IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18904 of 2024

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M/s. Reliable Infra Services Private Limited- M/s. Trigyn Technologies Limited, a Consortium being represented through Lead Bidder namely M/s. Reliable Infra Services Private Limited, having its registered Office at 1st Floor, Kamta Ram, Sakhi Enclave, Beside Dayanand Boys School, Mithapur, Khagaul Road, P.O.- GPO, P.S. Jakkanpur, District- Patna, through its Head Business Development, namely Sri Saheel Sinha (male) aged about 35 years, son of Sri Sanat Kumar Sinha, resident of D-203 Shivam Apartment, Plot no. 14, sector 12, Dwarka, South West Delhi, P.S.- Dwarka North, District- Delhi-110078.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Additional Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Project Officer -cum- Additional Director, Urban Development and Housing Department, Government of Bihar, Patna.
5. The Special Duty Officer, Urban Development and Housing Department, Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ashish Giri, Sr. Advocate
		Ms. Riya Giri, Advocate
		Mr. Sumit Kumar Jha, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar, AC to GA-11

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

Date : 09-04-2025

Heard Mr. Ashish Giri, learned Senior Advocate for the petitioner and Mr. Prabhat Kumar, learned Advocate for the State.

2. The petitioner/Consortium, has approached this Court with a challenge to the decision of the respondents in cancelling the tender notice issued by the Urban Development and Housing Department.

3. RFP No. 1791 dated 07.03.2024 was floated for selection of agency for customization, development, implementation and maintenance of Integrated E-Governance solution using platform for delivery of Online Governance across all Urban Local Bodies of Bihar under the National Urban Digital Mission.

4. This was cancelled apparently for unavoidable/indispensable reasons.

5. Mr. Giri drew the attention of this Court to an

earlier RFP which was cancelled because of the petitioner remaining the only bidder in the fray. For the second time, when the RFP was floated, the petitioner emerged as L-1. He was called for a meeting for settling of the rates, in which meeting, he offered a concession of 3.5 percent. Despite that, the respondents took a decision of cancelling the entire tender.

6. The reasons have not been provided in the order cancelling the RFP for the second time, but it appears from the counter affidavit that the reason was the technical fault in the floating of the RFP.

7. A review of the tender by the department was made, which found that there were violations of Rule 131(O) of the Bihar Financial Rules, 1950.

8. According to the aforenoted Rule, the amount of Earnest Money Deposit (for short 'EMD') is admissible from 2 to 5 percent of the estimated cost, and based on this assumption, the EMD should have been a minimum of 2 crores. However, in the instant proposal, estimated cost had not been assessed prior to the floating of RFP and the EMD in the said tender was fixed at only 50 lakhs only, which is

violative of the provision referred to above of the Bihar Financial Rules, 1950.

9. The second ground is that for determining bid security, work experience, turn-over and rate reasonability as well as estimated cost had to be assessed. Because of lack of assessment of the estimated cost prior to the floating of the tender, the respondents contend that the issues were not correctly worked out. There is another technical flaw, namely, no prior administrative approval of the project cost. There was no approval because there was no estimation of cost. For these reasons, the Three Member Committee, constituted for the purpose of reviewing the tender, found that it was not appropriate to allow the RFP to be processed further.

10. Apart from this, Mr. Prabhat Kumar, learned Advocate for the respondent/State has pointed out that Clause 5 of the RFP clearly states that the RFP could be postponed and cancelled at any time because of the administrative reasons and no claim shall be entertained on it.

11. Mr. Giri, while assailing the aforenoted

decision of cancelling the RFP for the second time, submitted that a clear reading of the Bihar Financial Rules, 1950 would demonstrate that it is not obligatory to have a prior approval of the estimated cost, especially when the RFP is not for supply of goods but only for services.

12. The other contention raised on behalf of the petitioner is that with his rates having been disclosed and exposed, the petitioner has been put to clear disadvantage, even if he participates in the next RFP.

13. Lastly, it has been submitted that it was his legitimate expectation that contract would be awarded to him as he fulfilled all other criteria.

14. Mr. Giri has further pointed out that the respondents in other contracts of the same nature have gone for post-facto approval of the estimated cost. In this connection, it has been argued that the decision to cancel the RFP is arbitrary, whimsical and, therefore, is hostile to him.

15. In support of his arguments, Mr. Giri has shown to us a judgment of the Supreme Court in ***Subodh Kumar Singh Rathour v. Chief Executive Officer and***

***Others; 2024 SCC OnLine SC 1682**,* wherein the Supreme Court has held that the Court's power under the writ jurisdiction could be invoked in disputes even at the stage prior to the award of contract and it would not be necessary for the Courts to wait for the award of the contract for it to assess whether the decision of cancellation of the RFP in its entirety is based on sound reasons. The Supreme Court, in fact, has explained that any action under a writ jurisdiction will lie even at the stage prior to the award of a contract by the State but when such award of contract is imbued with procedural impropriety, arbitrariness, favouritism or without any application of mind. In that case, a Court may set aside the decision which is found to be vitiated for the reasons supplied not being correct.

16. At the same time, a caution has been sounded that while assessing such reasons, the Court will not substitute the same with its own decision. The space for the Courts to interfere when the tender is cancelled after the award of the contract, is for the simple reason that the sanctity of contract is always required to be maintained.

17. After having examined the records of this case,

we are of the view that the decision of the Government and the reasons for cancellation of the RFP in entirety is not arbitrary. Arbitrariness, though is easily visualized, but it is necessarily to be proved. No doubt, control of administrative discretion is necessary and it is ensured by treating such decisions to be assailable before a Court of law. But then, whether an action of cancelling the RFP is arbitrary or unfair, is to be tested on the parameters under Articles 14 and 19 of the Constitution of India.

18. In our view, if the RFP has been cancelled because of the technical fault, namely, for non-observance of the provisions contained in Bihar Financial Rules, 1950, it cannot be said to be arbitrary.

19. The RFP otherwise also appears to be non-specific and not well defined, especially when the estimated cost was not approved before the RFP was floated.

20. The reasoning that in some other contracts, the respondents had applied the principle of post-facto approval for salvaging the tender/RFP, would be no good ground to hold that in this instance when the RFP is cancelled in entirety, it would *per se* be arbitrary.

21. So far as the contention of the petitioner with respect to his rates having been exposed is concerned, that could be of some concern; but on a careful analysis, such apprehension appears to be unfounded. With the change in the estimated cost, if RFP is floated after observance of the provisions of the Bihar Financial Rules, 1950, the rates offered by the bidders would be fresh and different, in which case the petitioner would not be adversely affected because of his earlier quoted rate having been exposed. The State has to be provided with sufficient space in the joints for taking decision with respect to carrying out a tender process.

22. Nothing has been shown to us to demonstrate that there was any *mala fides* or an unnecessary quest for according favour to other bidders.

23. The petitioner was adjudged L-1 and was also called for negotiations for settling of rates. This itself demonstrates that there was every intention of the respondent to complete the process, but for the assessment, in review, of the Special Committee, in which it was found that the tender had technical fault, necessitating cancellation

of the entire tender process.

24. We do not find any merit in this petition.

25. The writ petition is dismissed.

26. Cost easy.

(Ashutosh Kumar, ACJ)

(Anjani Kumar Sharan, J)

Sujit/PKP

AFR/NAFR	NAFR
CAV DATE	NA
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