

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15685 of 2023

M/s Annu Computer, Proprietorship Firm having its Head Office at 1st Floor, BISCOMAUN Tower, West Gandhi Maidan, Patna- 800001, through its Proprietor, Abhay Kumar Singh (male), aged about 58 years, son of Late Adya Prasad Singh, resident of House No.79, Road No.21, Sri Krishna Nagar, P.O-G.P.O. P.S.-Buddha District Colony Patna-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Electoral Officer, Bihar, Patna.
2. The Chief Electoral Officer, Bihar, Patna.
3. The District Election Officer-cum-District Magistrate, Samastipur, Bihar.
4. The Senior Official, Electoral Branch, Samastipur, Bihar.
5. The Deputy Election Officer, Samastipur, Bihar.
6. The Technical Bid Committee in relation to tender dated 22.09.2023 bearing P.R. No.009099/2023-24.
7. M/s R.K. Tech, having its Head Office at Station Road, Belbanwa, Motihari East Champaran, Bihar- 845401, through its Director, Rajendra Kumar Tripathi (male), son of Rambabu Tripathi, at Station Road, Belbanwa, Motihari East Champaran, Bihar- 845401

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Ms. Riya Giri, Advocate Mr. Sumit Kumar Jha, Advocate
For the State	:	Mr. Raghwanand, G.A.-11 Mr. Pratik Kumar, A.C. to G.A.-11
For the Respondent No. 7	:	Mr. Rajendra Narain, Sr. Advocate Mr. Sunil Kumar Pandey, Advocate
For the E.C.I.	:	Mr. Siddhartha Prasad, Advocate

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

Date : 26-02-2024

Heard the parties.

2. The present petition has been preferred for



grant of the following reliefs:-

(i) to issue a writ/ order/ direction in the nature of certiorari for quashing of the decision of Technical Bid Evaluation Committee contained in Memo No.1302 dated 14.10.2023 issued under the signature of the Deputy Election Officer, Samastipur, Bihar to the extent of which respondent M/s R.K. Tech has been held technically qualified in relation to tender dated 22.09.2023 bearing P.R. No.009099/2023-24;

(ii) to hold and declare that the respondent R.K. Tech is not qualified in terms of Clause 12 & 15 of the NIT for consideration of its financial bid and as such it ought to have been technically disqualified;

(iii) to pass interim/ex-parte interim order staying the further tender process relating to perpetration of photo voter list in the District of Samastipur vide tender dated 22.09.2023 bearing P.R. No.009099/2023-24 and/or prevent the respondent from finalizing the tender processing question.

3. The matrix of facts giving rise to the present writ petition is/are as follows:-

4. On 22.09.2023, the Samastipur District Election Office, under the signature of the District Electoral Officer-cum-District Magistrate, Samastipur, the Senior Officer,



Electoral Branch, Samastipur and the Deputy Electoral Officer, Samastipur issued tender for publication of photo voter list in the district of Samastipur as available in the official website i.e.state.bihar.gov.in/prdbihar wherein the date of tender is/was shown to be 22.09.2023.

5. As per the Notice Inviting Tender (henceforth, for short 'the N.I.T.'), those participating in the bid were required to fulfill certain criterias and one of the essential requirement was Clause 12, the English translation of which read as follows:

12. The tendering firm/ company will have to give an affidavit to the effect that they are not related/affiliated with any political party and there is no legal action /prosecution presently pending against the firm/proprietor of the firm/employee of the firm for any inappropriate /criminal/ illegal act related to election.

6. The petitioner asserting that they fulfill the requirements submitted the bid in the said NIT.

7. According to the petitioner, including them, altogether seven bidders participated in the tender process and in terms of the covering notice of the tender, the date of opening of the technical bid was on 04.10.2023.

8. On 4.10.2023, the petitioner participated in



the technical bid along with other tenderers, wherein it was orally informed that five tenderers have technically qualified including the respondent no. 7, M/s R.K. Tech as well as the petitioner.

