

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2048 of 2024

M/s Raj Informatics Construction through its proprietor Bharat Kumar Singh, Male, age about 52 years, son of Late Baldeo Singh, Resident of Village/Mohalla-D.N. Singh Lane B-Area, Mithapur, P.O.-G.P.O., P.S.-Jakkanpur, Patna-800001, Bihar.

... .. Petitioner/s

Versus

- 1. The State of Bihar.
- 2. The Principal Secretary Department of Health, Bihar, Patna.
- 3. The Stae Health Society, Sheikhpura, Bihar, Patna, through its Executive Director.
- 4. The D.M. cum Chairman District Health Society, Katihar.
- 5. The Civil Surgeon cum Member Secretary, District Health Society, Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Vinod Kumar, Advocate Mr. Ashutosh Singh, Advocate
For the Respondent/s	:	Mr. Md. Nadim Seraj, GP-5
For the S.H.S	:	Mr. K.K. Sinha, Advocate Mr. Shashi Shekhar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-02-2024

The petitioner is concerned with the contract entered into for three years between 10.09.2020 to 11.09.2023 for supply of energy to the Hospitals within the District of Katihar. The petitioner’s contention is that there was satisfactory compliance of the conditions of the contract and hence he is entitled to be considered for continuance as per the policy of the Society coming forth in Annexure-P/6.



2. We heard learned Senior Counsel Sri Y.V. Giri and the learned counsel appearing for the State and the Society. Admittedly, the contract expired on 11.09.2023 and as of now by Exhibit-P7 a Notice Inviting E-Tender (e-NIT), have been called for. The ground for continuance is based first on Annexure-P6 and also on Clause-7 of the agreement, which is produced at Annexure-P/2.

3. Looking at Annexure-P/6; the Executive Director of the State Health Society had issued a communication to all Civil Surgeons that after due diligence it has been decided that work of Agencies working under public private partnership, if found satisfactory for one year, then the period of the said agency can be extended for three years. In the present case the petitioner has completed the contract between 10.09.2020 and 11.09.2023 and this is not a continuance after one year. In fact the contract specifically indicates that if there is no satisfactory implementation of the work then there shall be cancellation of the contract. Read together it can only be understood as stipulating that a contract is awarded for three years, after one year, if it is not implemented satisfactorily it has to be cancelled. But if the implementation is satisfactory, then it has to be allowed to be continued for the entire period.



4. Annexure-P/6 has to be read along with the specific terms of the contract and we do not think that the Executive Director, State Health Society can bring in such policies to regulate the award of works given on contract and extend it beyond the period of award, especially since that would violate Article 14 and it would leave to one particular person/agency being given the contract for successive periods. It also has to be emphasized that the purpose of inviting tenders for a particular period is to ensure that there is competitiveness in the bids placed before the Authority, ensuring that the State Authority gets the best bid for execution of its works.

5. Now, we come to Clause-7 which has the nominal heading of 'Contract Period' in Annexure P/2, which is extracted here under:

“7. The contract will be valid for a period of 3 years from the date of commencement of services. However, in the event of service rendered being found unsatisfactory or due to any other such reasons, the contract can be short closed by the Authority & Performance Security money will be forfeited as per the terms of the contract. The contract period may be extended for a duration of 1 year or more, on the same rates, terms and conditions based on the



requirements, availability of resources and specially the satisfactory performance of work done by the agency or in any other conditions mutually agreed by the service provider and the DHS. Any extension shall not be the right of the agency.”

6. We have to specifically emphasize the underlined portion, where it is stated that any extension shall not be the right of the Agency. In such circumstances, we do not think that there is any obligation on the part of the respondent Authorities to consider Exhibit-P3 and P4 representations.

7. We also notice, as pointed out by the learned Senior Counsel that Exhibit-P5 series of documents, proclaiming satisfactory implementation of the work is placed on record by the various Hospitals. Pertinently, this is required for continued engagement during the contract period itself. Failure would entail cancellation. This cannot lead to any right conferred on the petitioner for extension after the contract period, if the contract is satisfactorily completed. It is incumbent on every contractor awarded with a work to complete it satisfactorily; failing which civil and penal consequences would follow. Satisfactory completion is not a premium and is the bench mark of the award. No benefit can be conferred or asserted, on



satisfying the minimum bench mark of satisfactory completion.

8. Admittedly, as of now by Exhibit-P7 a Notice Inviting Tender has been published. In such circumstances, we find neither reason to direct the consideration of Annexure-P3 or Annexure-P4 which would be a useless formality, nor do we find reasonable cause to interfere in the fresh Tender issued.

9. We have also taken note of the decision in **(2023) 5 BLJ 107 Madras Aluminium Company Ltd. Vs Tamil Nadu Electricity Board and another** which is in the context of violation of the equality clause under Article 14. In fact we are of the opinion that if the contract is continued seamlessly with one contractor itself there would be violation of Article-14. We find absolutely no reason to interfere with the Notice Inviting e-Tender. We dismiss the writ petition.

10. However, the learned Senior Counsel also submitted that pending the NIT the petitioner has been continuing with the work but no payments made. If that is so and payments are not made, the Authority will definitely look into it and ensure that till a new contractor is appointed if the petitioners services are taken the payments would be made in accordance with the original agreement.



11. The writ petition stands dismissed with the above reservation.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Adnan/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.02.2024
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