IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6027 of 2025

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Harilal Ventures Pvt. Ltd. through its Managing Director, Amit Mankani, Male, aged about 50 years, S/o Late Shri Harilal Mankani, having its registered office at Plot No. IV/06, Patliputra Industrial Area, Patliputra, Patna and a resident of House No. A-27, Hari Villa 5, Buddha Colony, Near Hospito India, P.S.-Buddha Colony, Boring Canal Road, Patna-1.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Building Construction Department, Government of Bihar, Patna.
2. The Chief Engineer (Patna), Building Construction Department, Bihar, Patna.
3. The Superintending Engineer, South Bihar Circle, Building Construction Department, Bihar, Patna.
4. The Executive Engineer, Patna Building Division, Building Construction Department, Patna.
5. The Assistant Engineer, Samrat Ashok Convention Kendra Lower Division, Patna Building Division, Patna.
6. Amrapali Banquets Pvt. Ltd. A company registered under the Companies Act, 1956 having its registered office at Sone Bhawan, Birchand Patel Path, R-Block, Patna, through its Director, Jitendra Nath Gupta, S/o Mahendra Nath Gupta, a resident of House No. 11, Basant Vihar Colony, Opposite Laxmi Complex, Boring Road, Patna-800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lalit Kishore, Sr. Advocate Mr. Nitesh Kumar, Advocate Mr. Sumit Kumar, Advocate Mr. Ayush Kumar, Advocate Mr. Kanishka Shankar, Advocate
For the State	:	Mr. Vivek Prasad, G.P.-7
For Respondent No. 6	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Sanket, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 06-05-2025

Heard Mr. Lalit Kishore, learned Senior Advocate for the petitioner and Mr. Mrigank Mauli, learned Senior Advocate for the Respondent No. 6. The State is represented by Mr. Vivek Prasad, learned Government Pleader No. 7.

2. The petitioner has demanded quashing of the entire tender process relating to Notice Inviting Tender (for short 'NIT') dated 07.02.2024 seeking agency for outsourcing of the restaurant in Samrat Ashok Convention Centre, perhaps on the ground that the re-tender in this instance was not authorized under the Bihar Financial Rules, 1950 (As amended by Amendment Rules, 2016), particularly Rule 131J(c) thereof, which reads as hereunder:-

> *"131J(c) After evaluating the technical bids received by the purchaser department by the competent committee or authority, if only one tender remains or no tender is received in the first bid for evaluation of financial bid then re-tender shall be invited for it immediately. If after inviting re-tender also, only one tender remains for evaluation of financial bid after technical evaluation, then*

the matter will be disposed off by the authority of one level above of the competent authority".

3. The short facts for disposal of this writ petition are that for selecting a restaurateur to manage the restaurant belonging to the respondent/State, located in Samrat Ashok Convention Centre, a tender was floated attracting three participants including the petitioner and Respondent No. 6. Since their bids could not be evaluated within the validity period of the tender, the tender had to be recalled.

4. A re-tender was made vide NIT dated 07.02.2024 in which only the petitioner and Respondent No. 6 participated. Since the petitioner was found to be technically unresponsive, Respondent No. 6 remained the sole person who cleared the technical evaluation and the agreement was concluded with him after his financial bid was evaluated and found to be responsive.

5. The learned Senior Counsel for the petitioner submits that in this instance also, with only Respondent No. 6 having remained in the fray, the NIT ought to have been recalled and a fresh tender was required to be issued.

6. The condition under Rule 131J(c) for selecting even a single bidder in the re-tender gets attracted only if in the first tender, no bidder appears or only one bidder remains in the fray and not in every case of re-tender.

7. In the present case, Mr. Lalit Kishore, learned Senior Advocate has argued that the first tender could not be brought to logical conclusion for the reason of expiry of the validity period before which the bids could not be evaluated. Thus, for all practical purposes, the re-tender dated 07.02.2024 was a fresh tender and, therefore, in this instance, if only one bidder remained in the fray after technical evaluation, the contract should not have been concluded with him; rather this procurement of service should have been subjected to a further re-tender.

8. Mr. Mrigank Mauli, learned Senior Advocate has raised a preliminary objection to the maintainability of the writ petition; not perhaps on the issue raised by the petitioner but primarily on the conduct of the petitioner. He has pointed out that the Technical Evaluation Committee found the bid of the petitioner to be unresponsive on 05.07.2024. The petitioner was permitted to file his

objection within a period of seven days. No objection was filed by him till 12.07.2024 i.e. till the expiry of seven days. The financial bid of the Respondent No. 6 was then sent to the Departmental Tender Committee on 18.07.2024 with Respondent No. 6 as the sole bidder. On 17.10.2024, the Departmental Tender Committee found Respondent No. 6 to be the highest bidder. He was then directed to deposit Rs. 3,21,550/- as advance rent.

