

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.19036 of 2024**

M/s Topline Infra Projects Pvt. Ltd. through its Authorized Signatory Sonu Kumar, Gender-Male, aged about 29 years, Son of Harilal Agarwal, Resident of Mill Road, Ward No.- 08, P.S. Town, District - Khagaria.

... .. 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, Seemanchal Wing, Road Construction Department, Bihar, Patna.
6. The Technical Bid Evaluation Committee, Office of Chief Engineer, Seemanchal Wing, Road Construction Department, Patna.
7. The Superintending Engineer, Road Circle, Purnea.
8. The Executive Engineer, Road Construction Department, Road Division, Kishanganj.

... .. Respondent/s

**Appearance :**

|                      |   |                                                                                                  |
|----------------------|---|--------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Y.V. Giri, Sr. Advocate<br>Mr. Anil Kumar Singh, Advocate                                    |
| For the Respondent/s | : | Mr. P.K. Shahi, Advocate General<br>Mr. Madanjeet Kumar, G.P.-20<br>Mr. Samir Kumar, AC to GP-20 |

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**CAV JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 27-08-2025**

The present petition has been filed by the petitioner under Article 226 of the Constitution of India in which the petitioner has prayed for the following relief(s):-



“(i) For quashing of the order dated 22.11.2024 contained in Letter No. 5876(E) (Annexure- P/5) whereby and whereunder the Respondent Engineer-in-Chief, (Works Management) directed the Respondent Chief Engineer, Seemanchal Wing, RCD to re-tender in connection with the work of **"strengthening and widening/ reconstruction with two lane with hard shoulder from Bahadurganj to Terhagach Road in the State of Bihar under work division of Kishanganj"** on SBD Mode.

(ii) For a direction to the respondents to award the aforesaid work in favour of the petitioner and issue Letter of Acceptance (LOA) to him as the BID of the petitioner has been found the lowest (L1) and the most responsive in tender vide **NIT No.- 02/ RCD/KISHANGANJ/ RE-TENDER/EPC/2023-24.**

(iii) For appropriate declaration that :-

- I. The impugned order for re-tender dated 22.11.2024 is on non-est ground, without jurisdiction, arbitrary, discriminatory, unreasonable, unfair, malafide and violative of principles of natural justice and fair play.
- II. The impugned decision to re-tender is without



cancellation of tender vide  
**NIT No.- 02/ RCD/  
KISHANGANJ/ RE-  
TENDER/EPC /2023-24**  
and as such, is not  
sustainable either on fact or  
on law.

III. The petitioner fulfills all  
terms and conditions of the  
tender which is on EPC  
mode and being L1 he is  
entitled to award the  
aforesaid work.

(iv) For a direction to the respondents  
not to act upon the impugned order dated  
22.11.2024 (Annexure - P/5) and not to take any  
further action in the matter of re-tender in  
connection with the aforesaid work till the  
disposal of the present writ.

(v) For any other relief(s) or  
consequential relief(s) to which the petitioner  
may be found entitled to in the facts and  
circumstances of this case.”

2. The facts leading to filing of the present petition are  
as under:-

2.1. It is the case of the petitioner that it is a private  
limited company and a registered and reputed contractor under



the respondents department and other works departments. The petitioner is engaged in construction works for several decades. It is stated that on 19.02.2024, the respondents issued Notice Inviting Re-Tender on EPC mode vide NIT No.- 02/RCD/KISHANGANJ/RE-TENDER/EPC/2023-24 through e-procurement mode on their website. The said NIT was with regard to the work of “strengthening and widening/reconstruction with two lane with hard shoulder from Bahadurganj to Terhagach Road in the State of Bihar under work division of Kishanganj”.

2.2. It is the case of the petitioner that petitioner participated in the said tender process and submitted its bid. Petitioner also deposited an amount of Rs. 3.08 Crore in the form of Bank Guarantee. On 26.06.2024, the Technical Bid Evaluation Committee examined the technical bid of the bidders and after scrutiny, the petitioner as well as other six contractors/bidders were declared qualified in the technical bid. Thereafter, some complaints were made against successful contractor of the technical bid and one company was debarred from participating in the bid.

2.3. Thereafter, on 19.09.2024, financial bid was opened and the petitioner was found as lowest bidder (L-1).



Thus, the contract was required to be executed with the petitioner.

