IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2482 of 2024

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Arun Kumar Singh Son of Mukut Dhari Singh, Resident of Mukut Niwas, Chandmari Road, Lane No. 2, Kankarbagh, P.S- Kankarbagh, District- Patna.

... ... Petitioner/s

Versus

1. The Bihar State Road Transport Corporation Through its Administrator, having its office situated at Pariwahan Parishar, Fulwarisharif, Patna, 800014.
2. The Chief of Operation/ Chief Operation Officer, Bihar State Road Transport Corporation, office situated at Pariwahan Parishar, Fulwarisharif, Patna, 800014.
3. The State of Bihar through the Secretary, Transport Department, Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pursottam Jha, Adv.
	:	Mr. Ajay Jha, Adv.
For BSRTC	:	Mr. P.K. Verma, Adv.
	:	Mr. Sanjay Kumar, Sr. Adv.
	:	Mr. Sanjay Kumar Ghosarvey, Adv.
For the Respondent/s	:	Mr. Ramadhar Singh, Government Pleader 25

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
Date : 03-10-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following reliefs:-

> *"(i) To hold and declare that the action of the respondent concerned in not honouring and complying with the terms of the agreement contained in Clause 31 of agreement dated 13.05.2013 (Annexure-P/1) is highly, illegal, arbitrary, malafidy, malicious and unsustainable in the eye of law and is fit to be deprecated by this Hon'ble Court in strong words.*
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> *AND CONSEQUENT UPON SUCH DECLARATION.*

(ii) A writ in the nature of mandamus may kindly be issued by this Hon'ble Court, commanding the respondents concerned to give effect to Clause 31 of the agreement dated 13.05.2013, and in turn, to allow the petitioner to ply his vehicle on the route in question, at the appropriate time and on the prescribed routes, as per the agreement dated 13.05.2013.

(iii) To hold and declare that in view of the Clause 31 of the Agreement dated 13.05.2013 (Annexure-P/1) entered into the between the petitioner and the Bihar State Road Transport Corporation (for short "the Corporation"), the petitioner, who has already requested the Respondent Corporation on 02.11.2022 to extend the lease/ agreement for further period of 5 to 10 years for plying his buses on the agreed routes}, is entitled for the extension of the said agreement by the Respondent Corporation, in the same manner, as has been done in the case of several similarly situated bus operators, details whereof are as follow:-

Name of Owner	Name of route	Period of earlier agreement	Period of extended agreement
Bipin Kumar	Jamui-Gaya	04.02.2010 to 03.02.2020	04.02.2020 to 04.02.2025
Sri Fanindra Kumar	Mahudar-Gaya	04.09.2010 to 03.09.2020	04.09.2020 to 03.09.2025
Sri Uday Singh	Nawada-Gaya	25.02.2010 to 24.02.2020	25.02.2020 to 25.02.2025
Smt. Bharti Devi	Patna-Ranchi	01.02.2010 to 31.01.2020	01.02.2020 to 31.01.2025
Sri Bijay Kumar	Siur-Patna	03.02.2020 to 02.02.2020	03.02.2020 to 03.02.20254

(iv) To hold and declare that the action of the Respondent Corporation on the one hand in not granting extension of the agreement of the petitioner for plying his buses on the prescribed routes (details whereof have been given in the table mentioned in Para No. 1(v) of this writ petition) and their action on the other hand in allowing such similar benefits to other similarly situated bus operators named in the above table is highly discriminatory, tantamounting to the violation of Article 14 of the Constitution of India and is also violative of Clause 4(C)(1) of the Bihar State Legislation Policy, 2011.

(v) For issuance of a writ in the nature of certiorari quashing that part of the Tender Notice No. 2 dated 18.01.2024, in so far as, it relates to the invitation of the tender for plying the buses under PPP Scheme on different

routes, Inter Regional and Inter State including the following 15 Inter Regional routes upon which the petitioner has been plying his 42 buses as per the Agreement dated 13.05.2013 till date in terms with the agreement in between the petitioner and the respondent-corporation dated 13.05.2013, detailed in the following table:-

SL	Routes	No of Buses
1	Patna-Madhubani	02
2	Patna-Laheriasarai	01
3	Patna-Sitmarhi	10
4	Patna-Bela (Sitmarhi)	01
5	Patna-Nawada	03
6	Patna-Kunauli	02
7	Patna-Ganauli	01
8	Biharsharif-Nawada	06
9	Patna-Ranchi	04
10	Patna-Raxaul	02
11	Patna-Purnea	04
12	Patna-Samastipur	01
13	Patna-Sasaram	01
14	Patna-Bahadurganj	02
15	Patna-Rajgir	02

(vi) For issuance of an order, direction or a writ in the nature of certiorari quashing Clause 14 of Part-I of the Tender Notice No. 02 dated 18.01.2024 (Annexure-P/6), whereby buses below 10 years old can apply in the said Tender process, which are in the teeth of the relevant provisions of M.V. Act, 1988, Bihar Motor Vehicle Rules 1992 and the resolution issued by the State Transport Authority, Bihar, Patna dated 01.03.2019 (Anex-P/8),

(vii) For issuance of writ in the nature of certiorari for quashing clause 14 of the Terms and Conditions of Tender Notice no. 02 dated 18.01.2024 (Annexure-P.6) whereby it has illegally and unauthorisedly been held that in the process of finalizing liberty to ply the buses, provided that they become ready to pay the Bid Amount quoted and finalised by H1 bidder.

