IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12358 of 2025

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Marcom Infra Pvt. Ltd. At Ranjan Complex, Mohalla, Naya Tola, Bari Road, P.O.-Bankipur, P.S.-Kadamkuan, District-Patna-800004, through its Director, Amrendra Kumar Sharma, Male aged about 59 Years, Son of Thakur Singh, Resident of House No. 456, Nehru Nagar, P.O. and P.S.-Patliputra, District-Patna (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
3. Chief Engineer, Minor Water Resources Department, Bhagalpur (Bihar).
4. Superintending Engineer-Cum-Technical Secretary, Minor Water Resources Department, Bhagalpur (Bihar).
5. Superintending Engineer, Minor Irrigation Circle, Bhagalpur (Bihar).
6. Executing Engineer, Minor Irrigation Division, Bhagalpur (Bihar).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Sr. Advocate Mr. Harsh Vardhan, Advocate Mr. Samsher Prasad, Advocate Mr. Harsh Raj, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General Mr. Vikas Kumar, Advocate

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

Date: 11-09-2025

Heard the parties

2. The petitioner in the present writ application seeks the following main relief:

"I. To issue an appropriate writ / order / direction in the nature of mandamus commanding the Respondents to produce the Order passed by the Chief Engineer, Minor Water Resources Department, Bhagalpur, by which the Tender ID No. 87466 (construction of Manikpur Khurd Weir, Construction of Manikpur Buzurg Weir and construction of Belthu weir and construction of Majrohi Weir (Group 05)) and Tender ID No. 87471 (construction of Hasanpur Weir, Construction of Pariyak Checkdam, and construction of Dobhi Rangania Checkdam (Group-08)) of NIT No. 03/2024-25 issued by the Executive Engineer, Minor Irrigation Division, Bhagalpur, in which the petitioner has been declared L-1, have been cancelled for no reason and then to issue a writ of certiorari for quashing the said Order.

II. To issue an appropriate writ / order / direction in the nature of mandamus commanding the respondents to issue letter of intent and work Order in favour of the petitioner of Tender No. 03/2024-25/MID/Bhagalpur-Group-5 (Tender ID 87466 - construction of Manikpur Khurd Weir, Construction of Manikpur Buzurg Weir and construction of Belthu weir and construction of Majrohi Weir) and of Tender No. 03/2024-25/MID/Bhagalpur-Group-8 (Tender ID 87471

> *- construction of Hasanpur Weir, Construction of Pariyak Checkdam, and construction of Dobhi Rangania Checkdam), as the petitioner in the financial bid has been declared L-1 (Lowest Tenderer)."*

3. Learned counsel for the petitioner submits that the petitioner is a private limited company represented through its Director, Shri Amrendra Kumar Sharma. Pursuant to the NIT dated 29.11.2024, the petitioner submitted its bids for Group-5 (Tender ID 87466 – relating to construction of Manikpur Khurd Weir, Manikpur Buzurg Weir, Belthu Weir and Majrohi Weir) and Group-8 (Tender ID 87471 – relating to construction of Hasanpur Weir, Pariyak Checkdam, and Dobhi Rangania Checkdam).

4. Learned counsel states that the petitioner duly deposited the earnest money, tender fee, and processing charges in respect of both groups. After evaluation of technical bids by the Tender Evaluation Committee in its meeting dated 04.02.2025, the petitioner was found technically qualified in both groups. True copies of the decisions of the Committee have been placed on record as Annexure-P/4. It is further contended that the financial bids were thereafter opened, and in both groups the petitioner was declared the lowest tenderer (L-1). The decision of the financial bid was duly uploaded on the official website and was also downloaded by the petitioner on 22.07.2025.

5. It is the case of the petitioner that despite having been declared L-1, he received e-mails dated 23.07.2025 (Annexure: P7 and P7/A) from the department stating that he stood disqualified in cover-2 evaluation for both Tender ID 87466 and Tender ID 87471. Learned counsel points out that the impugned communications did not disclose any reason for such disqualification or cancellation. It is argued that cancellation of the tender process, after the technical and financial bids had been opened and the lowest bidder identified, is wholly arbitrary, violative of the principles of natural justice, and contrary to the petitioner's legitimate expectation of award of contract.