2.4. However, the grievance of the petitioner is that the respondent Engineer-in-Chief (Works Management) wrote letter dated 22.11.2024 to respondent Chief Engineer and directed him to re-tender of the work by SBD Mode. Petitioner has, therefore, challenged the aforesaid action on the part of the respondent authority of cancelling the tender process and issuance of re-tender process on SBD Mode.

2.5. Petitioner has, therefore, challenged the aforesaid decision by filing the present petition.

3. Heard Mr. Y.V. Giri, learned Senior Advocate assisted by Mr. Anil Kumar Singh, learned counsel appearing on behalf of the petitioner and Mr. P.K. Shahi, learned Advocate General assisted by Mr. Madanjeet Kumar, learned Government Pleader No. 20 and Mr. Samir Kumar, learned Assistant Counsel to learned Government Pleader No. 20 for the respondents.

4. Mr. Y.V. Giri, learned Senior Advocate appearing on behalf of the petitioner has referred to the averments made in the memo of petition and also referred to the documents which are annexed with the same. Thereafter, it has been contended that the respondent authority issued Notice Inviting Re-Tender



on EPC Mode. However, subsequently, such decision has been changed after opening of the financial bid. The reason assigned by the respondent authority is that if the time of completion of the work is 18 months, the tender is required to be issued in the form of SBD whereas, the respondent authority by mistake issued the tender on EPC Mode. It is submitted that in fact the respondent authority has failed to consider the aspect that after issuance of Notice Inviting Re-Tender on EPC Mode, corrigendum was issued and time of completion of the work was fixed at 20 months. Thus, if the time of completion is now 20 months, the respondent authority has rightly issued the tender on EPC Mode. It is also submitted that after opening of the financial bid of the bidders, it was not open for the respondent authority to cancel the entire process on the foresaid ground. It is also contended that the decision of cancellation of the tender has been taken by the officer who is having no authority to cancel the same and, therefore, on this ground also the cancellation of the tender process is required to be set aside.

5. Learned Senior Advocate has also referred to the policy of the State dated 31.05.2023 for issuance of tender on EPC Mode, copy of which is placed at Page- 77 of the compilation of the petition. It is submitted that the respondent



authority taken policy decision to issue the tender process by EPC Mode if the amount involved is Rs. 50 Crores or more and the time for completion of the project is more than 18 months. However, the said policy has been framed by the respondents because there are certain defects while issuing the tender on SBD Mode. Thus, merely because in the present case the initial NIT was for completion of the contract within 18 months, and if it has been issued on EPC Mode, it is always open for the respondent authority to issue the tender even when the time for completion of work is 18 months. Thus, the process of cancellation of the tender is required to be set aside.

6. Learned Senior Advocate, therefore, contended that the decision taken by the respondent authority is arbitrary and violative of Article 14 of the Constitution of India. This Court, therefore, can exercise the powers under Article 226 of the Constitution of India and thereby set aside the impugned decision.

7. At this stage, learned Senior Advocate further submits that even after cancellation of the tender process, the respondent authority has issued Notice Inviting Re-Tender by SBD Mode. The petitioner participated in the same. However, the respondents have rejected the technical bid of the petitioner



on hyper technical ground that the petitioner has not revealed about the pendency of the present case in the bid document, although the respondents were party in the present case. Thus, aforesaid disqualification of the petitioner in the re-tender process is also challenged by the petitioner by filing I.A. No. 2 of 2025. However, at this stage, learned Senior Advocate submits that if the main petition is allowed, there is no need to consider I.A. No. 2 of 2025.

8. Learned Senior Advocate has placed reliance upon decision rendered by the Hon'ble Supreme Court in the case of ***Subodh Kumar Singh Rathour vs. Chief Executive Officer and Others***, reported in ***2024 SCC OnLine SC 1682***. Learned Senior Advocate has, more particularly, placed reliance upon Paragraphs 123, 129 and 132 of the said decision.