9. However, the decision of the Technical Bid Committee held on 04.10.2023 was not communicated. The petitioner made an objection before the respondent District Election Officer-cum- the District Magistrate, Samastipur informing that R.K. Tech cannot qualify for award of tender as the staff and officers of the said M/s R.K. Tech have criminal case instituted against them in the year 2017, in relation to large scale illegality in making forged election cards which led to the lodging of the Mithanpura P.S Case No. 152/2017 dated 21.05.2017. It was further informed that taking into account the said criminal case, they were also disqualified in the Kishanganj District for the same work. The petitioner contended that as the said contractor has given false affidavit and has not disclosed the same, its financial bid should not be opened.

10. However, the contention is that on the said representation, no decision was taken and/or communicated to the petitioner forcing him to file reminder on 10.10.2023. All of a sudden, on 15.10.2023, it was telephonically informed that the



financial bid will be opened at 4:00 PM on 16.10.2023.

11. On 16.10.2023, the petitioner again placed its objection before the respondent District Election Officer-cum- District Magistrate, Samastipur, stating that the decision taken by the technical bid Committee (held on 04.10.2023) was neither communicated to them nor their complaint against the respondent M/s R.K Tech adjudicated and that as such, opening of financial bid on 16.10.2023 itself was unlawful. The petitioner thus requested to provide copy of the technical bid decision before opening the financial bid.

12. The petitioner alleged that it was only at around 4:00 PM on 16.10.2023 i.e. at the time of opening of the financial bid that the decision of the technical bid was communicated to the petitioner vide memo no. 1302 dated 14.10.2023 without disposing of the objection raised by him against the respondent R.K. Tech.

13. Learned counsel submits that the respondent M/s R.K. Tech was liable to be held disqualified in the tender process for reason of submitting false affidavit and material suppression of fact as mandated in Clause 12 of 'the NIT', there being Mithanpura P.S. case lodged against its employees. He further submits that in the Mithanpura P.S. Case



No. 152/2017 dt. 21.05.2017 instituted under various sections of I.P.C. including 420, 467, 468 as well as Section 66 (A) and 66 (B) of I.T. Act, charge-sheet has been submitted on 30.11.2019 which followed cognizance taken on 26.08.2021 by the court of Learned ACJM-IX, Muzaffarpur (E).

14. Learned counsel has drawn the attention of this Court to a document dated 25.05.2017 sent by the respondent R.K. Tech and addressed to the Officer In-Charge, Mithanpura Police Station, Muzaffarpur and English translated copy read as follows:

Translated copy

Ref. No.: -

Date 25.05.17

To,

The Station House Officer,

Mithanpura Police Station,

Muzaffarpur.

Sub.: On 21.05.2017, in relation to recovery of laptop from the house of candidate, Priyanka Sharma, Ward no. 36 in election of Municipal Body, 2017.

Ref.: Mithanpura P.S. Case No. 152/2017 dated 21.05.2017.



Sir,

It is humbly requested that Mithanpura P.S. Case No. 152/2017 dated 21.05.2017 has been registered in relation to recovery of laptop from the house of candidate, Priyanka Sharma, Ward no. 36 in election of Municipal Body, 2017 pertaining to allegations of committing fraud, breaching confidentiality of election and forgery.

It may be noted that according to the statement recorded in the FIR the laptop seized by the Magistrate has R.K. Tech written over it and it is alleged to be found in the house of staff of R.K. Tech, Priyanka Sharma and Baboo Sharma.

It may be noted that my agency, M/s R.K. Tech has been reliably and trustworthily with maintaining confidentiality has performed work for different departments of government/ non-government. Our agency R.K. Tech has been doing very sensitive and highly confidentiality work of election for the last 8 years and in the event of Muzaffarpur's District Legislative Assembly



Election year 2010, Panchayat Aam Election year 2011, Nagar Municipality Election Year 2012, Lok Sabha Aam Election year 2014, Vidhan Sabha Election year 2015 and Panchayat Aam Election year 2016, preparation of voter list, work of epic preparation, has been done successfully and timely, in accordance with the direction of the Election Commission of India, New Delhi, office of the Chief Election Officer, Bihar, Patna, State Election Commission, Bihar, Patria and office of the District Election Officer. But till now my agency, R.K. Tech.. Motihari has not faced allegation for fraud, breaching confidentiality or any illegal work.

