

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13501 of 2022

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Naveen Kumar Singh Son of Krishneshwar Kumar Singh Resident of
Mohalla-192/576, Magadh Colony, Road, NO.3, Near NCC Office, P.S.-Gaya,
District-gaya, the Proprietor of M/s Horizon Construction, Magadh Colony,
Road No.3, Gaya ... Petitioner

Versus

1. The Bihar State Warehousing Corporation having its Head Office at Block B-2, 1st Floor, Maurya Lok Complex, P.S.-Kotwali, District-Patna through its Managing Director.
2. The Managing Director, Bihar State Warehousing Corporation having its Head Office at Block B-2, 1st Floor, Maurya Lok Complex, P.S.-Kotwali, District-Patna
3. The Centre In-Charge, Bihar State Warehousing Corporation Manpur, Gaya.
4. The General Manager (R), Food Corporation of India, Arunchal Bhawan, 4th Floor, Exhibition Road Area, Near Exhibition Road, Chauraha, Patna-800001.
5. The Divisional Manager, Food Corporation of India, Saharsa, Bihar.
6. J.M.D. Enterprises (Registration No. BUSS/CORD/2021-22/TH-93), Indrapuri Gate NO. 2A/91, Texi Book Colony. P.O.-Kesri Nagar P.S.-Patliputra, District-Patna through its Partners Namely Umesh Kumar Jayswal and Geeta Jayswal. ... Respondents

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Appearance :

For the Petitioner : Mr.Arun Kumar, Adv.
For the Respondents : Mr.Prabhat Kumar Verma AAG

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY)

Date : 10.07.2023

The present Writ Petition is filed by the petitioner herein seeking the following reliefs:

- a. *For issuance of an appropriate Writ/s, order/s, direction/s, in the nature of certiorari quashing the said decision of the Respondent Bihar State Warehousing Corporation by which the Tender*



pursuant to (Notice Inviting Tender) NIT No.TH-Handling Contractor to carry out Handling & Transporting works attached to Lakhisarai Warehousing Centre has been allotted in favour of Respondent No.6.

b. For issuance of an appropriate Writ/s, order/s, direction/s in the nature of certiorari quashing the Letter of Award (hereinafter referred to as LOA) and consequent execution of contract Agreement by the Respondent Bihar State Ware Housing Corporation in favour of Respondent No.6 pursuant to its Notice Inviting Tender (NIT) No.TH-01/2021-22 and consequently declare the said LOA and Contract Agreement to be null & void and inoperative and forfeit the earnest money as well as security deposit amount and blacklist the Respondent No.6 from future participation in any Bid.

c. For issuance of an appropriate Writ/s, order/s, direction/s in the nature of certiorari quashing the work order as communicated by the Managing Director of Bihar State Warehousing Corporation to the Respondent No.6 by letter bearing No.248 dated 28.01.2022 by which Respondent No.6 has been appointed as Transporting & Handling Contractor for the period of Agreement i.e, 01.02.2022 – 31.01.2024.

d. For issuance of an appropriate Writ/s, order/s, direction/s in the nature of Mandamus commanding Corporation to reconsider the entire Bids pursuant to Notice Inviting Tender (NIT) No.TH-01/2021-22 and award the contract in its favour and appoint the Petitioner as Transporting & Handling Contractor to carry out Handling & Transporting works attached to BSWC Lakhisarai Centre as the Petitioner is the sole Bidder who fulfills all the terms of NIT and duly qualifies for the aforesaid Bid.

e. For issuance of an appropriate Writ in the nature of certiorari quashing the Registration of the Petitioner with the Bihar State Warehousing Corporation bearing Registration No. BUSS/CORD/2021-22/TO THE-93.

f. For issuance of any other order/orders or



relief/reliefs for which the Petitioner may be found to be entitled in the facts and circumstances of the case.

2) Heard the submissions of the learned counsel for the petitioner, learned counsel for the Respondent No.1, learned counsel for the Respondent No.6.