9. Learned Senior Advocate, therefore, urged that the present petition be allowed.

10. On the other hand, learned Advocate General has vehemently opposed the present petition. Learned Advocate General would mainly submit that the NIT in question was issued on EPC Mode for the work, and time of completion for the same was 18 months. On 19.02.2024, the petitioner and other bidders participated in the said tender process. However,



thereafter, it was noticed by the respondent authority that issuance of the NIT in question on EPC Mode is not as per the policy dated 31.05.2023. It is submitted that the said policy is placed at Page-77 of the compilation of the petition. Learned Advocate General would submit that if the tender for work costs more than Rs. 50 Crores having time for completion of work being more than 18 months, then the tender is required to be issued by EPC Mode. In the present case, time for completion of the work was only 18 months and, therefore, the tender was required to be floated on model document of SBD as per guidelines dated 31.05.2023. When the aforesaid aspect was noticed by the respondent authority, the tender process in question was cancelled and the department issued re-tender process in which the petitioner also participated. However, in the said process, petitioner did not disclose about the pendency of the present case and, therefore, his technical bid was rightly rejected by the respondent authority. It is submitted that merely because the corrigendum has been issued subsequent to issuance of the tender by EPC Mode, it is not open for the petitioner to contend that the initial process of issuance of the tender itself was correct. Learned Advocate General pointed out difference between the procedure of SBD and EPC Mode.



11. Learned Advocate General has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of *Jagdish Mandal vs. State of Orissa and Others*, reported in *(2007) 14 SCC 517*. Learned Advocate General also placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of *The Principal Chief Conservator of Forest & Ors. vs. Suresh Mathew & Ors.* passed on 25.04.2025 in *Special Leave Petition (C) No(s). 12353-12355 of 2021*.

12. Learned Advocate General, therefore, urged that the present petition be dismissed.

13. Having heard learned Advocates appearing for the parties and having gone through the materials placed on record, it transpires that the controversy involved in the present matter is in a very narrow compass. It is not in dispute that the Notice Inviting Re-Tender was issued on 19.02.2024 for the works stated in the said NIT on EPC Mode. Copy of the same is produced at Page-23 of the compilation of the petition. If the said document is carefully examined, it is revealed that it has been specifically stated in the said document that time of completion of work is 18 months. Keeping in view the aforesaid NIT, if the policy of the State Government framed vide



communication dated 31.05.2023 is carefully examined (copy of which is placed on record at Page-77 of the compilation of the petition), it is revealed that it has been specifically stated in the said policy/communication that if the cost of the work is more than Rs. 50 Crores and time for completion of the work is more than 18 months, then the tender is required to be issued by EPC Mode. Thus, it can be said that if the time for completion of work is 18 months, the NIT is required to be issued by way of SBD Mode. In the present case, it is not in dispute that when the NIT was issued on 19.02.2024, time for completion of work was 18 months and, therefore, the respondent authority was required to issue tender by way of SBD Mode and not by EPC Mode.

14. Now, it is the contention of learned Senior Advocate appearing for the petitioner that the corrigendum has been issued, by which, time of completion of work is provided as 20 months and, therefore, no error is committed by the respondent authority while issuing the tender by EPC Mode.

15. We are of the view that the aforesaid contention is misconceived. On the date of issuance of NIT on 19.02.2024, the time of completion of work provided in the said NIT was 18 months. Merely because subsequently corrigendum was issued, the tender process issued from beginning cannot be termed as



correct process in view of the policy of the respondent-State, contained in communication dated 31.05.2023.

16. Thus, in the facts and circumstances of the present case, when the respondent authority came to know about the aforesaid mistake committed by it by issuing tender process in February, 2024, same has been corrected by cancelling the entire tender process and thereby issuing a fresh NIT as per the policy dated 31.05.2023. Looking to the facts of the present case, it cannot be said that the officer who has cancelled the tender process was not authorized to cancel the same as the issuance of tender process from the beginning itself was not as per the policy.

17. In the case of *Subodh Kumar Singh Rathour* (supra), the Hon'ble Supreme Court has observed in Paragraphs 123, 125, 126, 128, 129 and 132 as under:-

“**123.** Before we close this judgment, we must also address one very important aspect as regards the importance of maintaining the sanctity of tenders in public private procurement processes.

**125.** Public tenders are designed to provide a level playing field for all potential



bidders, fostering an environment where competition thrives, and the best value is obtained for public funds. The integrity of this process ensures that public projects and services are delivered efficiently and effectively, benefiting society at large. The principles of transparency and fairness embedded in public tender processes also help to prevent corruption and misuse of public resources. In this regard we may refer to the observations made by this Court in *Nagar Nigam v. Al. Farheem Meat Exporters Pvt. Ltd.* reported in **(2006) 13 SCC 382**, which reads as under:—

*“16. The law is well settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject-matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of government contracts through public auction/public tender is to ensure transparency in the public procurement, to*



maximise economy and efficiency in government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution.”