It is noteworthy that M/s R.K. Tech is a registered organization as per the government norms and is known as a trustworthy and renowned organization for carrying out government and non-government work with trust and confidentiality.

I, (organization) am completely unaware of the above allegations and conspiracy



and have no connection whatsoever with this incident. In such a situation making such allegation is tarnishing the image due to which the organization is hurt.

Thus, if any employee associated with my agency is found involved in the said incident kindly take proper action in accordance with law. Also, whenever or wherever the organization is required in any kind of investigation, the organization will cooperate fully and will follow the administrative instructions.

Faithfully,

Director,

R.K. Tech, Motihari,

15. Mr. Ashish Giri representing the petitioner submits that on the date of submission of the bid, the present case was still continuing as against the said respondent and as such it was mandatory for them to disclose it in the affidavit and as they deliberately suppressed to gain benefit of consideration of tender, such filing of false affidavit amounts to material suppression and an act of fraud which vitiates everything, in that background, his bid is/was liable to be rejected.



16. He submits that on similar ground, the candidature of the said respondent no. 7 for the same work relating to Kishanganj district was earlier rejected as will be apparent from the decision dated 22.09.2023 taken by the Committee headed by the District Election Officer-cum-District Magistrate, Kishanganj and read as follows:

“On 13.09.2022, at 3:30 pm, the data of the application for revision has been submitted in the order of preparation of voter list of the draft and previously published electoral list for 2024 and under continuous updation and invited candidates for the minimum rate for inclusion in their published electoral rolls. Proceedings of the meeting of the District Purchase Committee convened on 22.09.2023 at 3:00 pm for the meeting of the District Purchase Committee Gudan, Oak for calling the technical tender in the light of the said meeting and the mutual decision obtained in the said meeting.

According to the attendance meeting register.

Proceeding

ERO of Election Commission of India. In order to prepare photo voter list on the net portal, under the brief revision 2024 and continuous updation, the data of the applications received from off-line printing of draft and final



published electoral list and news for determination of minimum rate for all the quality work related to printing of forms. In the light of the tender invited through letters, till 3:00 pm on 13.09.2023, tenders were received in envelope mode from the following firms/agencies-

<i>SI. No.</i>	<i>Tenderer Form Name</i>
<i>1.</i>	<i>Active Media Group, Patna</i>
<i>2.</i>	<i>Suprab Enterprises, Patna</i>
<i>3.</i>	<i>Khagaul Data Solution, Patna</i>
<i>4.</i>	<i>R. K. Teck, Motihari</i>

First of all, the technical tenders of the tenders received from the above works were opened by the District Purchasing Commitee ord all the seconical fenders were reviewed as per the conditions prescribed for the technical tender and the report regarding the availability of required documents/certificates was prepared in a separate form (bid sheet). It was done and videography of the entire joy process was done.

During the investigation of the technical tender, it was found that the following complaint was lodged in written form by M/s Khagaul Data Solution, Patna against M/s RK Tech, Motihari-

1. FIR was lodged against the firm/employee of M/s RK Tech. R.K. Wrong election card was being made by employee in the office of R. K. Tech near collectorate. Copy of



FIR is attached.

2. GST return receipt was provided for three years by all the bidders but M/s R.K. Tech did not supplied the same.

3. Turnover Certificate and Audit Report from the year 2018, It is necessary to have a UDIN number. The amount shown in the turnover certificate and audit report of the all tender should be matched with the amount shown in the UDIN number to ensure that wrong paper has not been submitted.

In the light of the above written complaint, Clarification and opinion was sought from M/s R.K Tech, Motihari through letter number 659/District Nirva, dated 15.09.2023 and District Election Officer-cum-District Officer, Kishanganj authorized the District Election Committee for its investigation and decision.