3) The brief facts for the purpose of disposing the present case are that the Respondent No.1-Corporation has issued a Notice Inviting Tender (NIT) No.TH-01/2021-22 for transportation and handling works of Food grains/Fertilizers for different Warehouses/ Centres/Godowns under Respondent No.1-Corporation under Grade A, B & C categories. It is the case of the petitioner that after publication of the said NIT in the newspaper on 02.12.2021, the petitioner along with other persons have participated in the tender floated by the Respondent No.1-Corporation. That the Technical Bids were opened on 10.01.2022 and the Financial Bids were opened on 24.01.2022. That though the Respondent No.6 has not fulfilled the mandatory conditions laid down in the tender notice, the respondent No.1 with a *malafide* intention has allotted the work order dated 28.01.2022 to the Respondent No.6.

4) At the time of arguments, the learned counsel for the petitioner has confined the prayer to the extent of setting aside the work order dated 28.01.2022 issued by the respondent No.1-Corporation in favour of respondent No. 6. The learned counsel for the petitioner has stated that the tender filed by the Respondent No.6 ought to have been rejected at the stage of Technical Bid itself but the authorities for the



reasons best known to them have qualified the Respondent No.6 in the Technical Bid even though the Respondent No.6 was not eligible for the same. The learned counsel for the petitioner has laid stress on the following three points i.e, with regard to the requirement of the Annual Turn Over of the tender participating Bidder; the Average Monthly Balance of the Bidder/Contractor; and the Experience Certificate produced by the Bidder. The learned counsel for the petitioner has stated that the Respondent No.6 has produced forged and fabricated documents and submitted fake Experience Certificate, which do not meet the requirements of the Tender document. The learned counsel has taken this Court to the various documents filed by the Respondent No.6 along with the tender document. That as per Clause 14 (xv) of the NIT, which mandates that the Average Monthly Balance of the Bidder/Contractor in the Financial Year for three months should be minimum of Rs. Two Crore for the Category - 1 Bidder and minimum of Rs. One Crore for Category - 2 Bidder and minimum of Rs.50 lakh for Category-3 Bidder but the Bank Balance Certificate filed by the Respondent No.6 does not bear the account number in which the balance has been shown. That insofar as Experience Certificate filed by the respondent No.6 is concerned, as per Clause 14 (xvii) of NIT, the Bidder has to submit the experience certificate in the prescribed Format of the NIT disclosing the Rail Rake handling & transportation work of different commodities viz. Agricultural product Food Grains/Seed/ Coarse Grains/Fertilizers/Cement/Sugar/other goods etc. of Rupees Five Crores



per year for two financial years during last 5 years for Category 1 & rupees two crores per year for two financial years during last 5 years for Category 2 & rupees one crore per year for two financial years during last 5 years for Category 3 but the Respondent No.6 has submitted the Experience Certificate of one Sri Satish Kumar Singh, who has not even participated in the tender process. The learned counsel has stated that Sri Satish Kumar Singh is stranger to the bid and the Experience Certificate submitted by the 6th respondent of the said Satish Kumar Singh cannot be equated as the Experience Certificate of the Respondent No.6. That even though the Respondent No.6 is trying to show that a Memorandum of Association has been entered between said Satish Kumar Singh and the Respondent No.6, it is pertinent to note that the said Memorandum of Understanding is not valid in the eye of law as the partner cannot be substituted in a partnership firm through a Memorandum of Understanding but only through a substitution of partner as contemplated under relevant provision of the Partnership Act, 1932. Moreover, the total work from Rail Rake Handling & Transportation for the Financial Year 2017-18 is Rs.7,06,214/- and therefore, the same does not meet the eligibility criterion under the Bid Document and as contemplated under Clause 14 (xvii) of NIT. Though the authorities were apprised of the above said facts, they ignored the objections raised by the petitioner and allotted the work order to the Respondent No. 6, contrary to the Tender Notice and ultimately prayed this Hon'ble Court to set aside the work order dated 28.01.2022 issued by the respondent No.1 in favour of respondent No.6.



5) Per contra, the learned counsel for the Respondent No.6 has stated that the Memorandum of Understanding has been entered between the Respondent No.6 and Satish Kumar Singh. The Experience Certificate of said Satish Kumar Singh who is none other than the partner in the firm of Respondent No.6 meets the eligibility criteria. Therefore, the Experience Certificate of Respondent No.6 was rightly taken into consideration by the authorities concerned as Satish Kumar Singh was already recognized as partner of the Respondent No.6 firm. That the authorities concerned have processed the Technical Bids as well as Financial Bids in accordance with the terms and conditions laid down in the tender document and only after scrutinizing the Bids submitted by the various Bidders, the contract was awarded to the Respondent No.6. The learned counsel has stated that most of the contract work period is already over and any interference by this Court at this juncture would cause irreparable loss to the Respondent No.6. Therefore, the learned counsel prayed this Hon'ble Court to dismiss the present Writ Petition.