6. Learned counsel further submits that immediately upon receipt of such e-mails, the petitioner addressed detailed representations on 23.07.2025 (Annexure: P8 and P8/A) to the departmental Minister as well as the Principal Secretary, requesting that the letter of intent and work order be issued in his favour. However, no action was taken on such representations. It is the specific stand of the petitioner that the respondents have purportedly invoked Clause 40 of the NIT as well as Rule 159(6) of the Bihar PWD Code, but both provisions have been misapplied. According to the petitioner, Clause 40 pertains to situations prior to completion of the tender process, whereas in the present case the process had already culminated in declaration of the petitioner as L-1. Likewise, Rule 159(6) cannot be resorted to after completion of the entire exercise and declaration of the lowest bidder.

7. It is further alleged that the action of the respondents is mala fide, being motivated only to benefit favoured contractors, and is in clear violation of Articles 14 and 19(1)(g) of the Constitution of India. Learned counsel submits that arbitrary cancellation of tenders without disclosing reasons undermines transparency in public contracts, is against public policy, and amounts to denial of equal opportunity in State contracts.

8. The petitioner has filed an interlocutory application seeking amendment in the relief portion of the writ petition to challenge the re-tender bearing NIT No. 06/25-26 dated 13.08.2025, issued by the Executive Engineer, Minor Irrigation Division, Bhagalpur, for the same works in which the petitioner had earlier been declared the lowest bidder pursuant to NIT No. 03/2024-25. The petitioner contends that since the earlier tender was cancelled without assigning reasons and therefore, the impugned re-tender, annexed as Annexure-P/9, is also arbitrary and illegal.

9. Learned counsel appearing for the respondent no. 6 has filed a detailed counter affidavit controverting the statements and averments made in the writ petition. It has been submitted that certain foundational facts necessary for the adjudication of the present matter deserve to be noticed at the very outset. It has been brought on record that the petitioner participated in the tender process pursuant to NIT No. 03/2024-25, pertaining to Tender ID No. 87466 and 87471, relating to Group No. 5 and Group No. 8. It has been stated that the petitioner, along with other bidders, was declared technically qualified in respect of both the groups, and their financial bids were subsequently opened. The petitioner was found to be the lowest bidder (L-1) in both the groups.

However, learned counsel for the respondent no. 6 has drawn the attention of this Court to Paragraph No. 7 & 10 of the Counter Affidavit wherein it has been stated that the rates quoted by the bidders were not competitive and that the bidders appeared to have acted in concert and submitted their bids by forming a cartel. In view of the same, the Departmental Tender Committee (DTC) resolved to cancel the tender process, placing reliance on Clause 159(vi) of the Bihar PWD Code as also Clause 40 of the NIT, which empower the authority to cancel the tender at any stage if the circumstances so warrant. A photocopy of the proceedings of the Departmental Tender Committee (DTC) dated 21.07.2025 has been annexed as Annexure R-6/A series to the counter affidavit.

10. It has further been contended that the representation filed by the petitioner subsequent to the cancellation of the tender process is not liable to be entertained in view of the categorical findings recorded by the Departmental Tender Committee (DTC). The learned counsel has emphasized that no vested right accrues in favour of a bidder merely by being declared the lowest bidder, and the competent authority reserves the right to cancel the process in terms of the governing provisions of law and the conditions of the NIT itself.

11. Responding to the allegations made in the writ petition, it has been contended that the cancellation of the tender cannot, by any stretch, be said to be arbitrary or violative of Articles 14 or 19 of the Constitution of India, as alleged by the petitioner. Rather, the decision has been taken in accordance with the statutory provisions and the governing terms of the NIT. The counter affidavit concludes with the assertion that the action of the respondents is fully sustainable in law, that no prejudice has been caused to the petitioner, and that the writ petition deserves to be dismissed.

12. In rejoinder to the counter affidavit filed on behalf of the respondents, the petitioner has submitted that the allegation of cartelisation is wholly unfounded and without any material on record and thus cannot be sustained on mere presumptions or conjectures. The petitioner has placed on record the details of the financial bids in respect of Tender ID Nos. 87466 (Group–5) and 87471 (Group–8), to demonstrate that four different bidders, all private limited companies with distinct entities, had participated and quoted varied rates, thereby evidencing fair and competitive bidding.

