

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20317 of 2021

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Ambedkar Anusuchit Jati Mahila Vikas Swablambi Kalyan Samati Chakiya at
P.O. Brahmapur, District - Darbhanga (Bihar) through its Secretary Vijay
Shankar Thakur, aged about 48 years, Gender - Male, Son of Baleshwar
Thakur, Resident of Ward - 3, Barhampur, P.S. - Barhampur, District -
Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health
Department, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The District Magistrate Cum President, District Health Society, Darbhanga.
4. The Civil Surgeon Cum Member Secretary, District Health Society, T.B.D.C.
Building Opp. K.S. College, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rikesh Sinha, Advocate
Mr. Dileep Kumar Singh, Advocate

For the Respondent/s : Md. Mujtabaul Haque, GP-12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

**(The proceedings of the Court are being conducted by Hon'ble the Chief
Justice/Hon'ble Judges through Video Conferencing from their
residential offices/residences. Also the Advocates and the Staffs joined the
proceedings through Video Conferencing from their residences/offices.)**

Date : 03-02-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-



1. That this is an application for issuance of writ in the nature of mandamus and/or any other appropriate writ/writs, order/orders, direction/ directions for (i) Setting aside the Notice Inviting Tenders (NIT) issued on 21.11.2021 by civil Surgeon, Darbhanga for outsourcing of Cleaning Services of Government Healthcare Facilities in Darbhanga. (ii) for Inviting separate Tenders for work of Block, Panchayat and Ward as earlier. (iii) and/or for issuance of appropriate writ or direction for which your lordship may deem fit and proper.

Petitioner lays challenge to condition No. 3 of NIT i.e. tender document for Outsourcing of Cleaning Services at Government Healthcare Facilities in Darbhanga, issued on 21.11.2021 (Annexure-2 Page 11). The said condition, subject matter of challenge is reproduced as under:-

3) Tender documents may be collected from District Health Society, T.B.D.C Building, Darbhanga, Pin-846003 or downloaded from the district website 1. <https://Darbhanga.nic.in>. The technical bid should accompany a refundable bid security/Earnest Money Deposit (EMD) of Rs. 20,00,000.00 (Twenty Lakh rupees Only) in form of demand Draft drawn in favour of District Health Society, Darbhanga. It may be noted that no bidder is exempted from deposit of EMD. Tenders submitted without EMD, shall be summarily rejected.

In Hindustan Construction Co. Ltd. v. State of U.P., 2014 SCC OnLine All 15379 : (2014) 6 All LJ 337 : (2015) 1 BC 332 at page 341, the Division Bench of Hon'ble Allahabad High Court held as under:-

“8. While evaluating merits of the submission, it



would be appropriate, at the outset, to formulate the nature and extent of judicial review where a challenge is made to a condition imposed by a body which invites tenders by a bid document or, as the case may be, in a Request For Qualification. The principles which must govern such a case have been formulated in a recent judgment of the Supreme Court in *Michigan Rubber (India) Limited v. State of Karnataka* [(2012) 8 SCC 216 : (AIR 2012 SC 2915).] :

“From the above decisions, the following principles emerge:

- (a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;
- (b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;
- (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;
- (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and
- (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim a fundamental right to carry on business with the Government.



(24) Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say:

“the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”; and

(ii) Whether the public interest is affected, if the answers to the above questions are in negative, then there should be no interference under Article 226.”

It is brought to our notice that for the first time, the Government, by way of policy decision, has taken a decision of inviting the tenders for whole of the district. Nature and the scope of work are to provide cleaning services at different healthcare centres in District-Darbhanga. 42 such centres in the said district of different categories stand notified.

We notice that all such centres are having facility for treatment of indoor patients and the scope of work includes cleaning of the entire areas. All such centres within the district are covered by a single tender. One of the conditions stipulated in the document is that the bidder must have financial turnover of more than Rs. 1.5 crores for the last three preceding years. Another condition being that technical bid must accompany a



pre-deposit of Rs.20,00,000/- (Rupees Twenty Lakh)(Clause 3.3).

It is argued that the petitioner is a poor person and has been executing the work of similar nature, in some of the institutions notified in the tender document, for the last eight years.

Well, such factor cannot be a ground to challenge the tender condition, reproduced supra, more so, in the absence of any material on record to establish that the tender condition stands tailor made or malafidely inserted to suit a particular individual or oust another. Nor do we find any material, pointing finger of arbitrariness in the policy decision, whereby the Government, for the first time, has taken a decision of inviting tenders for outsourcing the work of cleaning of all the institutions within the very same district. Perhaps, such a measure is only for a better management and to facilitate proper monitoring of the party undertaking the work, subject matter of the tender document. The scope of the work is notified in Annexure-5 of the tender document is quite extensive; requires sufficient deployment of human resources as also cleaning material. Condition of pre-deposit is directly linked with the financial capacity of the party desiring to furnish the bid. This



condition has a direct nexus with the object sought to be achieved. Financial ability; potential; and capacity, being a necessary concomitant for qualification.

Under these circumstances, we find ourselves not to be persuaded to even issue notice. As such, present petition stands dismissed.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.02.2022
Transmission Date	

