

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9716 of 2025

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Balwant Construction Pvt. Ltd. having its registered office at Village Sarai, P.O. Mashoudha (Jandaha), P.S. Ramgarh, District- Kaimur, Bihar through its Director Veer Raghawan, Male, aged about 31 years, Son of Ramji Singh, Resident of New Area Jora Mandir, Dehri, P.S. Dehri Nagar, District Rohtas, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer In-Chief, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer-2, Rural Works Department (Gaya), Government of Bihar, Patna.
4. The Superintending Engineer, Work Circle- Sasaram, Rural Works Department, Government of Bihar, Patna.
5. The Nodal Officer, MMGSUY, Rural Works Department, Government of Bihar, Patna.
6. The Executive Engineer, Rural Works Department, Works Division - Bhabhua.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
Mr. Shubham Prakash, Advocate

For the Respondent/s : Advocate General

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 04-09-2025

In the instant writ petition, petitioner has prayed for the following reliefs :

“(i) Quashing of the Letter No. 701 dated 07.05.2025 (Annexure P/5) by which the Executive Engineer without any jurisdiction and contrary to



the express mandate of the Clause 27 of the Instructions to Bidders has directed the petitioner to submit the rate justification on account of having quoted seriously unbalanced rate;

(ii) Quashing of the consequential Letter No. 801 dated 29.05.2025 (Annexure P/6) by which, the Executive Engineer without any authority of law and contrary to the stipulations under Clause 31.1 and 32.1 of the ITB has issued the Letter of Acceptance with other consequential directions to furnish performance and additional performance guarantee; and

(iii) Restraining the Respondents from proceeding further and giving effect to the Letter No. 701 dated 07.05.2025 and Letter No. 801 dated 29.05.2025 during the pendency of the present writ application and/or the without the leave of this Hon'ble Court."

2. Learned counsel for the petitioner submitted that impugned action is taken by the Executive Engineer who is not the competent authority in the light of the Notice Inviting Tender read with bidding procedures, in particularly Clause 27.4 and further submitted that relevant Clause should have been with reference to 34.1 and not 17.6 of ITB. It is also submitted that time period mentioned is 21 days for certain procedure whereas that has been reduced to 15 days.

3. *Per contra*, learned Advocate General submitted that Engineer-in-Chief has requested the Executive Engineer to secure



rate justification from the petitioner *vide* communication dated 03.05.2025 (Annexure P/4). Resultantly, the Executive Engineer sought rate justification from the petitioner on 07.05.2025. The petitioner failed to submit rate justification as demanded by the Executive Engineer, thereafter, the Executive Engineer has proceeded to pass order on 29.05.2025 (Annexure P/6). Therefore, there is no infirmity in the impugned action of the respondents for the reasons that Executive Engineer has been asked to take a decision by the Engineer-in-Chief. That apart, there is public interest involved, therefore, trivial issue like whether Executive Engineer or Engineer-in-Chief takes decision, it does not matter.

4. Heard the learned counsels for the respective parties.

5. Facts are not disputed. Learned counsel for the petitioner vehemently contended that Executive Engineer is not the competent authority to take a decision in respect of rates from the petitioner and proceed to pass further consequential order, issuance of letter of acceptance *vide* communication dated 29.05.2025. It is necessary to reproduce paragraph 27.4 of the Notice Inviting Tender read with bidding procedures, it reads as under :

“27.4 If the bid, which results in the lowest Evaluated Bid Price, is unbalanced or



front loaded in the opinion of the Engineer-in-Chief -cum-Additional Commissioner-cum-Special Secretary / Engineer-in-Chief, the Engineer-in-Chief-cum Additional Commissioner-cum-Special Secretary / Engineer-in-Chief may required the Bidder to produce detailed price analysis for any or all items of the Schedule of Prices, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analysis, taking into the consideration the schedule of estimated Contract payments, the Engineer-in-chief-cum Additional Commissioner-cum-Special Secretary / Engineer – in-Chief may require that the amount of the performance security be increased as per the RCD Notification No. 447(s)-cum-Memo No.-448 (s), dated 16.01.2020 and RWD Letter No. 292 (WE) Dated 17.01.2020 at the expense of the Bidder to a level sufficient to protect the Engineer-in-chief-cum- Additional Commissioner-cum-Special Secretary / Engineer – in – chief against financial loss in the event of default of the successful Bidder under the Contract.”