13. The petitioner has further urged that the impugned cancellation orders dated 21.07.2025 (Annexure-R6/A series) make no reference to the ground of non-competitive rates.The petitioner has also highlighted instances of inconsistency in the respondents' approach by pointing out that in NIT No. 03/2024-25 (Group–3), a tender was awarded to one Arvind Kumar at 0.70% below the estimated cost, and in NIT No. 01/2024-25, work was allotted to one Sanjay Kumar at 0.50% below the estimated cost, in both cases without any allegation of non-competitiveness or cartel formation. The petitioner asserts that its case stands on a stronger footing as there was genuine competition amongst four bidders.

14. Lastly, the petitioner has placed reliance on the judgment of the **Hon'ble Supreme Court in Eva Agro Feeds Pvt. Ltd. v. Punjab National Bank & Anr., (2023) 10 SCC 189**, to contend that even where a disclaimer clause existed, cancellation of the tender process without assigning reasons has been disapproved. It is submitted that the ratio squarely applies to the present case.

ISSUES IN QUESTION:

Upon consideration of the pleadings of the parties and the submissions advanced on their behalf, the following issues arise for determination in the present writ petition:

1. Whether the cancellation of the tender process initiated under NIT No. 03/2024-25 was issued without assigning any reason? If so, whether such cancellation is still legally sustainable in view of Clause 40 of the NIT and Rule 159(vi) of the Bihar PWD Code, particularly in light of the fact that the petitioner was declared the lowest bidder (L-1)?

2. Whether the cancellation of the tender process by DTC based on the apprehension of existence of cartelization and non-competitive bidding constitutes a valid ground for annulment of the tender?

3: Whether, and to what extent, this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, is empowered to interfere with decisions of the tendering authority in matters which are essentially administrative and contractual in nature?

4. Whether the action of the respondents in cancelling the petitioner's tender, while awarding similar tenders at comparable or lower rates to other bidders, suffers from arbitrariness and discrimination so as to offend Article 14 of the Constitution of India?

5. Whether the petitioner is entitled to challenge, by way of amendment, the subsequent re-tender bearing NIT No. 06/25-26 dated 13.08.2025 issued for the same works, and whether such re-tender can be sustained in law?

FINDINGS:

ISSUE 1. Whether the cancellation of the tender process initiated under NIT No. 03/2024-25 was issued without assigning any reason? If so, whether such cancellation is still legally sustainable in view of Clause 40 of the NIT and Rule 159(vi) of the Bihar PWD Code, particularly in light of the fact that the petitioner was declared the lowest bidder (L-1)?

Learned counsel for the petitioner has urged that the cancellation of the tender process is unsustainable in law, as no reasons were communicated despite the petitioner having been declared L-1 in both groups of the tender. In rebuttal, the counter affidavit filed on behalf of Respondent No. 6 makes it abundantly clear that the petitioner's application has been cancelled on account of the apprehension of cartelisation amongst the bidders and the consequential risk of loss to public funds. Therefore, the contention of the petitioner that no valid reasons were communicated in relation to the cancellation of the tender process initiated under NIT No. 03/2024-25 is rendered wholly untenable and devoid of merit.

Even if the reasons were not communicated properly as to why the tender of the petitioner has been cancelled, this Court finds substance in the contention advanced on behalf of the respondents that the cancellation of the tender process initiated under NIT No. 03/2024-25, even after the petitioner had been declared as the lowest bidder (L-1), is legally sustainable in view of Clause 40 of the NIT and Rule 159(vi) of the Bihar PWD Code. The jurisprudence on this point is well settled. In ***State of Jharkhand v. CWE-Soma Consortium (2016) 14 SCC 172***, the Hon'ble Supreme Court authoritatively held that so long as a formal letter of acceptance has not been issued, no bidder acquires a vested right merely by being declared the lowest bidder. At paragraph 13, the Court categorically observed:

> *"The appellant-state was well within its rights to reject the bid without assigning any reason thereof. This is apparent from clause 24 of NIT and clause 32.1 of SBD which reads as under:-*
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> *Clause 24 of NIT: "Authority reserves the right to reject any or all of the tender(s) received without assigning any reason thereof." Clause 32.1 of SBD: "...the Employer reserves the right to accept or reject any Bid to cancel the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer's action."*

The reliance placed by the petitioner on **Eva Agro Feeds Pvt. Ltd. v. Punjab National Bank (2023) 10 SCC 189** is misplaced. In that case, the Apex Court found fault with the cancellation of an e-auction where the successful bidder had already acquired a vested right upon being declared the highest bidder, and the cancellation was effected under a disclaimer clause without reasons. However, the factual context herein is distinct. In the present case, the process had not culminated in any award of work or issuance of letter of acceptance, and thus no enforceable right had crystallized in favour of the petitioner. Moreover

Respondent No.6 has taken note of Clause 40 of NIT read with Rule- 159(6) of the Bihar PWD Code.