(viii) For grant of such other relief or reliefs, to which the petitioner may be found entitled to in the facts and circumstances of this case.

3. Learned counsel for the petitioner has stated that the petitioner has entered into the agreement dated 13.05.2013 (Annexure-P/1) with the respondent-Corporation for running of the buses under the Public Private Partnership Mode. That initial period of the agreement was for a period of ten years and that the said period was expiring on 12.05.2023. That as per the terms and conditions of the said agreement, more particularly, Clause 31 of the said agreement, the petitioner would be entitled for extension of the contract in case the official respondents want to continue under the same mode. Learned counsel has stated that taking into account the contents of the Clause 31 of the agreement, the petitioner has written a letter dated 02.11.2022 seeking extension of the contract. However, the authorities without considering the same have issued an NIT calling for fresh tenders for the very same routes for which the agreement has been earlier entered between the petitioner and the respondents. Learned counsel has stated that the petitioner left with no other option had to approach this Hon'ble Court by way of the present writ petition and prayed for giving effect to the Clause 31 and also for granting the other reliefs for setting aside some of the clauses which were enumerated with the NIT.

4. *Per contra*, the learned counsel for the respondent has vehemently opposed the very maintainability of the present writ petition and stated that the earlier contract had come to an end in the month of May 2023 itself. That the authorities have taken a policy decision not to renew the existing contracts as the Corporation was not making enough profits and, therefore, with a view to make more profits, they have called for open tenders. That the tender was issued in the Month of January, 2024 and the last date for applying the same is 09.02.2024. However, the petitioner has not participated in the said tenders, therefore, the petitioner cannot question the terms and conditions imposed in the NIT. Further, it is stated that there is arbitration clause available in the present agreement between the parties and if the petitioner is aggrieved by any action of the respondents, he has remedy by way of invoking the arbitration clause. Learned counsel has stated that this Court does not have any jurisdiction to interfere in the present writ petition as the agreement is duly a non-statutory agreement and, therefore, the present writ petition is liable to be dismissed on that ground alone. Further, it is stated by the learned counsel that the correctness or otherwise of the policy decision of the respondent-Corporation cannot be gone into by this Hon’ble Court under Article 226 of the Constitution of India.

5. Admittedly, as seen from the record, the petitioner had entered into the agreement for plying of the buses on behalf of the Corporation on 13.05.2013 for the different routes enumerated in the said agreement. As per the terms and conditions of the agreement, the Corporation will get 7% revenue on the total number of seats of buses multiplied by the number of trips. In the counter-affidavit filed by the respondents, it is specifically stated that the Corporation with a view to earn more profits has taken a policy decision to call for open tenders for plying the buses in the Public Private Partnership Mode and the same was issued on 18.01.2024. The fact that some of the bus operators have participated in the tenders and quoted more percentage than the petitioner is not being denied. As a matter of fact, the minimum quotation that was expected from the participating tenderers was put at 10% and some of the tenderers who have participated for the routes have quoted rates ranging from 10.65% to 29.50%. Though, the counsel for the petitioner has laid much stress on Clause 31, which reads as under;

> *"31. This agreement shall remain effective for a period of ten years from the date of agreement signed. After the 10 years period in case BSRTC wants to operate buses on the said routes under similar arrangement then the Second Party shall have the right of first refusal."*

6. It is to be noted that the said clause will apply only where the routes were sought to be given out on similar arrangement. However, in this case as seen from the records, the authorities have given the contract at a fixed rate of 7% have now taken a policy decision to call for open tenders with a minimum guarantee of 10%. The contention of the petitioner that the earlier tender/ arrangement was under the Public Private Partnership Mode and the new tenders are also under the Public Private Partnership Mode, therefore, the same are under similar arrangement and are subject to Clause 31 of the agreement is without any legal basis. It may be true that the buses are being hired under the Public Private Partnership Mode but the other conditions cannot be said to be similar, more particularly, in respect of the profit sharing. The earlier contract was on the basis of fixed percentage whereas in the present case, it is on the basis of open tender called therefore, they cannot be equated as being similar. That in so far as the other prayers sought for by the petitioner challenging some of the conditions in the NIT are concerned, it is to be noted that the petitioner has never participated in the tender, though the petitioner has filed the writ petition in the month of February, 2024, no stay was obtained by the petitioner, therefore, once the tender was floated and the successful bidders have emerged, the challenge to the said clause pales into insignificance. Further, the petitioner has not taken any steps to implead the third party tenderers who have emerged as successful bidders in the open tender, the CWJC is liable to be dismissed. On the ground that the subsequent tenderers have not been made party respondents even after having knowledge of the same, no orders can be passed behind the back of the successful tenderers.

7. Having regard to the above mentioned facts and circumstances, this Court does not find any merit in the present writ petition and the petition is dismissed accordingly however without any costs.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.11.2024.
Transmission Date	NA