District Purchasing Committee reviewed the complaint received against M/s R.K Tech. Motihari and the reply filed by them and after review the following decision was taken:-

<i>Sl. No.</i>	<i>Paragraph complaint</i>	<i>Decision and intention of District Purchasing Committee</i>
<i>1</i>	<i>1</i>	<i>It is clearly written In paragraph 7 of the affidavit attached with the tender submitted by M/s R. K Tech, Motihari that there is no case pending in the court against their firm/proprietor, but it is clearly mentioned in the FIR that M/s R.K. Tech's laptop and from the office of R.K. Tech near collectorate</i>



		<i>Objectionable items related to elections have been recovered. Nothing has been said in this regard in the clarification report by M/s RK Tech, which does not completely refute the allegation.</i>
2	2	<i>Condition No. 4 of the technical tender along with updated return and certificate of doing similar work worth at least Rs 05 lakh in the last three financial years (2020-21, 2021-22 and 2022-23) and Goods and Services Tax. Demand has been made along with the challan. M/s R.K. Tech has submitted one of the financial year certificates, which is valid.</i>
3	3	<i>Turn over certificate has been submitted by the bidder as per the condition of the tender, which is valid.</i>

District Purchasing Committee by M/s R.K. Tech, Motihari, in the context of the FIR, was declared invalid as per the above review and declared unsuccessful in the technical tender. While examining the technical tender of M/S Khagaul Data Solution, Patna, it was found that the validity of the ISO 9001:2015 certification certificate of the firm has expired on 13.07.2023. Similarly, as per the condition of the technical tender, a certificate of experience of working completely in any one district having more than four Legislative Assemblies under Vihar State was demanded, but this firm only had the experience of working in three Legislative Assembly constituencies of the district. The certificate has



been submitted which does not conform to the prescribed conditions. Due to not fulfilling the above conditions in the technical tender, M/s Khagaul Data Solution, Patna was declared unsuccessful in the technical tender.”

17. Learned counsel for the petitioner submits that the respondents have wrongly proceeded to consider the financial bid of the respondent M/s. R.K Tech on 16.10.2023 itself, which is untenable and unlawful in the facts and circumstances of the present case.

18. He submits that two different yardsticks cannot be applied in the State on the same issue as it is apparent that on the same ground, while the bid of respondent no. 7 was rejected in the Kishanganj district, in the district of Samastipur, different view has been taken by the respondents.

19. Learned counsel submits that till date, the decision taken in the financial bid on 16.10.2023 has not been made available to the petitioner and hence he is not in a position to bring the same on record. However, the petitioner prays that the respondent may be directed to produce the decision of financial bid and the same be quashed.

20. A counter affidavit has been filed on behalf of the respondent nos. 3 to 6. Learned State Counsel submits that pursuant to the direction of the petitioner, the



matter was verified, report called for from the District Prosecution Officer regarding the involvement of R.K. Tech in criminal case. In turn, report was sent by the said D.P.O. that R.K. Tech or its employee involvement has not been found.

21. He further submitted that Raj Kumar Tripathi, the proprietor of M/s R.K Tech, Motihari had furnished affidavit on 30. 09. 2023 stating therein that his firm is not affiliated with any political party and there is no legal action running against his firm/ Proprietor of the firm/any employee of the firm any inappropriate/Criminal/illegal act related to election.

22. Learned State Counsel submits that as per the cognizance order released by court at Muzaffarpur, the accused names are: 1. Mr. Ravishankar Sharma, 2. Uday Shankar, 3. Vinay Shankar Sharma, 4. Priyanka Sharma, 5. Salini Sharma and 6. Manish Kumar Singh., these accused were never part of M/s R.K Tech Motihari.

23. Another counter affidavit on behalf of respondent no. 7 is on record. Mr. Rajendra Narain, learned Senior Counsel submits that the involvement of employees of the R.K. Tech has not been found in the Mithanpura P.S. Case No. 152 of 2017. This was also confirmed by the District



Prosecution Officer, Muzaffarpur upon query made by the respondents herein.

24. Learned Senior Counsel further submits that as the respondent no. 7 has qualified in the Technical bid, to stall the process, the petitioner has resorted to objection petition which is fit to be rejected. His further submission is that whenever, he submits his bid in any district, those inimical to him file objection with the sole purpose to debar him from the process and they even succeeded in Kishanganj.