9. The petitioner but had been serving as the restaurateur earlier.

10. He was asked by the authorities to vacate the premises in favour of Respondent No. 6.

11. The petitioner then filed a writ petition vide CWJC No. 17150 of 2024 challenging the direction to him to vacate the leased premises in favour of Respondent No. 6, but did not elect to implead Respondent No. 6. The writ petition was filed without the necessary averment of the petitioner having participated in the tender process and having been found unsuccessful at the technical stage itself. However, the petitioner, it has been argued, was able to procure a stay order on 13.11.2024. When Respondent No.

6 came to know of this, an Interlocutory Application was filed by him in the aforenoted writ petition (CWJC No. 17150 of 2024) seeking his impleadment as an intervenor, which was allowed and ultimately the writ petition was dismissed on 20.03.2025. The petitioner, it has further been argued, did not even readily agree to make payments of the rental dues against him.

12. The present writ petition was filed on 08.04.2025 and on the very next day, an MJC petition was filed by the petitioner for modification of the order dated 20.03.2025 passed in CWJC No. 17150 of 2024 to the extent of seeking extension of time for vacating the premises and modification of the direction with regard to the arrear rental demand by the respondent authorities.

13. That MJC application was not filed with all the documents and hence, it was listed for 'Orders on Office Notes' for removal of defects. The Respondent No. 6 appeared in that MJC *suo motu*.

14. It was only on 20.04.2025 that the premises was vacated and handed over to Respondent No. 6, as directed by the Writ Court. The MJC petition, referred to

above, has not yet been listed before the Court, which in all its probability, has lost its force and has become infructuous.

15. The second of the arguments advanced on behalf of the Respondent No. 6 is that Rule 131J(c) of the Bihar Financial Rules, 1950 is with respect to adopting a ‘Two bid system’ for purchasing high value plant, machinery etc. of a complex and technical nature and not for procurement of service or outsourcing of the agency for running a restaurant which is covered by Rule 131U, which deals with procurement of services.

16. Even otherwise, it has been submitted on behalf of Respondent No. 6 that it may not be necessary that only in such cases of re-tender, which has been necessitated because of only one bidder remaining in fray in the first tender, would there be any requirement of recalling the re-tender for the reason of one bidder remaining in fray. What he harps upon is that in all cases of re-tender, for whichever reason, the authorities would be perfectly within their rights to go for concluding the contract even if there is one bidder in the fray, who passes the muster of technical and financial

requirements.

17. Contending the aforenoted argument, Mr. Lalit Kishore submitted that the facts narrated by Respondent No. 6 is more in the nature of an *ad hominem* attack on his person, but the interpretation given of Rule 131J(c) of the Bihar Financial Rules, 1950 is not acceptable for the reason that the words used in the Rules are absolutely clear that only in the event of a re-tender because of the first tender not attracting any bidder or only one bidder remaining in the fray, the authorities could go for finalizing the tender with the sole bidder in the re-tender. Not in every case of re-tender would this liberty be available with the respondents/department for concluding the contract with a single bidder.

18. There could be instances, Mr. Lalit Kishore, argues, where on account of technical fault, a tender is withdrawn. In that event, any re-tender would more be in the nature of a fresh tender where it would not be safe to conclude the tender process even when only one bidder remains in the fray.

19. After having heard the learned counsel for the

parties, we find that the petitioner had been running the restaurant on behalf of the Government for the last several years. In the tender process which was conducted, the petitioner could not succeed because he was found to be technically unresponsive. He did not raise any objection with respect to the decision of the Technical Evaluation Committee within the window provided to him. It was only after nine months that the entire process was challenged on the plea of violation of Rule 131J(c) of the Bihar Financial Rules, 1950, which may not be permissible.

20. The petitioner having participated in the tender process and having been declared technically unresponsive, cannot turn around and challenge the very process on the ground that in the re-tender, single bidder’s paper ought not to have been accepted. He had the occasion to raise his objection within seven days of the opening of the technical bid which he did not.

21. Apart from this, we find that the conduct of the petitioner has been, all through, questionable. He has attempted to hoodwink the entire process of selection of the restaurateur which has only delayed the conclusion of the

contract in favour of Respondent No. 6.

22. For the reason of the conduct of the petitioner as also for the reason that Rule 131J(c) of the Bihar Financial Rules, 1950 would not strictly apply to the present case where the tender was for selecting an agency for outsourcing a restaurant, we find the writ petition to be utterly lacking in merits.

23. The writ petition is, thus, dismissed.

24. Cost easy.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

P.K.P./Avinash

AFR/NAFR	
CAV DATE	
Uploading Date	07.05.2025
Transmission Date	