Therefore, so far as the plea of absence of reasons is concerned, the Court is of the view that once the NIT itself reserves power to cancel without assigning any reason, the action cannot be faulted solely on that ground. The Court cannot sit in appeal over the administrative decision of the Government unless malafides or patent arbitrariness are established, neither of which is made out in the present case.

Accordingly, this Court holds that the cancellation of NIT No. 03/2024-25, despite the petitioner being L-1, was within the lawful discretion of the respondents, duly supported by Clause 40 of the NIT and Rule 159(vi) of the Bihar PWD Code, and cannot be interfered with under Article 226 of the Constitution.

ISSUE 2. Whether the cancellation of the tender process by DTC based on the apprehension of existence of cartelization and non-competitive bidding constitutes a valid ground for annulment of the tender?

This Court now proceeds to examine the question as to whether the apprehension of existence of cartel formation and non-competitive bidding, in the absence of cogent material or specific findings in the cancellation order, can constitute a valid ground for annulment of the tender. It is a settled principle of law that the State and its instrumentalities, while discharging public functions in the contractual sphere, are trustees of public funds, and hence are under an obligation to ensure that public works are awarded in a manner that secures transparency, competitiveness, and value for the public money.

It is well established in public procurement jurisprudence that (i) a tendering authority is the trustee of public funds and is under a duty to ensure transparency, competitiveness and value for money in the award of public contracts; (ii) participation in a tender or even being declared the lowest bidder does not confer a vested right on a bidder until a formal acceptance/award is made; and (iii) authorities entrusted with procurement enjoy a measure of administrative and commercial discretion to cancel, annul or re-tender where, in their bona fide judgment, the public interest or the integrity of the process so requires.

In the Counter Affidavit filed by Respondent No.6, in paragraph 7 & 10 of the said affidavit, it has been clearly stated that the rates quoted by the bidders were non competitive and that the bidders appeared to have acted in concert and submitted their bids by forming a cartel; the DTC thereupon invoked Clause 40 of the Notice Inviting Tender and Rule 159(vi) of the Bihar PWD Code and cancelled the tenders for Group-5 and Group-8. It is not in dispute that:

(a) the financial bids were opened and the petitioner emerged as L-1,

(b) no formal letter of acceptance or contract had been issued to the petitioner prior to cancellation, and

(c) the DTC's minutes have been placed on record (Annexure-R-6/A series).

The petitioner's rejoinder points to the numeric spread of bids (for Group-5: petitioner at 0.54% below estimate and L-2 at 0.11% below estimate; for Group-8: petitioner at 0.56% below estimate and L-2 at 0.51% below estimate) and contends that these figures demonstrate genuine competition and negate any presumption of cartelisation.

Viewed against these facts, the Respondent's action must be assessed on two planes. Firstly, whether the Respondent had a reasonably arguable basis to suspect lack of competitiveness/cartelisation so as to trigger the power to cancel; and secondly, whether the manner and purpose of exercising that power were bona fide and not arbitrary or discriminatory. The Respondent's apprehension regarding existence of cartelization which led to the DTC cancelling the tender process, constitutes a valid ground that the decision was not an ex-post facto afterthought. The authority's duty to guard the public exchequer and to promote effective competition may, in a proper case, justify cancellation where there is a real risk that the process will not yield value for money or that collusive bidding has vitiated competitive pricing. Numerical closeness of quoted rates, while it may be explicable by normal market conditions, can also be a pointer (in the authority's view) to parallelism in bidding; whether the DTC's view was justified is essentially an administrative judgment, amenable to challenge in this Court only if shown to be palpably unreasonable or mala fide.

