IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16212 of 2024

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Shamsher Alam son of Shah Alam, Resident of village-Ujara Narayanpur, Police Station-Uchkagaon, District-Gopalganj, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Department of Education through its Additional Chief Secretary, Patna, Bihar.
3. Bihar State Educational Infrastructure Development Corporation Limited through its Chief Managing Director, Acharya Shivpujan Sahay Path, Bihar Rashtrabhasha Parishad Campus, Shiksha Bhavan, Saidpur, Patna-800004.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shashi Ranjan Kumar, Advocate Mr. Kumar Prateek, Advocate Mr. Rahul Kumar Dubey, Advocate
For the State	:	Mr. P.K. Shahi, Advocate General Mr. Madanjeet Kumar GP-20
For the BSEIDC	:	Mr. Girijish Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-12-2024

The writ petition is filed against the respondent authority's inaction in awarding a contract; which was bid successfully by the writ petitioner and declared as L1 at the financial bid opening.

2. We have heard Mr. Shashi Ranjan Kumar learned

counsel appearing for the petitioner, Mr. P.K Shahi learned AG for the State and Mr. Girijish Kumar learned counsel appearing for the Bihar State Educational Infrastructure Development Corporation Limited (BSEIDCL).

3. The learned Counsel for the petitioner submits that the petitioner had applied under Annexure-P/1 issued by the respondent Corporation for the work assigned at Group No. DW-162 in the Gopalganj district. The various works tendered were with respect to provision of drinking water in the Government Schools within the State of Bihar. The Corporation had issued LOA (Letter of Acceptance) in favour of many persons some of which are produced along with the writ petition. The petitioner submits that there is no reason why the petitioner should not be issued with the work order since he has come out successful in the tender proceeding as is evident from Annexure-P/2.

4. Learned Advocate General relied on the counter affidavit and specifically on Annexure-R-A produced along with the counter affidavit. It is the submission of the learned Counsel for the State that there was a paradigm shift so far as the guidelines regarding carrying out basic infrastructure/civil works in the financial year 2024-25. In the financial year 2023-

24 about 676.36 crores was made available for infrastructure and Rs. 900 crores for bench and desk so as to ensure infrastructure in the various government schools. In the financial year 2024-25, it was decided that all schemes below Rs. 5 Crores will be implemented at the district level and those above Rs. 5 Crores will be implemented centrally by the respondent-Corporation. It was hence the schemes with lesser amount of expenditure shifted to the district level.

5. Learned counsel for the petitioner submits that the petitioner had a legitimate expectation of award of the work and there cannot be an arbitrary cancellation of a tender as has been held by the Hon’ble Supreme Court in the case of ***Subodh Kumar Singh Rathour Vs. Chief Executive Officers & Ors*** reported in ***2024 SCC online SC 1682.*** Learned Advocate General however would counter that there is no question of legitimate expectation; as has been held by the Hon’ble Supreme Court in ***State of Bihar & Anr Vs. Sachindra Narayan & Ors*** reported in ***(2019) 3 SCC 803*** since the work was not awarded and the change in policy of the work being carried out at the district level which cannot be said to be arbitrary.

6. We have looked at Annexure-R/A which speaks of

the work below Rs. 5 Crores being carried out at the district level and that above being implemented by the respondent-Corporation. It is seen from the above letter that earlier there was no control set at the district level which has now been implemented and detailed guidelines are given for the purpose of expediting the work and provision of infrastructure requirement in every school, as anticipated for the next three years.

7. We see that there is a paradigm shift in policy of the contracts being awarded for the purpose of carrying out works below Rs. 5 Crores at the district level itself. ***Subodh Kumar Singh Rathour*** (supra) emphasized that the sanctity of public tenders lies in their role in upholding the principles of equal opportunity and fairness. It was also held that once a contract has come into existence through a valid tendering process, its termination must adhere strictly to the terms of the contract, with the executive powers for such cancellation being exercised only in exceptional cases. We have to immediately notice that here, there was no award of tender. In the cited decision an award of contract was cancelled after execution of an agreement on the ground of possibility of fetching higher license fees, technical fault in the tender and potential bidders having not

participated and the need to engage experts for maintenance of critical public infrastructure. It was found that there was no substantiation of the various reasons pointed out and none of these could validly result in termination of a contract already issued; which has not been done in the instant case.

8. As far as legitimate expectation, merely because the petitioner was declared L1 in a financial bid, it cannot be said that the petitioner had a legitimate expectation to be awarded the contract. ***Sachindra Narayan*** (supra), held that though legitimate expectation is a ground of judicial review, it cannot be validly raised unless there is a legal obligation and it cannot be raised on a mere wish, desire or hope. There cannot be any right conferred on the petitioner to be issued with the contract merely on the petitioner having been declared L1 in the financial bid opening and what remains with the petitioner, on being declared as L1 is a hope that the tender will be awarded to him.

9. Learned Counsel for the respondent-Corporation also submitted that LOAs could not be issued since the funds were transferred from the Corporation to the district level. The present case is not one where the contract was entered into and terminated or the tender proceedings abruptly cancelled without

any reason. There cannot be found an arbitrary exercise of cancellation of the tender process especially since it was occasioned due to the policy shift in carrying out the infrastructure development in the schools within the State.

10. We find absolutely no reason to precipitate the award of tender by a judicial order. The writ petition is without merit and is liable to be rejected and we reject the same.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

ranjan/-

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