6. Reading of the aforementioned Clause, it is crystal clear that certain authorities have been assigned to take necessary steps or procedures. One of the official is Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary / Engineer-in-Chief. Therefore, there is no reference to Executive Engineer. On



the other hand, it is to be noted that Engineer-in-Chief should have taken *suo motu* action insofar as seeking rate justification from the petitioner. On the other hand, he has asked the Executive Engineer to take rate justification from the petitioner. Consequently, Executive Engineer sought information from the petitioner relating to rate justification. For having not furnished rate justification, the Executive Engineer had taken a decision in respect of letter of acceptance on 29.05.2025. In the light of these facts and circumstances, it is crystal clear that Executive Engineer is not the competent authority to seek justification of rate from the petitioner and further passing letter of acceptance. The Hon'ble Supreme Court has held that if authority has been assigned a particular duty or a role, he alone is required to exercise such powers. If there is any deviation, one has to draw inference that incompetent authority has passed order. The Hon'ble Supreme Court in the case of ***Dharani Sugars and Chemicals Ltd. vs. Union of India*** reported in (2019) 5 SCC 480, Paragraph Nos. 47 and 53, it is held as under :

“47. Section 35-AA makes it clear that the Central Government may, by order, authorise RBI to issue directions to any banking company or banking companies when it comes to initiating the insolvency resolution process under the provisions of the Insolvency Code. The first thing to be noted is that without such authorisation, RBI would have no such



power. There are many sections in the Banking Regulation Act which enumerate the powers of the Central Government vis-à-vis the powers of RBI. Thus, Section 36-ACA(1) provides as follows:

“36-ACA. Supersession of Board of Directors in certain cases.—(1) Where Reserve Bank is satisfied, in consultation with the Central Government, that in the public interest or for preventing the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or any banking company or for securing the proper management of any banking company, it is necessary so to do, Reserve Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of such banking company for a period not exceeding six months as may be specified in the order:

Provided that the period of supersession of the Board of Directors may be extended from time to time, so, however, that the total period shall not exceed twelve months.”

This Section makes it clear that RBI's satisfaction in superseding the board of directors of banking companies can only be exercised in consultation with the Central Government, and not otherwise.

53. *A conspectus of all these provisions shows that the Banking Regulation Act specifies that the Central Government is either to exercise powers along with RBI or by itself. The role assigned, therefore, by Section 35-AA, when it comes to initiating the insolvency resolution process under the Insolvency Code, is thus, important. Without authorisation of the Central Government, obviously, no such directions can be issued.”*



The Hon'ble Supreme Court in the case of ***Avtar Singh and Another vs. State of Bihar*** reported in (2023) 18 SCC 717, in paragraph Nos. 13 to 16, it is held as under :

13. The facts in the case as noticed above as such, are not in dispute. The only argument raised is about the power of the person who had seized cylinder on the basis of which the appellants were prosecuted. Clause 7 of the Order, which is reproduced hereunder, prescribes officers who have the power.