Applying the foregoing principles to the record before this Court, the apprehension of cartelisation and non-competitive bidding as pleaded by the Respondents constitute a legally cognizable ground for annulment of the tender, provided the authority acted bona fide and within the four corners of the tender conditions (Clause 40) and Rule 159(vi). On the present facts — where no contract had been admittedly awarded, the Respondents have contemporaneously recorded their apprehension and the cancellation was effected under express contractual/statutory powers the decision to annul the tender is a valid exercise of administrative discretion. That said, such a decision cannot rest on mere conjecture; if the petitioner is able to demonstrate that the Respondents action was founded on extraneous motives, patent irrationality or arbitrary discrimination, this Court would be obliged to intervene. In short: an apprehension of cartelisation and non-competitive bidding, if bona fide, can justify cancellation; absent such bona fides, cancellation would be susceptible to judicial review. The petitioner in the present case has completely failed to bring on record any document or material to establish that the annulment of the tender was accentuated for malafide reasons.

In light of the above observations, this Court holds that the apprehension of cartel formation and lack of competitiveness, even if not detailed with extensive findings in the cancellation order, can nonetheless constitute a valid ground for annulment of the tender, provided the same is exercised in good faith and within the framework of Clause 40 of the NIT. The absence of a concluded contract and the wide discretion vested in the tendering authority further fortify the respondents' action in the present case.

However, while holding as above, we are cognizant of two judgments of the Hon'ble Apex Court delivered in **Excel Crop Care Limited vs. Competition Commission Of India & Anr (2017) 8 SCC 47** and **Rajasthan Cylinders & Containers**

Ltd. vs. Union Of India (2020) 16 SCC 615 wherein it has been held that parallel pricing simpliciter would not lead to the conclusion that there was a concerted practice and that there has to be other credible and corroborative evidence to show that there exists a cartel formation between the bidders.

In our humble view , these two judgments of the Hon’ble Apex Court will not apply to the facts of the present case and are distinguishable as follows:

(i) In **Excel Crop Care (Supra),** there was a statutory adjudication under the Section 3 of the Competition Act, 2002, by the CCI after full-fledged investigation, appeal before COMPAT, and scrutiny by the Supreme Court. The finding of cartelisation was backed by evidence and statutory mandate.

In the present case, the Departmental Tender Committee (DTC) merely exercised its administrative discretion under Clause 40 of the NIT and Rule 159(vi) of the Bihar PWD Code to cancel the tender process based on an apprehension that the quoted rates were “non-competitive” and appeared collusive.

Here’s a detailed comparison between Excel Crop Care Ltd. v. CCI and the present case, highlighting why the two are distinguishable and why the said judgment doesn’t apply to the present facts and circumstances.

Aspect	Excel Crop Care Ltd. v. CCI	Present Case
Legal Framework	Competition Act, 2002 (Sections 3 & 27) – adjudication by CCI.	Clause 40 of NIT & Rule 159(vi) of Bihar PWD Code – administrative discretion.
Nature of Proceedings	Quasi-judicial inquiry by statutory regulator (CCI), appeal before COMPAT, scrutiny by Supreme Court.	Administrative decision by Departmental Tender Committee (DTC) to cancel tender process.
Standard of Proof	Cogent circumstantial evidence sufficient to establish collusion beyond reasonable doubt in competition law context.	No requirement of conclusive proof; reasonable apprehension is sufficient to invoke cancellation power under NIT.
Consequences	Penal consequences – penalty imposed on manufacturers under Section 27 of Competition Act.	Mere cancellation of tender; no penalty or adverse finding against bidders.

This court is thus of the humble view that the two situations are thus incomparable, and the findings of Excel Crop Care cannot be transplanted to the present case.

(ii) In **Rajasthan Cylinders (Supra)**, the focus was on proof of cartelisation under Competition Law, where penalties were imposed and thus high evidentiary standards were required. In the present case, the issue is not proof but apprehension — the authority is entitled to cancel tenders if it suspects non-competitive bidding, even without establishing cartelisation.

The oligopoly market context in **Rajasthan Cylinders (Supra)** explains parallel pricing, but here, with open competition possible, the DTC can legitimately cancel tenders to protect fairness.

Here's a detailed comparison between **Rajasthan Cylinders & Containers Ltd. Vs UOI** and the present case, highlighting why the two are distinguishable and why the said judgment doesn't apply to the present facts and circumstances.

