

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4095 of 2023

Amulya Traders and Engineers Private Limited having its registered office at Village-Amritpur, P.S.-Tajpur, District-Samastipur through its Director, Leena aged about 49 years (Female), W/o Mukesh Narayan Sinha.

... .. Petitioner/s

Versus

1. State of Bihar through its Additional Chief Secretary, Department of Health, Govt. of Bihar.
2. The Additional Chief Secretary, Department of Health, Govt. of Bihar.
3. The Managing Director, Bihar Medical Services and Infrastructure Corporation Limited, 2nd and 3rd Floor, Swasthya Bhawan, Behind IGIMS, Sheikhpura, Patna.
4. The Chief General Manager (Project) Bihar Medical Services and Infrastructure Corporation Limited, 2nd and 3rd Floor, Swasthya Bhawan, Behind IGIMS, Sheikhpura, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vikas Kumar, Advocate
For the Respondent/s	:	Mr. Mujtabaul Haque (Gp12)
	:	Mr. Vasant Vikas, AC to GP 12

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-07-2023

In the instant petition, petitioner has prayed for the following reliefs:-

a) For quashing of Clause 5.2 of Request for Proposal (RFP) for Rate Contracting of Construction Supervision and Quality Control (CSQC) Consultants at Bihar Medical Services & Infrastructure Corporation Limited (BMSICL) through e-tendering mode vide NIT No. BMSICL/Infra/02/2023, Dated 25-01-2023 whereby and whereunder at serial No. 1 the qualification criteria for selection as Construction Supervision and Quality Control (CSQC) Consultants for various groups has been fixed as follows:



SI. No.	Criteria	Category of CSQC		
		B (50 to 200 Cr.)	C (10 to 50 Cr.)	D (Up to 10 Cr.)
1.	Turnover (Average annual turnover of last 5 year i.e., 2017-18 to 2021-22)	5 Crores	3 Crores	1.5 Crore

as the aforesaid eligibility criteria mentioned in the tender is manifestly unreasonable and arbitrary.

b) For direction to the respondent authority to fix the criteria of turn over as Average Annual turnover of last three years instead of Average Annual turnover of last 5 years as has been done in earlier tenders of corporation for the same purpose.

c) For direction to the respondent authorities to first quantify the Estimated Cost of consultancy services on highest ceiling amount of that category and then fix an Average Annual Turnover of last three years as Eligibility Criteria, which is just and reasonable.

2. Grievance of the petitioner is that pursuant to the NIT dated 25.01.2023, Clause 5.2 relates to category-wise criteria and the qualification criteria for selection as Construction Supervision and Quality Control (CSQC) Consultants for various groups insofar as category B (50 to 200 Crores) the turn over for the last five years from 2017-18 to 2021-22 Rs. 5,00,000,00/- (Rs. Five



Crores). The petitioner is aggrieved by this assigning of Rs. 5 Crores turnover on the score that the respondent-Bihar Medical Services and Infrastructure Corporation Ltd., Patna (for short 'BMSICL') issued NIT on 17.01.2022 in respect of same category they had assigned Rs. 2,00,000/- (Rs. Two Crores). In other words, within one year they have enhanced Rs. 3,00,000,000/- (Rs. Three Crores) for the purpose of turnover (average annual turnover) for the last 5 years i.e. 2017-18 to 2021-22 such enhancement from Rs. 2 crores to Rs. 5 crores is arbitrary and illegal.

3. Learned counsel for the petitioner further submitted that such fixation is unrealistic and no yardstick.

4. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that there is no infirmity in respect of the qualification criteria for selection as (CSQC) Consultant for various groups read with category B insofar as turn over of Rs. 5,00,000,00/- (Rs. Five Crores).

5. Heard learned counsels for the respective parties.

6. In support of petitioner's prayer, the one and only contention is that arbitrarily the BMSICL have fixed the turn over (average annual turn over) of last 5 years, i.e. 2017-18 to 2021-2022-B Category (50 to 200 Crores). Such turn over figure of Rs. 5 Crores is contrary to earlier NIT dated 17.01.2022 where it has



been insisted for Rs. 2,00,000,00/- (Two Crores) for turn over. In other words, there is an enhancement of Rs. 3 Crores for NIT in the year 2023. These are all the policy decisions of the respective authorities. Having regard to the earlier date of NIT dated 17.01.2022 read with present NIT in the month of January, 2023 there is an escalation of prices and there may be various factors. Therefore, it is the Corporation to take a decision as to what would be the turn over and other criterias. We find ther is no violation of Article 14 or any other provision. In other words ingredients of arbitrary has not been made out. Having regard to these factual aspects, we find that there is no arbitrary in fixing Rs. 5 Crores under B category (50 to 200 Crores) for turn over (average turn over) of last five years, i.e. 2017-2018 to 2021-2022, so as to interfere with the present matter.

7. Accordingly, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

Vikash/-

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

