

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18468 of 2024

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M/s Raja Constructions through its managing partner Shyamdeo Singh,
Gender- Male, aged about 41 years, Son of Dwarika Singh, Resident of Taj
Colony, Panchayati Akhara, P.S. Town, District - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary. Road Construction Department, Visheweshraiya Bhawan, Bailey Road, Patna.
2. The Additional Chief Secretary, Road Construction Department, Visheweshraiya Bhawan, Bailey Road, Patna.
3. The Departmental Tender Committee, Road Construction Department, Patna.
4. The Engineer-in-Chief (Works Management), Road Construction Department, Visheweshraiya Bhawan, Bailey Road, Patna.
5. The Chief Engineer (South), Road Construction Department, Visheweshraiya Bhawan, Bailey Road, Patna.
6. The Technical Bid Evaluation Committee, Office of Chief Engineer (South), Road Construction Department, Patna.
7. The Superintending Engineer, Road Construction Department, Magadh Road Circle, Gaya.
8. The Executive Engineer, Road Construction Department, Road Division 1, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate

For the Respondent/s : Mr. P.K. Verma, AAG- 3

Mr. Sanjay Kumar Ghosarvey, AC to AAG- 3

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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 : 17-04-2025

We have heard Mr. Y.V. Giri, the learned Senior Advocate for the petitioner and Mr. P.K. Verma, the learned AAG- 3 for the respondents.

2. The petitioner, a partnership firm, is aggrieved by the decision of the respondents dated 06.11.2024 whereby the work of construction of Box drain cum Road on Mansarwa Nala from Ghughri Tand more to Falgu River (including Development of 5 Nos. JN, W/S of Gaya Road partly & Subrat Road (Bengali Ashram to NH-82 in Gaya District under RCD), Bihar for the year 2023-2024 has been re-tendered. Even though, in the tender, the petitioner had participated and was adjudged L-1.

3. Mr. Giri has submitted that the order of re-tender dated 06.11.2024, referred to above, is on *non est* grounds, arbitrary, unfair and mala fide for the



following reasons:

(a) the decision to re-tender is without cancelling of the earlier tender and, therefore, the same is not sustainable in law;

(b) the petitioner fulfilled all the terms and conditions of the tender, which is on the Engineering and Procurement Mode (EPC), leaving no justification for cancelling and re-tendering the work;

(c) the decision is whimsical as the reason assigned for cancellation of the earlier tender and the work being re-tendered, is not intelligible, and;

(d) no sanctity has been maintained of public interest and public-private partnership tenders as also the legitimate expectation of the petitioner/company, which was



adjudged L-1 and his rates has been exposed.

4. The respondents have submitted that the work has been re-tendered and the petitioner has participated in the fresh tender and, therefore, he cannot maintain the instant writ petition.

5. The reason why the earlier tender was cancelled was that the tender had not been floated with the standard model of EPC, 2029. Some modifications, by way of addendums, were made in the bid documents, which did not have the approval/permission of the competent authority. No sooner was this brought to the notice of the authority, the tender was cancelled.

6. The Departmental Tender Committee, after thread bare discussions, found the tender document to be different from the model bid document and, therefore, a decision was taken to cancel the bid and go for a fresh tender.

7. Some of the discrepancies in the tender



documents were in few clauses where the conditions appeared to have been relaxed in juxtaposition to the conditions in the EPC/RPF Model, 2019 of MORTH, which was adopted by Road Construction Department, Bihar.

8. It has further been submitted that the re-tender has been issued after the cancellation of the earlier tender *vide* order dated 06.11.2024. The afore-noted action has been approved the Departmental Tender Committee in its proceeding dated 29.11.2024.

9. On the submission made by the petitioner that many such contracts against RFP which were not exactly on the EPC, 2019 Model were allowed to be continued, Mr. Verma, the learned AAG- 3 has submitted that there was no justification for committing the same error only on the ground of earlier errors in floating the tenders were not noticed.

10. Some of the tenders, about which reference has been made in the writ petition, went unnoticed and, therefore, they were continued. No sooner



the respondents/authorities found that the conditions in the instant RFP were more relaxed than the model RFP, a decision was taken to cancel the tender and float a fresh tender.

11. The learned AAG-3 has further informed this Court that this particular tender is not the solitary instance where cancellation order has been passed. In fact, three more tenders were cancelled on similar grounds on the same date and, therefore, it is wrong for the petitioner to say that he has been discriminated in a hostile manner.

12. There is no doubt that public tenders are the cornerstone of governmental commercial processes, which must be transparent, competitive and fair, but on the principle of legitimate expectation, an RFP with technical fault cannot be allowed to remain afloat for inviting bidders as it would be unfair to others.

13. The petitioner has not been proscribed from participating in the fresh tender. Though the



petitioner was adjudged L-1 in the earlier tender, but a fresh exercise would require fresh submission of rates, which would be competitive.

14. The decision to cancel the tender has been taken before the contract was signed with the petitioner. A specific reason has been assigned by the respondents to cancel the contract. The reason cannot be called *non est* if the RFP contained relaxed conditions than permissible standards. It would not be in furtherance of public policy not to cancel such tenders on technical faults, which would have had, if allowed to be continued, serious consequences of loss of revenue or lack of stringency to ensure that the work is completed and all and sundry may not remain in the fray.

15. The cancellation of tender and floating of a fresh one cannot be said to be, in the afore-noted circumstances, an act of resiling from its promise by the State.

16. No good reason has been assigned for



us to interfere in the matter.

17. The petition is dismissed.

18. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.04.2025
Transmission Date	NA