Aspect	Rajasthan Cylinders Vs UOI	Present Case
Legal Framework	Competition Act, 2002 — Sections 3(3)(d) & 3(1)	Bihar PWD Code, Rule 159(vi) & Clause 40 of NIT — administrative discretion to cancel tender.
Market Structure	Oligopoly market — very few sellers (3 main manufacturers) (IOC/HPCL/BPCL) & only one major buyer	Competitive public works tender — multiple potential contractors, open competitive process invited through NIT.
Court's Reasoning	Parallel pricing alone does not prove cartelization. In an oligopoly, cost factors + buyer control naturally lead to similar bids. Proof of concerted practice is required.	No requirement to prove cartelization. Respondents can cancel tender if bids appear non-competitive or collusive. Decision is administrative,
Principle Evolved	Oligopoly principle: In markets with few suppliers and one buyer, parallel pricing is natural, not proof of collusion.	Administrative discretion principle: State can cancel tender in larger public interest without proving cartelisation.

This court is thus of the humble view that the ratio of **Rajasthan Cylinders (Supra)** is clearly distinguishable and does not apply the petitioner's case.

ISSUE 3: Whether, and to what extent, this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, is empowered to interfere with decisions of the tendering authority in matters which are essentially administrative and contractual in nature?

It is trite law that award of contracts, acceptance or rejection of tenders, and cancellation or re-tendering of public works are essentially commercial and administrative functions of the State and its instrumentalities. The scope of judicial review in such matters is narrow and circumscribed.

In ***Michigan Rubber (India) Ltd. v. State of Karnataka (2012) 8 SCC 216***, the Hon'ble Supreme Court held that the Government must have freedom of contract and is entitled to prescribe conditions ensuring competition and safeguarding public interest. The Apex court observed that:

*17) In **Jagdish Mandal vs. State of Orissa and Others, (2007) 14 SCC 517,** the following conclusion is relevant:*

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is

"sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

Likewise, in **Tata Cellular v. Union of India** reported in **(1994) 6 SCC 651**, the Hon'ble Supreme Court delineated the scope of judicial review in contractual matters, holding that:

> *"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is*

expected to protect the financial interest of the State.”.

Applying these principles to the present case, it is clear that this Court cannot re-appreciate or substitute its own view for that of the Departmental Tender Committee as to the competitiveness of the bids or the existence of apprehended cartelisation. Such decisions lie in the commercial domain of the procuring authority. The Court’s interference would be justified only if the cancellation was shown to be vitiated by mala fides, patent arbitrariness, discrimination, or absence of any rational basis.

Accordingly, this Court holds that while it does possess the power of judicial review in tender matters, the same is extremely limited and must be exercised with great restraint. The tendering authority, being custodian of public funds, is entitled to take administrative decisions in commercial prudence, and unless its action is demonstrably arbitrary or unconstitutional, this Court would not interfere.

ISSUE 4. Whether the action of the respondents in cancelling the petitioner’s tender, while awarding similar tenders at comparable or lower rates to other bidders, suffers from arbitrariness and discrimination so as to offend Article 14 of the Constitution of India?

This Court must next consider whether the respondents' action in cancelling the petitioner's tender, while awards in other tenders were made at comparable or even lower rates, manifests such arbitrariness or discrimination as would offend Article 14 of the Constitution. The law on arbitrariness and equality is well-settled: Article 14 proscribes not only unequal treatment but also action which is arbitrary in substance or effect, for "equality" and "arbitrariness" are antithetical and the latter vitiates the former.

The seminal exposition of this principle is found in E.P. Royappa v. State of Tamil Nadu, 1974 AIR 555 , where the Hon'ble Apex Court described arbitrariness as a distinct facet of Article 14 and held that action uninformed by relevant reasons and guided by whim or caprice cannot stand. That said, it is equally well established that judicial interference with administrative or contractual decisions in public procurement is limited and calls for restraint.

Applying these principles to the present factual matrix, two propositions emerge. First, a mere numerical comparison of awarded rates in distinct tenders is not, by itself, conclusive proof of discrimination. Public procurement decisions are fact-sensitive and may legitimately vary according to the particularities of each tender number of bidders, responsiveness to technical conditions, nature and scope of work, timing, market conditions, pre-qualification criteria, and other commercially relevant considerations. Absent clear evidence that identical rules were applied inconsistently to similarly placed bidders, or that a particular bidder was singled out for adverse treatment for extraneous reasons, different outcomes across different tenders do not ipso facto amount to a violation of Article 14. The Court must insist on proof of selective application or mala fides before upsetting an administrative decision.

Second, where a tendering authority acts with an articulated public-interest objective — for example, to preserve competitiveness, to guard against suspected cartelisation, or to safeguard public funds — and where the power to cancel or re-tender is conferred by the tender conditions and statutory rules, such exercise of discretion will ordinarily command judicial deference unless shown to be arbitrary or colourable.