6) learned counsel appearing on behalf of the Respondent No.1-Bihar State Warehousing Corporation has stated that after duly scrutinizing the tender documents of the various Bidders, the authorities have awarded the contract to the Respondent No. 6 and that they have followed the procedure prescribed under the tender document.

7) A perusal of the document, more particularly, the tender document i.e, Not
the Respondent]
ler (NIT) No.TH-01/2021-22 issued by
t the said tender document has been



issued for the Transportation and Handling works of different commodities. It is pertinent to note that as per Clause 14(ix)(a), eligible person to participate in the tender document must be a partner in any partnership firm, which should have a registered partnership deed and as per Clause 14(xiv) of NIT, the Bidder should have a Minimum Annual Turn Over of Rs. Five Crore for the category-I and Rs.2 Crore for category-2 and Rs.1 Crore for category-3 and as per clause 14 (xv) of NIT, the Bidder should have minimum Average Monthly Balance of rupees two crores for category-1 and rupees one crore for category-2 and Rs.50 lakh for category-3 and as per clause 14 (xvii) of NIT, Bidder should have an Experience Certificate disclosing the work executed relating to Rail Rake handling and transportation work of different commodities i.e, Agricultural product Food Grains/ Seed/Coarse Grains/Fertilizers/Cement/Sugar/other goods etc. of Rupees Five Crores per year for two financial years during last 5 years for category 1 & Rs.Two crores per year for two financial years during last 5 years for category 2 & Rs.One Crore per year for two financial years during last 5 years for category 3. Further, as per Clause 20 of the NIT, any information furnished by the bidders which is wrong/forged or any forged documents/ certificates/Affidavits are filed, the tender filed by the said Bidder would be invalid and would be cancelled and the amount deposited by the said Bidder would be forfeited and action would be taken in accordance with law.

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veracity of the claims made by the

petitioner that the Respondent No.6 has submitted documents which ought to have been rejected with regard to the above mentioned clauses, it is necessary to verify the documents filed by the Respondent No.6 along with the tender document. Annexure-IV is the Experience Certificate dated 25.02.2020 filed by the Respondent No. 6 shows that the said Certificate is signed by the partner of JMD Enterprises i.e, Respondent No.6 and one Satish Kumar Singh. The said Satish Kumar Singh is shown as a Proprietor but the name of the firm is not mentioned in the said document. Moreover, said Satish Kumar Singh has signed in his individual capacity and not as a partner of the firm. Even though much reliance has been placed by the Respondent No.6 on the Memorandum of Understanding entered between the said Satish Kumar Singh and JMD Enterprises to show that Satish Kumar Singh is also a partner in the Respondent No.6 firm, it is pertinent to note that the said Memorandum of Understanding was entered by the Satish Kumar Singh and JMD Enterprises and as per one of the clauses of said MOU, it is mentioned that the proposed business shall be carried on under the name and style of “Mr. Satish Kumar Singh” and that the parties to the agreement have agreed to do business of transporting goods on behalf of said Satish Kumar Singh. That the said Memorandum of Understanding is not a registered document but only a notarized document. As per one of the clauses in the said Memorandum of Understanding, the partnership business would be divided 50% each to Satish Kumar Singh and JMD Enterprises, the said document can only be construed as a



