

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10879 of 2023

1. Bihar Samvedak Sangh Registered Society under Society Registration Act, 1860, Registered Office 138, Vidhayak Colony, Kautilya Nagar, Patna, through its Chairman namely Suyash Kumar, Male, aged about 48 years, son of Rajendra Prasad Singh, Resident of Flat No. 103, Mahendra Lok Apartment, Sampatchak, Kankarbagh.
2. Kushagra Hytech Infra Pvt. Ltd. a Company registered under the provision of The companies Act having registered office at Devanti Kunj, House No. C/32, Arunodaya Colony, Transport Nagar, P.S.- Agamkuan, P.O- Bahadurpur Housing Colony, District-Patna, represented through on of its directors namely Sri Sunil Kumar (male), aged about 42 years, Son of Sri Mathura Prasad, Resident of Devanti Kunj, House No. C/32, Arunodaya Colony, Transport Nagar, P.S.- Agamkuan, P.O- Bahadurpur Housing Colony, District-Patna.

... .. Petitioner/s

Versus

1. The Union of India through Secretary Ministry of Rural Development, Krishi Bhawan, New Delhi.
2. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
3. Chief Secretary, Government of Bihar, Patna.
4. Principal Secretary, Chief Minister Secretariat, Bihar, Patna.
5. Principal Secretary, Road Construction Department, Government of Bihar, Patna.
6. Principal Secretary, Rural Work Department, Government of Bihar, Patna.
7. Principal Secretary, Water Resources Department, Government of Bihar, Patna.
8. Principal Secretary, Building Construction Department, Government of Bihar, Patna.
9. Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
10. Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.

... .. Respondent/s



Appearance :

For the Petitioner/s	:	Mr. Y.V.Giri, Sr. Advocate Mr. Ashish Giri, Advocate Mr.Sumit Kumar Jha, Advocate Ms. Riya Giri, Advocate
For the UOI	:	Dr. K.N.Singh, A.S.G. Mr. Manoj Kumar Singh, CGC Mr. Devansh Shankar Singh, Advocate Mr. Prabhat Kumar Singh, Advocate
For the State	:	Mr. P.K.Shahi, A.G.

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

Date : 19-02-2024

Petitioners are an association of contractors and two contractors. The challenge is against the procedure followed by the State Government Departments while inviting tenders for awarding contracts.

2. The challenge is two fold, insofar as the removal of restriction of holding any bid below 10% of the estimated quantum being rendered invalid and the alleged insistence of additional performance guarantee in violation of Rule 161 of the Bihar Public Work Department Code (hereinafter referred to 'Code').

3. Mr. Y.V.Giri, learned Senior Counsel for the petitioners, argues that there was a restriction as imposed in Annexure-3, which was applicable to all notice inviting tenders (NIT) issued within the State of Bihar. The said restriction has been removed by Annexure-4. It is pointed out that the



restriction was brought in only to ensure that unscrupulous elements do not bid and leave the work mid way as also to avoid corruption and nepotism in awarding of contracts. There is absolutely no rationale in removing the restrictions. It is also pointed out that Annexure-4 specifically provides for a review after one year which is not being done. It is pointed out that even the counter affidavit of the State does not indicate that a review is not possible, but only 'red-tape'; insofar as the matter pending before the various departments, was raised as a reason for the restriction not being again implemented. It is argued that the removal of restriction interferes with Article 14 of the Constitution of India.

4. Mr. P.K.Shahi, learned Advocate General, on the other hand, submits that it is the restriction which interferes with Article 14 and that the Central Government also has cautioned the State Government from bringing in any such restrictions.

5. Dr. K.N.Singh, learned Additional Solicitor General supports the stand of the State and points out that the Central Government has not implemented any such restriction; which would go against the spirit of Article 14 and in that circumstance, there cannot be a different criteria for the State of



Bihar, at least, insofar as the projects funded by the Union.

6. We cannot but notice that Annexure-3 is brought out by the Road Construction Department wherein bids having 10% below the estimated quantum were treated as invalid. The restriction was removed by a proper gazette notification issued under the order of the Governor of Bihar. The policy is clearly spelt out in Annexure-4 Notification and we do not find any arbitrariness in the same.

7. As has been argued by the learned Advocate General, a restriction, as indicated in Annexure-3, would definitely run against the principle of equality. Insofar as a review is concerned, it is again a policy decision, which cannot be precipitated by the orders of this Court. The fact that no review has been made till date only indicates that the State Government does not, as of now, intend to bring in any restriction. A restriction, as we noticed, would be a violation of principle of equality and negation of Article 14 of the Constitution of India.

8. The attempt of the petitioners is to ensure that only contractors, who have very good financial capacity, are awarded the contracts of the State Government Departments. We also notice the judgment of this Court in CWJC No. 11234



of 2023, therein also one of the grounds raised was that the ceiling of 10% less than the rate of BOQ was not followed in the award of contract, which was under the *Prime Minister's Gram Sadak Yojana*. The defence was that the State Government in implementing the PMGSY projects has to comply with the standard bid documents issued by the NRIDA. The Division Bench refused to accept the ground raised by the petitioner. Even with respect to the other projects, the State has now removed the restriction, which is a purely policy matter and which only furthers the principle of equality, in the award of tenders.

9. With respect to following the general principles under Rule 161 of Code, we are of the opinion that it has to be raised at the appropriate time when there is an alleged violation, by a person who has applied under a tender.

10. We do not find any reason to consider the question in a vacuum. We make it clear that we have not looked at the rule or the code and by leaving liberty to challenge it at the appropriate time, we are not also indicating that the Code has to be followed scrupulously in all matters; which could also be found to be a mere guideline. We do not make any finding on merits and leave the question to be decided at the appropriate



stage.

11. Writ petition stands dismissed with the
above reservation.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	21.02.2024
Transmission Date	