“7. Power of entry, search and seizure.—(1) an officer or the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by Central Government or any officer not below the rank of a Sales Officer of an Oil Company, or a person authorised by the Central Government or a State Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this order, for the purpose of satisfying herself that this order or any order made thereunder has been complied with:

(a) Stop and search any vessel or vehicle which the Officer has reason to believe has been, or is being or is about to be, used in the contravention of this order;

(b) Enter or search any place with such aid or assistance as may be necessary;

(c) Seize and remove with such aid or assistance as may be necessary, the entire quantity of any stock of liquefied petroleum gas in cylinders, cylinder valves and pressure regulators, along with the vehicles, vessels or any other conveyances used in carrying such stock if he has reason to suspect that any provision of this order



has been or is being or is about to be, contravened in respect of such stock and thereafter take or authorise the taking of all measures necessary for securing the production of the stock of liquefied petroleum gas in cylinder, cylinders, gas cylinder valves, pressure regulators, vehicles, vessels or other conveyances so seized before the Collector having jurisdiction under the provisions of section of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production....”

14. It nowhere prescribes that a Sub-Inspector of the Police can take action. No doubt, the aforesaid clause provides that in addition to the specified officers, the persons authorised by the Central or State Government may take action under the Order. However, nothing has been placed on record to support the argument that the Sub-Inspector of Police was authorised to take action under the aforesaid Order.

15. It is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden. Reference can be made to Dharani Sugars & Chemicals Ltd. v. Union of India [Dharani Sugars & Chemicals Ltd. v. Union of India, (2019) 5 SCC 480]

16. In the absence of the authority and power with the Sub-Inspector to take action as per the Order, the proceedings initiated by him will be totally unauthorised and have to be struck down.”

In yet another case namely ***Captain Sube Singh vs. Lt.***

Governor of Delhi reported in **(2004) 6 SCC 440**, Paragraph No.

30, the Hon’ble Supreme Court held as follows :

“30. The contention of the respondents is that the power to enforce the binding nature of the concessional passes issued by DTC on the private stage carriage operators



can be spelled from the provisions of Section 67(1)(d) of the Act. In our view, such a power cannot be subsumed under the powers of the State Government to fix fares and freights for stage carriages having regard to the desirability of preventing uneconomic competition among holders of permits. Permit condition 13 merely stipulates that the permit-holder shall ensure that concessional passes issued to various sections authorised for these buses shall be honoured. The authorisation has to come from STA. In other words, only concessional passes which are authorised by STA would be binding on the operators. We see no power in Section 67(1)(d) of the Act or otherwise by which a concessional pass issued by DTC could be made binding upon private stage carriage operators, particularly when there was no such condition imposed in the permit issued. Hence, we are of the view that paragraph 3(b) of the impugned notification is clearly ultra vires the powers of the State Government under Section 67 of the Act and, therefore, liable to be quashed and set aside.”

7. Taking note of the principles laid down by the Hon’ble Supreme Court, the Executive Engineer is not authorized under this Notice Inviting Tender read with bidding procedure, therefore, petitioner has made out a case. Accordingly, Letter No. 701 dated **07.05.2025** (Annexure P/5) and Letter No. 801 dated **29.05.2025** (Annexure P/6) are set aside. Writ petition stands allowed.

8. At this stage learned Advocate General relies on definitions of contracts and interpretation. It reads as follows :

“The Employer is the party who employs the Contractor to carryout the Work and Services. The



Employer may delegate any or all functions to a person or body nominated by him for specified functions.”

Therefore, the Executive Engineer is the competent authority. It is to be noted that by virtue of communication dated 03.05.2025, on behalf of the Engineer-in-Chief, he has delegated the power to the Executive Engineer to secure detailed rate of justification. So limited delegation is only for securing details of rate of justification from the petitioner. In that event, it is restricted in seeking detailed rate of justification from the petitioner, the Executive Engineer should have remitted back to the Engineer in Chief for issuance of letter of acceptance, therefore, there is no delegation to the Executive Engineer by the Engine-in-Chief insofar a passing order relating to letter of acceptance. Accordingly, aforementioned contention stands rejected, reserving liberty to ensure the competent authority to take action strictly in accordance with law.

(P. B. Bajanthri, ACJ)

(Alok Kumar Sinha, J)

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	11.09.2025
Transmission Date	