The Supreme Court has recently condemned manifestly selective and discriminatory conduct in procurement (for instance, where a deficiency was permitted to be cured by one bidder but not by another, resulting in unequal treatment), and in such circumstances interference is justified. However, this case is distinguishable where there is no cogent material to demonstrate that the authority applied the rules selectively or acted with mala fide intent. In the instant case the petitioner has pointed to other awards at rates said to be comparable (0.70% and 0.50% below estimate) and contends that cancelling the petitioner's tender (at 0.54% / 0.56% below estimate) is discriminatory. That contention, without more, is insufficient.

The respondents have relied on Clause 40 of the NIT and Rule 159(vi) of the Bihar PWD Code and have assigned a prima facie view that the bids in the subject NIT lacked competitiveness and there was an apprehension of cartelisation — matters which, if bona fide, bear directly upon the competitiveness and probity of that particular procurement exercise. Unless the petitioner can establish by contemporaneous record or other cogent material that the respondents applied the tender conditions differently in the subject case as compared to the other contracts (for example, permitting rectification or relaxing mandatory conditions in favour of a competitor while denying the same to the petitioner), this Court ought not to infer arbitrariness merely from divergent outcomes across separate tenders. The distinction between permissible administrative discretion and forbidden discrimination is factual; the petitioner's allegation falls short of demonstrating the kind of clear fault on behalf of the respondents.

Accordingly, on the present record and in the absence of any material showing selective application of the rules, mala fide conduct, or patent inconsistency, this Court is not persuaded that the respondents' action amounts to arbitrariness or discrimination violative of Article 14. The differences in outcome vis-à-vis other tenders, without more, do not establish an equal-protection breach; judicial interference would be inappropriate in the exercise of supervisory jurisdiction under Article 226 unless the petitioner can point to contemporaneous evidence of unequal treatment or extraneous considerations.

ISSUE 5: ***Whether the petitioner is entitled to challenge, by way of amendment (I.A No 1), the subsequent re-tender bearing NIT No. 06/25-26 dated 13.08.2025 issued for the same works, and whether such re-tender can be sustained in law?***

Having upheld the annulment of tender, the challenge to Re-tender is now otiose and meaningless. Having said so, the petitioner, while seeking to challenge the re-tender, has contended that the cancellation of the earlier tender was arbitrary as no cogent reasons were communicated. However, once it is demonstrated that the cancellation and re-tender were founded upon the necessity of maintaining transparency, avoiding cartelisation, and protecting public funds, the ground of arbitrariness loses force. The Court cannot compel the State to proceed with a tender that is apprehended to be vitiated by collusive bidding, as doing so would itself compromise the constitutional mandate of fairness and equality under Article 14.

The issuance of a re-tender in the circumstances was a matter of administrative discretion, consistent with Clause 40 of the original NIT and Rule 159(vi) of the Bihar PWD Code, both of which recognise the authority's power to cancel and re-invite tenders in the larger public interest. Absent any proof of mala fides or demonstrable arbitrariness, the decision to issue the re-tender must be upheld as legally valid and within the permissible parameters of administrative law.

15. For the reasons recorded hereinabove, this Court finds no merit in the writ petition. The cancellation of the tender process initiated under NIT No. 03/2024-25, as well as the subsequent issuance of re-tender bearing NIT No. 06/25-26 dated 13.08.2025, are upheld to be within the lawful authority of the respondents and in conformity with Clause 40 of the NIT and Rule 159(vi) of the Bihar PWD Code. The apprehension of cartelisation and non-competitive bidding, being a matter directly affecting public interest and financial prudence, absent proof of malafides and arbitrariness, constitutes a valid basis for annulment of the tender. The plea of arbitrariness, discrimination, and violation of Article 14 raised on behalf of the petitioner is found to be devoid of substance as no proof of the same has been tendered. The respondents' action, viewed in the light of settled judicial principles limiting the scope of judicial review in contractual matters, cannot be said to be arbitrary or mala fide.

16. Accordingly, the writ petition, along with the interlocutory applications are dismissed. There shall be no order as to costs.

(P. B. Bajanthri, ACJ)

(Alok Kumar Sinha, J)

Prakash Narayan

AFR/NAFR	AFR
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