

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20334 of 2021

1. Raj Informatics Construction through its sole Proprietor Bharat Kumar Singh, Male, Aged about 40 years, Son of Late Baldev Singh, Resident of Mithapur, B-Area, D.N. Singh Lane, P.S. - Jakkanpur, District - Patna.
2. Singh Services, through its Sole Proprietor Sanjeev Kumar, Male, Aged about 38 years, Son of Rajendra Singh, Resident of Village - Kripaganj, P.S. - Ben, District - Nalanda.
3. M/s Krishna Construction, through its partner Awadhesh Kumar Singh, Male, Aged about 58 years, Son of Late Mundrika Singh, Resident of Abhyanta Nagar, Ashiyana Nagar, P.S. - Rajiv Nagar, District - Patna.
4. Neelam Printers and General Order Suppliers, through its partner Satendra Narayan Singh, Male, Aged about 47 years, Son of Late Jagdish Singh, Resident of Village - Veer Kunwar Singh Nagar, New Area, P.S. - Aurangabad, District - Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary, Health Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Health Department Govt. of Bihar, Patna.
3. The State Health Society, Shekhpura, Patna, Bihar through its Executive Director.
4. The District Magistrate Cum - Chairman The District Health Society, Nalanda at Biharsharif.
5. The District Health Society Nalanda through its member Secretary, the Civil Surgeon Nalanda at Biharsharif.
6. The Additional District Magistrate - Cum - Chairman Tender Committee Nalanda at Bihar Sharif.
7. Sri Yogendra Singh, The District Magistrate Nalanda Cum - Chairman, District Health Society, Nalanda at Biharsharif.
8. Prabhakar Enterprises, through it Proprietor Rajiv Kumar Ramanandi Singh having its Registered Office 48, Padmavati Nagar, Nr. Rajpipla Road, Ankleshwar - 393002, Gujrat.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Ashutosh Singh, Advocate Mr. Vinod Kumar, Advocates
For the Respondent/s	:	Mr. Ramadhar Singh (G.P. 25) Mr. K.K. Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-04-2022

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s):-

i) For to set aside the order dated 23.11.2021 passed by the District Magistrate Cum-Chairman, The District Health Society, Nalanda (Respondent No. 4) passed in Miscellaneous Case No. 35/20-21 (Raj informatics constriction and others versus the State) (Annexure-9) whereby and where under the respondent has rejected the petitioners representation dated 11.10.2021 filed in pursuance of this Hon'ble Court's . order dated 07.10.2021 passed in CWJC No. 17010/21, in most arbitrary, illegal and malafid in record manner much-less without applying his mind towards the facts and circumstances as well as the spirit of the Hon'ble Court's order.

ii) For, to direct the respondent authorities to finalize the Tender namely "Out Sourcing of Cleaning Services at Government Health Care facilities in the District Nalanda" i.e. Tender Ref. No. 1795 dated 07.08.2021(Annexure-1), so for petitioners works are concerned, by issuing work order after duly execution of agreement in favour of the petitioners, since the petitioner's bids has all ready been held successful and declared as L1 (Lowest bidder) in their respective works item.

iii) For, to set aside the second Notice Inviting Tender (NIT) / Re-Tender notice vide Rcf. No. 2068 dated 13.09.2021 (Annexure-6)

iv) For, to direct the respondent authorities not to open the tender and further act upon with regard to the second Notice Inviting Tender (NIT) / Re-Tender notice vide Tender Enq. Ref. No. 2068 dated 13.09.2021 (Annexure-6).

v) For, to direct the respondent authorities to hold an inquiry with respect to the genuineness of the Power of attorney as well as the affidavits submitted by Prabhakar Enterprises through its proprietor Rajiv Kumar Ramanandi Singh (Respondent No. 8).

vi) For, to direct the respondent authorities

to hold an inquiry, under what circumstances the respondent No. 4 (District Magistrate Cum Chairman, District Health Society Nalanda) after opening of Tender on 01.09.2021 and before completion of tender process of Tender Ref. No. 1795 dated 07.08.2021 in which the petitioners were found L 1, has imposed further condition "if an agent submits bid on behalf of registered company as companies act 1956 / 2013 / Partnership firm / LLP firm / Partnership firm / Trust Society, he must have authorities for participation and submission of bid through power of attorney. otherwise such bid shall be rejected, power of attorney must be as per application law" and subsequently ordered orally for cancellation of earlier Tender and for re-tender/ Notice Inviting Tender (NIT) vide Ref. No. 2068 dated 13.09.2021.

vii) For grant of any other relief/reliefs for which the petitioner's may be found entitled there too in the facts and circumstances of this case.

In view of the intervening developments as deposed by Dr. Ram Mohan Sahay, Non Communicable Disease Officer, Biharsharif, Nalanda, in his counter affidavit, and more so paragraph 10, prayers 3 and 4 have become infructuous inasmuch as the tendering process initiated vide tender no. 2068 dated 13.09.2021 stands recalled.

In so far as the remaining prayers are concerned, Sri Y.V. Giri, learned Senior Advocate, under instructions, submits that petitioners shall be content if a direction is issued to the respondent authorities to consider the matter afresh with the quashing of the order dated 08.09.2021 (page 60) passed by the Civil Surgeon Cum Member Secretary, District Health Society, Nalanda.

We notice that the process for issuance of tender for certain services was initiated by the Competent Authority with the issuance of NIT dated 07.08.2021. Several persons, including the present petitioners, participated therein. It is a matter of record, as is also evident from the record of the proceedings prepared by the committee constituted to finalize the tender dated 01.09.2021 (Annexure-2, page 50) that the bids of writ petitioners were found to be the lowest amongst all the tenderers. When the matter was processed and case placed before the competent authority for finalizing the bids, vide order dated 08.09.2021 (page 60), the competent authority recorded that under the oral directions of the District Magistrate Cum Chairman of the District Health Society, the process cannot be completed. Resultantly, fresh tender was invited with the issuance of NIT dated 30.09.2021, but now recalled.

In our considered view, order dated 08.09.2021 (page 60), is legally unsustainable, for the decision making authority could not have acted on the directions of the superior authority, more so on oral directions. The decision to continue or cancel the tender had to be in writing by assigning reasons, which we find, in the instant case not to be so done in accordance with law. As such, on this short ground alone, we

quash and set aside the order dated 08.09.2021 (page 60) passed by the Civil Surgeon Cum Member Secretary, District Health Society, Nalanda, whereby he took a decision to cancel the tender. However, whether such process of tendering initiated vide NIT dated 07.08.2021 or not is to be completed is purely within the domain of the competent authority. But such a decision can not be on the oral directions and without assigning any cogent reasons borne out from the record.

As such, we direct the decision making authority to positively take a decision on finalizing such process of tendering in accordance with law, within a period of three weeks from the date of production of a copy of this order.

The petition stands disposed of in the aforesaid terms.

Record perused and returned.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	