25. Learned Senior Counsel as such submits that the District Administration, Samastipur was justified in declaring him successful in technical bid and the writ petition is fit to be rejected.

26. This Court has gone through the facts of the case, the materials on record as also the submissions put forward by the respective counsels. Admitted fact is that in the district of Muzaffarpur where the petitioner was allotted similar work by the District Administration, the house of Priyanka Sharma/Baboo Sharma was raided and beside other incriminating documents, a laptop of R.K. Tech was also seized. Thereafter, the office of R.K.Tech near Muzaffarpur Collectorate was raided and further incriminating documents



were seized/recovered. This followed FIR against employees of R.K. Tech.

27. The allegation in the FIR lodged by the Patrolling-cum-Static Magistrate was that on secret information that in the house of Priyanka Sharma, people were found entering and coming out with fake voter identity card, the house was raided. Around 10 people were found working on laptops/printers and large number of voter list, voter slips as also incriminating documents of the District Collectorate having deputation chart of the Officials which are secret documents were found and seized. Also recovered/seized was a Laptop with R.K. Tech marked on it. The District Collectorate was thereafter raided and from the R.K. Tech office, incriminating documents were found. Some employees of the R.K. Tech were also present in the house of Priyanka Sharma/Baboo Sharma including one Manish Singh who was present there and involved in criminal activities. Accordingly, the FIR on 21.05.2017.

28. The police investigated the matter submitted chargesheet vide Chargesheet no. 260 of 2019 on 30.11.2019 finding the case to be true. This followed the cognizance or order dated 26.08.2021.

29. It is important to note here that after the



lodging of the FIR, the respondent no. 7 in its letter dated 25.05.2017 addressed to the Station House Officer, Mithanpura P.S., Muzaffarpur stated that he is ready to cooperate in the investigation. The letter sent on that account to the SHO, extracted hereinabove also did not contain a specific denial of the involvement and complicity of the employees of respondent no. 7.

30. Further, on the same ground, in Kishanganj, his tender document was rejected and it is not the case of the respondent no. 7 that he ever challenged the said rejection. In fact, the categorical statement made by the petitioner in paragraph 30 of the petition about the rejection of the technical bid of respondent no. 7 by the Committee at Kishanganj has not been refuted by the respondent no. 7. It is important to reproduce paragraph 28 of the counter affidavit of respondent no. 7 which read as follows:

“28. That the statements made in Para-30 and 31 to the writ petition need no reply as the same relate to private respondent.”

31. We cannot take our eyes away from the fact that most of the paragraphs of the counter affidavit filed on behalf of the State respondent as also the respondent no. 7 matches word by word. For proper appreciation, this Court is



reproducing some of the paragraphs of both the respondents:

S. No.	Counter affidavit on behalf of respondent nos. 3 to 6 (State)	Counter affidavit on behalf of respondent no. 7
1.	Para 7 <i>The statement made in paragraph no. 2 to the writ petition is not fully misconceived and are not applicable in the case of the petitioner. However, the same cannot be taken into consideration by this Hon'ble Court while disposing of the writ petition.</i>	Para 8 <i>The statements made in Para-2 to the writ petition are wholly misconceived and are not applicable in the case of the petitioner. However, the same are not fit to be taken into consideration by this Hon'ble Court while disposing of the writ petition.</i>
2.	Para 13 <i>The statement made in paragraph no. 8 to the writ petition is incorrect. On 04.10.2023 at 3.00 P.M., a technical committee meeting was held in presence of Additional Collector-cum Chairman Purchase Committee with respect to preparation of voter list and printing in which tenderers were present put their signature in the proceeding register.</i>	Para 10 <i>The statement made in Para-8 to the writ petition is incorrect. On 04.10.2023 at 3.00 P.M. a technical committee meeting was held in presence of Additional Collector-cum-Chairman Purchase Committee with respect to preparation of voter list and printing in which tenderers were present, put their signature in the proceeding register.</i>
3.	Para 16 <i>It submitted that in terms of letter no. 4772 dated 12.10.2023 of Incharge District prosecution officer, Muzaffarpur addressed to District Election Officer cum District Magistrate,</i>	Para 13 <i>It is stated and submitted that by letter no. 4772 dated 12.10.2023 the Incharge District Prosecution Officer, Muzaffarpur, informed</i>



