

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11150 of 2024

M/s Pashupatinath Distributor Private Limited, A Company incorporated under the provisions of Companies Act, 1956, having its registered office at F-2, Chandivyapar Bhawan, 3rd Floor, Exhibition Road, Patna through its Director Namely Yogendra Prasad Nirala, Son of late Lachhmi Rajak, Resident of Sadisopur, Patna, Bihar- 800111.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Health, Bihar, Patna.
2. The State Health Society, Bihar through its Executive Director.
3. The Technical Evaluation Committee, State Health Society, Bihar.
4. M/S GVK Emergency Management and Research Institute, having registered office at Paigah House, 156-159, Sardar Patel Road, Secunderabad, Telangana through its Director.
5. Ziquitza Health Care Ltd., Sunshine Tower, 23rd Floor, Senapati Bapat Marg, Dadar (West), Mumbai, through its Director.
6. Consortium of BVG India Ltd. and Samman Foundation having its office at SBI Colony No. 2, House No. 2/30, Jagdeo Path, Khajpura, Bailey Road, Patna 13 through its authorised representative .

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate Ms.Kanupriya, Advocate Mr. Abhishek Anand, Advocate
For the Respondent/s	:	Mr.S.D.Yadav, AAG-9 Mr. Anil Kumar Verma, AC to AAG-9
For the State Health Society:		Mr. P.K.Shahi, A.G. Mr. K.K.Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-07-2024

The attempt of the writ petitioner is to see that a fresh Notice Inviting Tender (NIT) is issued scuttling the entire tendering process initiated in the year 2022, wherein he stood



disqualified, which disqualification was approved up to the Hon'ble Supreme Court.

2. The facts as stated by the learned Counsel for the petitioner and agreed to by the learned Advocate General, across the Bar, are that an NIT of 2022 was issued for operation of Ambulance Services within the State of Bihar. Four persons had applied under the NIT, including the petitioner herein. Three were qualified and one was disqualified in the technical bid. M/s BVG India Limited, which was disqualified, approached this Court against their disqualification and also against the qualification of the petitioner herein. A Division Bench of this Court in CWJC No. 16899 of 2022 along with CWJC No. 8553 of 2023, by judgment dated 10.11.2023, set aside the disqualification of the writ petitioner, M/s BVG India Ltd. and found that M/s Pashupatinath Distributor Private Limited is disqualified.

3. The matter travelled to the Hon'ble Supreme Court on appeals filed both by the State and the petitioner herein. The Hon'ble Supreme Court held so in Paragraph-10 of the judgment passed at Annexure-11, which is extracted as under:-

“10. Having decided the aforesaid two issues, we are inclined to hold that both M/s BVG India Ltd. and M/s Pashupatinath Distributors Private



Limited are disqualified from participating in the tender concluded. In view of the aforesaid conclusion, the ultimate decision of the High Court in remitting matter back for a fresh consideration by the State is upheld while clarifying that the aforesaid two entities cannot be permitted to participate with the existing disqualification as discussed above, unless they are otherwise qualified in the light of the interpretation of the notice inviting tender. Incidentally, we are inclined to permit M/s Pashupatinath Distributors Private Limited to continue with their operation till the tender process as directed by the High Court in its impugned order and as modified by the order, is concluded. It is further clarified that the interim order dated 02.01.2024 passed by this Court shall continue till tendering process is concluded.”

(emphasis supplied by us)

4. The Hon’ble Supreme Court, by the above extract, held that both M/s BVG India Ltd. and M/s Pashupatinath Distributors Private Limited are disqualified. It was also clarified that even in a fresh evaluation of the technical bids, the two persons who have been found to be earlier disqualified should not be permitted to participate. As an interim protection, more in the nature of ensuring that the work is not hampered,



purely in public interest, the Hon'ble Supreme Court directed that the petitioner herein who was disqualified by the High Court, after having been given the work as L1, should continue the work till a decision is taken.

5. The learned Counsel for the petitioner submits that as of now the other two persons have been technically qualified and that is challenged. The argument is that they are disqualified at this stage of consideration; as directed by the Hon'ble Supreme Court since with respect to the 4th Respondent, the EMD was withdrawn and the 5th Respondent had not renewed the validity of the EMD submitted earlier. Admittedly, the NIT is of 2022 and the finalisation was in 2023 where the Respondents No. 4 & 5 had not been granted the tender. The 4th Respondent did not challenge the grant and hence, they withdrew the EMD; presumably. As far as the 5th Respondent, their writ petition was allowed disqualifying the party respondent, the petitioner herein and when the litigation was pending the EMD validity had expired. When a reconsideration is ordered by the Hon'ble Supreme Court, it has to relate back to the date on which the evaluation was carried out. Hence, the petitioner cannot challenge the consideration, especially when the petitioner had been disqualified by the Hon'ble Supreme Court.



6. The petitioner's contention is that by Paragraph-12 the Hon'ble Supreme Court had made a reservation. We extract Paragraph-12, as under:-

“12. We make it clear that our observations are pertaining to the terms of the tender conditions which are existing as of now and it is well open to the State to formulate any new condition, if so required.”

Admittedly, the State has not changed the tender conditions and is proceeding as per the NIT, 2022 itself. The two tenders which have now been considered were earlier qualified and there was no objection raised.

7. The present attempt of the petitioner to challenge the technical qualification is only to stall the finalisation of the tender so that he can continue on the protection granted by the Hon'ble Supreme Court, which was in public interest and not to save the petitioner from being deprived of the work.

8. We, hence, find the writ petition to be misconceived and dismiss the same with exemplary cost of Rs. 10,000/- payable to the Bihar State Legal Services Committee since it is a clear abuse of process of law. The said amount will have to be paid within a period of two weeks and if not, the Bihar State Legal Services Authority shall be entitled to proceed for recovery by taking measures similar to recovery of arrears due



on land through the District Magistrate, in which event the petitioner shall be liable for the charges incurred for making such recovery, which have to be recovered by the State.

9. Let a copy of this judgment be transmitted to the Member Secretary, Bihar State Legal Services Authority.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	30.07.2024
Transmission Date	

