patna.
4. The Principal Secretary Finance Department, Government of Bihar, Patna.



5. The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Raod, Shastri Nagar, Patna through the Managing Director.
6. The Managing Director The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.
7. The Chief General Manager The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.
8. The General Manager (P and D) The Bihar Medical Services and Infrastructure Corporation Ltd., Hospital Road, Shastri Nagar, Patna.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 7166 of 2020)

For the Petitioner : Mr.Shashi Bhushan Kumar Manglam, Advocate

For the Respondents : Mr.Lalit Kishore Advocate General

Mr. Braj Bhushan Mishra, AC to AAG 9

(In Civil Writ Jurisdiction Case No. 7846 of 2020)

For the Petitioner : Mr.Shashi Bhushan Kumar Manglam, Advocate

For the Respondents : Mr.Lalit Kishore Advocate General,

Mr. S.D. Yadav, AAG 9

For BMSICL : Mr. Vikash Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 7856 of 2020)

For the Petitioner : Mr.Shashi Bhushan Kumar Manglam, Advocate

For the Respondents : Mr.Lalit Kishore Advocate General

(In Civil Writ Jurisdiction Case No. 7921 of 2020)

For the Petitioner : Mr.Shashi Bhushan Kumar Manglam, Advocate

For the Respondents : Mr.Lalit Kishore Advocate General,

Mr. S.D. Yadav, AAG 9

For BMSICL : Mr. Vikash Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT**

Date : 04-02-2021

All the batch of writ applications involve the same question of fact and law and with consent of the parties, all the writ applications have been heard together and they are being disposed of by this common judgment.

Petitioner in CWJC No. 7166 of 2020 is aggrieved by the notification contained in Memo No.7806 dated 30.09.2016 contained in Annexure-5 of CWJC No. 7166 of 2020.



Mr. S.B.K. Manglam, learned counsel for the petitioner, would submit that in this case the tender of the petitioner was found responsive by the technical committee, yet Board of Directors have decided to cancel the tender of the petitioner and invite fresh tender.

Mr. Lalit Kishore, learned Advocate General appearing on behalf of the State, would submit that in the very first process of tender, no one submitted tender and therefore, inviting fresh tender was compulsion of the respondents and fresh tender should be read as the first tender for all practical purposes. Referring to Clause 27 of Annexure-2, learned Advocate General would submit that in case of the first tender, the respondents were justified in taking decision to invite fresh tender on the ground of solitary tender.

On perusal of the materials available on record and documents appended to the writ applications, the Court finds that earlier tender was invited but there was no response to the first tender and as a matter of compulsion, the respondents have to invite fresh tender. In the fresh tender, petitioner submitted his tender as his tender was found to be responsive by the technical committee. However, in the meeting of the Board, it was decided to invite fresh tender as the petitioner was solitary



tenderer. In the case of solitary tender in the process of first tender, then no reason is required to be assigned except that the single tender was the reason for fresh tender but if it is construed as second tender then in that situation, the respondents are under obligation to assign reasons for inviting fresh tender if they decline to accept the tender submitted by the petitioner if found in order and responsive by the technical committee.

Mr. Manglam, learned counsel appearing on behalf of the petitioners in other batch of cases, would submit that in all cases there was second tender and therefore, reason was required to be assigned by the respondents whereas learned Advocate General would submit that since there was single tender there is no reason except single tender for inviting fresh tender is enough.

Learned Advocate General further submits that the matter relates to construction of hospital and in larger public interest, the Court should not interfere in the affairs of the Board unless decision of the Board is arbitrary. He refers to the judgment of the Apex Court in the case of State of Jharkhand Vs. CWE-SOMA Consortium [(2016) 14 SCC 172] and submits that while exercising judicial review, the matters involving



public interest like construction of hospital unless the decision is arbitrary and shook conscientious of the Court, Court should not interfere. Ordinarily scope of judicial review is limited and the Courts are not expected to interfere in the decision of the authority. The Court may exercise power of review very sparingly in case involving larger public interest under Article 226 of the Constitution. The respondents have themselves decided vide Annexure-5 that in case after evaluation by the technical committee the technical bid is found responsive, the authority higher may take appropriate decision in case of single bid.

In CWJC No.7166 of 2020 there was dispute whether there was second tender being fresh tender to invite on account of no response to the very first tender notice but in other cases there is no dispute that the first tender was rejected on the ground of solitary response and in the process of second tender, the respondents have taken decision to reject the tender on the ground that the tender of the petitioners was solitary one.

On consideration of the rival submissions, the Court finds that the present case is case of fresh tender and in case of fresh tender, technical bid of the petitioners was found to be responsive. The Board exercising power in terms of Annexure-



5 was required to give reason not necessarily detailed but precise reason for inviting fresh tender in the process of evaluation of fresh tender. Since in the present case evaluation was not done objectively, and the Board has not assigned any reason except single tender which is applicable in the case of first tender, the Court is of the view that the respondents are required to give reason for rejecting the tender of petitioner, the Court is constrained to remit the matter back without quashing the order of rejection of the tender of the petitioners to the Board of Directors to re-examine the claim and tender of the petitioners, the Board has to give reason for rejection of tender at the earliest preferably within a period of 15 days from the date of receipt/production of a copy of this order. The decision of the Board as contained Annexure-A to the counter affidavit shall not come in the way of the respondents in taking fresh decision within a period of 15 days of the receipt/ production of a copy of this order.

In the larger public interest, the respondents are directed to take fresh decision within a period of 15 days from the date of receipt/production of a copy of this order. The fate of the tender of the petitioners shall abide by fresh decision to be taken by the respondents. Similarly in other cases of rejection of



Tender the Board has to give reason for rejection.

Accordingly, all the writ applications are disposed of.

It is made made clear that remand of these cases will not be construed as a direction to the respondents to accept the tender of the petitioners as valid and binding on the respondents.

(Anil Kumar Upadhyay, J)

BT/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.02.2021
Transmission Date	N.A.

