

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7121 of 2024

Abhishek Kumar Singh, Son of Krishan Kumar Singh, Resident of Ward No. 23, Ruidhasa, Hanuman Nagar, P.O.- Kishanganj, P.S.- Kishanganj, District- Kishanganj.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna, Bihar.
2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna, Bihar.
3. The Additional Secretary, Food and Consumer Protection Department, Government of Bihar, Patna, Bihar.
4. The District Magistrate, Kishanganj.
5. The Deputy Development Commissioner, Kishanganj.
6. The Additional Collector, Kishanganj.
7. The District Transport Officer, Kishanganj.
8. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Kishanganj.
9. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Patna, Bihar.
10. The District Supply Officer, Kishanganj.
11. The Additional District Manager (Public Distribution), Bihar State Food and Civil Supplies Corporation Limited, Kishanganj.
12. Tanweer Ahmad, Son of Late Md. Wasim, Resident of Line Masjid, P.S.- Kishanganj, District- Kishanganj.
13. Md. Imran Son of Late Abdur Rahman Resident of Village- Ruidhasa, P.S.- Kishanganj, District- Kishanganj.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Udbhav, Advocate
For the Resp-BSFC	:	Mr. Anjani Kumar, Sr. Advocate
		Mr. Shailendra Kumar Singh, Advocate
For the State	:	Mr. Kumar Manish, SC-5

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 30-04-2024



Heard Mr. Udbhav, learned counsel for the petitioner; Mr. Anjani Kumar, learned Senior Counsel for the respondent/Bihar State Food and Civil Supplies Corporation Limited (for short “the BSFC”) and Mr. Kumar Manish, learned counsel for the State.

2. The writ-petitioner, an unsuccessful bidder in relation to Notice Inviting Tender (NIT) No. 01/2022-23 issued by the BSFC for selection and empanelment of Transportation-cum-Handling Contractor, had earlier approached this Court in CWJC No. 5910 of 2023. By filing the afore-noted writ petition, the petitioner sought cancellation of tender process and subsequent issuance of work order dated 01.11.2022 in relation to NIT No. 1/2022-23 dated 28.07.2022. The writ petition came to be dismissed by the learned Division Bench of this Court vide order dated 11.08.2023, reserving liberty to the petitioner to approach the Managing Director, BSFC, and in the event of non-redressal of the petitioner’s grievance, he was permitted to file a fresh writ petition.

3. The learned counsel for the petitioner, urged before this Court that pursuant to the direction of this Court as noted hereinabove, the petitioner submitted a detailed representation before the Managing Director, BSFC, stating therein all the facts



with respect to illegal, arbitrary and improper declaration of respondents no. 12 and 13 as successful bidder. He vigorously contended that the District Transport Committee in complete transgression of the terms and conditions of the tender advertisement, declared the respondents no. 12 and 13 as successful bidders and awarded the work order by empanelling them as Transportation-cum-Handling Contractor.

4. It is the contention of the writ-petitioner that after having come to know that respondents no. 12 and 13 in collusion with the officials of the State Food Corporation have procured the work order on the basis of incorrect and false certificates, he immediately procured the relevant documents/certificates under the Right to Information Act, 2005. The bidders were, in terms of the NIT, supposed to file self-attested photocopies of registration book of five trucks registered in the name of the bidder or her/his/their family members with up-to-date tax token and road permits duly certified by the Transport Officer of the concerned district. Besides, the self-attested photocopies of insurance of Trucks, Pollution Certificates and Fitness Certificates duly counter signed by M.V.I. of the district from where vehicle is registered along with original copies of the separate lease/contract



agreement on stamp of Rs. 1,000/- of thirty such Trucks for every Truck separately.

5. Adverting to the terms and conditions as noted hereinabove, learned counsel for the petitioner, contended that both the respondents no. 12 and 13 have failed to submit up-to-date Fitness, Pollution and Insurance certificates in relation to many of the vehicles, which facts have been duly placed before the Managing Director, BSFC. However, the same has not been taken into consideration while rejecting the contention of the petitioner vide order dated 16.01.2024, which order is put to challenge in the present writ petition.

6. *Per contra*, learned Senior Counsel for the BSFC, at the outset, drew the attention of this Court to the earlier order of the Division Bench dated 11.08.2023. Referring thereto, learned Senior Counsel, submitted that the petitioner was declared unsuccessful in the technical bid by the District Transport Committee. However, the petitioner without assailing the order of disqualification, challenged the selection of respondents no. 12 and 13 as Transportation-cum-Handling Agent. He further contended that in the earlier round of litigation, the learned Division Bench had found that the petitioner could not even make out his case and, as such, the



writ petition stood dismissed, only reserving liberty to the petitioner to approach the Managing Director. In the absence of challenging such rejection of technical bid, the petitioner was not permitted to challenge the work order issued in favour of respondents no. 12 and 13, was also observed by the learned Division Bench.

7. Learned Senior Counsel further urged that the private respondents have been declared successful by the District Transport Committee after proper verification of documents/certificates by the District Transport Officer, Kishanganj. The District Transport Officer, Kishanganj, vide letter no. 376 dated 13.09.2022 submitted its report in respect to the validity of the documents/certificates of the trucks/vehicles. On the basis of such report, the District Manager, BSFC placed the matter before the District Transport Committee leading to the selection of the private respondents.

8. Having heard the rival submissions of the learned counsel for the respective parties, we find that the selection/empanelment of the private respondents are based upon the report of the District Transport Officer, Kishanganj, who found the certificates, in question, valid leading to the selection of the private respondents. The contention of the



petitioner that the District Manager who was heading the tender committee had given a report is not tenable. The challenge of the writ-petitioner is only confined to the work order issued in favour of respondents no. 12 and 13 without challenging his own disqualification in the tender process.

9. We also find that the challenge of the writ-petitioner in CWJC No. 5910 of 2023 was negated as the petitioner had failed to make out any case and the writ petition was dismissed.

10. It would be worth noting that scope of interference in judicial review of tender processes and award of contracts is limited only to cases where there is material violation of the terms relating to scrutiny and acceptance of tenders or where the decision is vitiated either by arbitrariness/irrationality or by mala fides/favouritism.

11. The Hon'ble Supreme Court in **Jagdish Mandal v. State of Orissa and Others [(2007) 14 SCC 517]**, while highlighting the scope of judicial review in matters relating to government contracts/tenders, has been pleased to hold that "*the power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a*



grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions: ”

(emphasis supplied by us)

12. In view of the aforesaid facts, this Court does not find any merit in the present writ petition. Accordingly, it is dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02-05-2024
Transmission Date	