Memorandum of Understanding entered between the Satish Kumar Singh and JMD Enterprises for the purpose of carrying out business under the name and style of “Mr. Satish Kumar Singh” but by no stretch of imagination it cannot be construed as a partnership deed of respondent no. 6 firm JMD Enterprises as per the provisions of the Partnership Act, 1932. Moreover, a reading of the said document clearly shows that any business of transporting goods has to be done under the name and style of “Mr. Satish Kumar Singh” but not under the name and style of “JMD Enterprises”. Therefore, it cannot be said that by virtue of the Memorandum of Understanding entered between the Satish Kumar Singh and JMD Enterprises, the said Satish Kumar Singh has become a partner of the JMD Enterprises. Furthermore, the Experience Certificate produced by the Respondent No.6 shows that the said document is issued in favour of the said Satish Kumar Singh and is not in the name of JMD Enterprises. Once it is held that said Satish Kumar Singh is not a partner of JMD Enterprises, the Experience Certificate produced by the said Satish Kumar Singh has to be held as invalid in the eye of law to the present matter. Even otherwise, in the said Experience Certificate, the nature of the work/contract executed shows that only Transporting & Handling Agent (DSD-Door Step Delivery) work was done and not Rail Rake Handling and Transportation work on different condition.

9) In [(2000) 2 SCC, 617 (AIR India Ltd. Vrs. Cochin International Airport)] the Hon’ble Supreme Court has summarized the scope of interference as enunciated in several earlier decisions thus :



“7The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. **But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under [Article 226](#) with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.**



In Association of Registration Plates Vrs. Union of India [(2005) 1 SCC, 679], the Hon'ble Supreme Court has held as under :

“43..... Article 14 of the Constitution prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contract. At the same time, no person can claim a fundamental right to carry on business with the Government. All that he can claim is that in competition for the contract, he should not be unfairly treated and discriminated, to the detriment of public interest.

In Bharat Cooking Coal Ltd. Vrs. AMR Dev Prabha [(2020) 16, SCC, 759] the Hon'ble Supreme Court, at paras 29 and 32, has observed as under :

*“29 : The scope of judicial review in tenders has been explored in-depth in a catena of cases. It is settled that constitutional courts are concerned only with lawfulness of a decision, and not its soundness. Phrased differently, Courts ought not to sit in appeal over decisions of executive authorities or instrumentalities. Plausible decisions need not be overturned, and latitude ought to be granted to the State in exercise of executive power so that the constitutional separation of powers is not encroached upon. **However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for courts to assume jurisdiction and remedy such ills.** This is especially true given our unique domestic circumstances, which have demonstrated the need for judicial intervention*



numerous times. Hence, it would only be the decisionmaking process which would be the subject of judicial enquiry, and not the end result.”

“32. In cases where a constitutional right is infringed, writs would ordinarily be the appropriate remedy. In tender matters, such can be either when a party seeks to hold the State to its duty of treating all persons equally or prohibit it from acting arbitrarily; or when executive actions or legislative instruments are challenged for being in contravention to the freedom of carrying on trade and commerce. However, writs are impermissible when the allegation is solely with regard to violation of a contractual right or duty. Hence, the persons seeking writ relief must also actively satisfy the Court that the right it is seeking is one in public law, and not merely contractual. In doing so, a balance is maintained between the need for commercial freedom and the very real possibility of collusion, illegality and squandering of public resources.”

In Shimnit Utsch India (P) Ltd. Vrs. W.B. Transport Infrastructure Development Corpn. Ltd. [(2010) 6 SCC, 303] the Hon’ble Supreme Court has held :

“State or its tendering authority is bound to give effect to essential conditions of eligibility stated in a tender document and not entitled to waive such conditions. However, this does not take away its administrative discretion to cancel entire tender process in public interest provided such action is not actuated with ulterior motive, arbitrariness, irrationality or is in violation of some statutory provisions.”



10) Having regard to the law laid down by the Hon’ble Supreme Court and the facts and circumstances of this case, this Court is constrained to hold that work order allotted by the Respondent No.1 in favour of the Respondent No.6 is not only illegal but the same is an arbitrary exercise of power, which is contrary to the Clauses 14(ix)(a), (xiv), (xv), (xvii) and 20 of NIT. Therefore, this Court has no other option but to set aside the work order dated 28.01.2022 issued by the respondent No.1 in favour of respondent No.6. The authorities shall call for fresh tender notice for the balance work, if any and are free to initiate necessary action against the Respondent No.6 under Clause 20 of the NIT.

11) Accordingly, this Writ Petition is allowed to the extent indicated above.

12) Consequently, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

(P. B. Bajanthri, J)

(A. Abhishek Reddy , J)

Shamshad/-

AFR/NAFR	AFR
CAV DATE	19.05.2023
Uploading Date	14.07.2023
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