

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18926 of 2024

=====

Hemant Kumar Singh Son of Late Shiv Mangal Singh, resident of Shivpuri,
P.S. Buxar Town, District- Buxar, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Engineer in Chief, (Work Management), Road Construction Department, Government of Bihar, Patna.
3. The Chief Engineer, (South), Road Construction Department, Government of Bihar, Patna.
4. The Superintending Engineer, Central Road Circle, Road Construction Department, Patna.
5. The Executive Engineer, Patna City Road Division, Road Construction Department, Gulzarbagh, Patna, Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
For the Respondent/s : Mr. Vikas Kumar, Advocate

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 19-04-2025

Heard Mr. Prabhat Ranjan, the learned Advocate

for the petitioner and Mr. Vikas Kumar, the learned

Advocate for the State.

2. The petitioner had participated in the NIT

issued by the respondent for widening and strengthening

of road in Patna City Road Division in which he was



declared technically successful. However, later, the work was re-advertised vide NIT No. RCD/02/EPC/Patna City/2023-24 (re-tender) on 22.01.2024 but this order of re-tender was under the signature of an Executive Engineer and not the Departmental Tender Committee, which is not permissible.

3. The contention on behalf of the petitioner is that he had disclosed his rates in the bid papers and was found to be technically responsive. A re-tender without any valid reason has only exposed his lowest rate on which he could work.

4. The other contention raised on behalf of the petitioner is that according to the PWD Code and the revised Rule 291A, a Departmental Tender Committee under the Chairmanship of the Secretary of the Department with the Engineer-in-Chief and the Chief Engineer of the concerned Zone and Internal Financial Advisor of the Department as the members, would only be vested with the powers to decide all tenders for which



power has not been given to any other authority in the Code.

5. The petitioner has pointed out that when the re-tender which was advertised for the reason of the earlier tender not being in the prescribed model, was challenged by the petitioner, the Departmental Tender Committee was hurriedly convened and the decision by the Executive Engineer (respondent No.5) was approved *ex post facto*, which is not permissible.

6. In support of his contention, the learned Advocate has pointed out that the Supreme Court in **Sunny Abraham v. Union of India and Anr. (2021) 20 SCC 12** has clarified that if the power vested with an authority is qualified to the extent that the order passed by that authority has to have a prior approval of the higher authority, such decision without the prior approval of the higher authority cannot be ratified *ex post facto*.

7. However, what can be easily noticed is that



when such a power is not qualified with any requirement of prior approval, *ex post facto* approvals of such decision by a subordinate authority would not *per se* be illegal.

8. Adverting again to the arguments raised on behalf of the petitioner and from perusal of the revised Rule 291A, it appears that the power to cancel a tender is vested with Departmental Tender Committee, which more often and not, is headed by the Departmental Secretary and the Departmental Engineer-in-Chief and Chief Engineer. In that case and in the event of such power of cancellation not being vested with any other authority, it shall vest with the Departmental Tender Committee. In the present case, because of the first tender for work not being in the same format/ model, notwithstanding the fact that the aforesaid first NIT attracted many bidders, all of whom were declared to be technically responsive, a re-tender was directed initially under the signature of the Chief Engineer, which decision was later approved by the Departmental Tender Committee.



9. The communication made by the Chief Engineer also reflects that it was under the directions of the authority that the tender was being withdrawn.

10. It is difficult to accept the submission of the petitioner that the Departmental Tender Committee got activated to give *ex post facto* approval only on the filing of the instant case by the writ petitioner, which may or may not be true. It (*ex post facto* approval) would have come in usual course.

11. In the absence of any stipulation of any requirement of prior approval or of any specific proscription of no other authority, even a member of the Tender Committee, to make any decision without the prior approval of the Tender Committee, the decision of the Chief Engineer which was approved later, cannot be termed to be faulty.

12. The ground raised on behalf of the petitioner against the cancellation of the tender, *viz.*, that his rates are exposed, is no good ground, in our



estimation, for interfering with the decision of the Departmental Tender Committee.

13. The reason for our saying so is that the rates are always subject to the competitive rates offered. No doubt, a person/ bidder offers his rate which in his estimation would fetch him the work but that need not necessarily be the lowest in his estimation. The element of competition is never ruled out. It is quite different that the petitioner never chose to participate in the re-tender but that was to his own peril, on his own decision. That some other NITs, not in the same format, have been taken to logical conclusion and works have been awarded, is no ground to justify a tender in the wrong format to remain afloat, inviting tenderers.

14. It is always advantageous if such decisions are taken before the contract under a tender is awarded.

15. Thus for the reasons, which we have explained in the preceding paragraphs, we do not find any merit in the challenge posed by the petitioner against the



re-tender of the work in question.

16. There is no merit in this petition and, therefore, the same is dismissed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Bibhash/Rajesh

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.04.2025
Transmission Date	NA