	<i>Samastipur, there is no involvement in Mithanpura P.S. Case No. 152/2017 of R.K. Tech, East Champaran (Motihari) and its employees has been founded in this case from the perusal of the records.</i>	<i>the District Election Officer-cum- District Magistrate, Samastipur, that there is no involvement of the respondent No.7 or its employees in Mithanpura P.S. Case No. 152/2017, as obvious from the perusal of the records.</i>
4.	Para 18 <i>Raj Kumar Tripathi proprietor of M/s R.K Tech Motihari (East Champaran) had furnished affidavit on 30. 09. 2023 stating therein that in Para-6 that his firm is not affiliated with any political parties and there is no legal action running against his firm/ Proprietor of the firm/any employee of the firm any inappropriate/Criminal/illegal act related to election.</i>	Para 15 <i>It is further clear that the respondent No.7 had furnished an affidavit of its Proprietor on 30. 09. 2023 stating there in Para-6 that his firm is not affiliated with any political party and there is no legal action against the firm / Proprietor of the firm/any employee of the firm nor any inappropriate/ Criminal/illegal act related to election, was there.</i>
5.	Para 29 <i>That the statement made in paragraph no. 24 to the writ petition is incorrect as it is evident from the perusal of annexure-P8 itself.</i>	Para 26 <i>That the statement made in paragraph no. 24 to the writ petition is incorrect as it is evident from the perusal of Annexure-P8 itself.</i>

32. Further, in para 23 of the petition, the petitioner made following averment:



“23. That as against the employee and staff of respondent M/s R.K. Tech, an FIR bearing Mithanpura P.S. Case No. 152/2017 dt. 21.05.2017 has been instituted under various sections of IPC including 420, 467, 468 as well as Section 66 (A) and 66 (B) of I.T. Act. In the said FIR, charge-sheet has been submitted on 30.11.2019, wherein employee of respondent namely Priyanka Sharma & Ravi Shankar Sharma @ Baboo Sharma have also been made accused along with other employee of M/s R.K. Tech.”

33. The respondent no. 7 has chosen not to reply to para 23 inasmuch as after reply to paras 20 to 22, the respondent no. 7 has straightaway jumped to reply to para 24. Thus, it can be safely assumed that he has accepted the allegations made therein.

34. It is further important to note here that though the respondent no. 7 has made statement that the accused named in Mithanpura P.S. Case No. 152 of 2017 are not his employees, he has deliberately chosen not to furnish the list of employees who were working in Muzaffarpur Collectorate after he succeeded in the tender process therein.

35. The State respondents too though sought report from the D.P.O., Muzaffarpur, for the reasons best known, did not ask for the list of employees of R.K. Tech available in



the Collectorate office at Muzaffarpur.

36. In the aforesaid facts and circumstances, the State-respondents were duty bound to dispose of the objection petition of the petitioner before moving further for opening of the financial bid. However, in a zeal to allow the respondent no. 7, his debarment at Kishanganj district was also overlooked.

37. We have already noticed the counter affidavit of the State respondents vis-a-vis respondent no. 7 to buttress our point of their active cooperation, which can be termed as a collusive attempt, which need no further elaboration.

38. This takes us to only one conclusion. The respondents were duty bound to look into the objection petition of this petitioner, enquire into the allegations so made, take a decision, communicate the same to the petitioner before finalizing the financial bid.

39. We have also taken note of the order dated 06.11.2023 of a Division Bench of this Court wherein it was held that the tender process will be subject matter of the outcome of the present writ petition

40. In that background, the writ petition is



allowed. The decision dated 14.10.2023 taken by the Technical Bid Evaluation Committee (vide memo no. 1302 dated 14.10.2023) issued by the District Election Officer, Samastipur as also any consequential order stands set aside. No cost.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

kiran/-

AFR/NAFR	AFR
CAV DATE	09.02.2024.
Uploading Date	26.02.2024.
Transmission Date	