(Emphasis supplied)

**126.** The sanctity of public tenders lies in their role in upholding the principles of equal opportunity and fairness. Once a contract has come into existence through a valid tendering process, its termination must adhere strictly to the terms of the contract, with the executive powers to be exercised only in exceptional cases by the public authorities and that too in loathe. The courts are duty bound to zealously protect the sanctity of any tender that has been duly conducted and concluded by ensuring that the larger public interest of upholding bindingness of contracts are not sidelined by a capricious or arbitrary exercise of power by the State. It is the duty of the courts to interfere in contractual matters that have fallen prey to an arbitrary action of the authorities in the guise of technical faults, policy change or public interest etc.

**128.** Cancellation of a contract deprives a person of his very valuable rights and is a very drastic step, often due to significant investments



having already been made by the parties involved during the subsistence of the contract. Failure on the part of the courts to zealously protect the binding nature of a lawful and valid tender, would erode public faith in contracts and tenders. Arbitrary terminations of contract create uncertainty and unpredictability, thereby discouraging public participation in the tendering process. When private parties perceive that their contractual rights can be easily trampled by the State, they would be dissuaded from participating in public procurement processes which may have a negative impact on such other public-private partnership ventures and ultimately it is the public who would have to bear the brunt thereby frustrating the very object of public interest.

**129.** We caution the public authorities to be circumspect in disturbing or wriggling out of its contractual obligations through means beyond the terms of the contract in exercise of their executive powers. We do not say for a moment that the State has no power to alter or cancel a contract that it has entered into. However, if the State deems it necessary to alter or cancel a contract on the ground of public interest or change in policy then such considerations must be *bona-fide* and should be earnestly reflected in the decision-making



process and also in the final decision itself. We say so because otherwise, it would have a very chilling effect as participating and winning a tender would tend to be viewed as a situation worse than losing one at the threshold.

**132.** As, we have held the Notice of Cancellation dated 07.02.2023 to be *non-est*, the issuance of a fresh tender to any third-party in respect of the same work would not defeat the vested rights that accrued in favour of the appellant. Similarly, the handing over of the operation and maintenance of the E.M. Bypass to the KMC also would have no bearing whatsoever, on the rights that stood vested in the appellant as on the date of cancellation of the tender. Such vested rights would continue to operate notwithstanding any change in the control and maintenance of the underpasses.”

18. We cannot dispute the proposition of law laid down by the Hon’ble Supreme Court in the said case. However, we are of the view that in view of the facts and circumstances of the present case, as discussed hereinabove, the aforesaid judgment would not render any assistance to the case of the petitioner.

18.1. It is required to be observed that the decision taken by the respondent authority of cancelling the initial tender



process dated 19.02.2024 was as per the policy of the State Government dated 31.05.2023 and, therefore, the impugned decision taken by the respondent authority cannot be termed as arbitrary decision. Thus, the same is not violative of Article 14 of the Constitution of India, as contended by learned Senior Counsel for the petitioner.

19. At this stage, we would like to refer to the decision rendered by the Hon'ble Supreme Court in the case of *Jagdish Mandal* (supra). The Hon'ble Supreme Court has observed in Para-22 as under:-

“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.”

20. In the case of ***Suresh Mathew & Ors.*** (supra), the Hon’ble Supreme Court has referred to and relied upon the decision rendered by the Hon’ble Supreme Court in the case of ***Jagdish Mandal*** (supra) and thereafter observed in Para-23 as under:-

“23. We may state here that if our observations are seen qua the touchstone of questions framed by this Court in the judgment of ***Jagdish Mandal (supra)*** the answer would be in negative, therefore the decision taken by the authorities cannot be termed as a *mala fide* decision or a decision to favour someone. At the cost of repetition, we may state that the decision of the authority is giving a fresh opportunity to



all interested bidders to compete with each other in the process of the fresh selection. In our opinion, the decision taken by the authority is not affecting the public interest, on the contrary it furthers the cause of the public interest and fair play.”

21. From the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that if the decision made by the authority is *mala fide* or intended to favour someone or if the said decision is arbitrary and irrational or against the public interest, the Court can interfere with said administrative action while exercising power of judicial review.

22. Keeping in view the aforesaid decisions, the facts of the present case, as discussed hereinabove, are again examined. We are of the view that the impugned decision taken by the respondent authority cannot be termed as arbitrary or irrational. In fact, the said decision is as per the policy dated 31.05.2023. Further, the petitioner has not made any allegation against the respondent authority with regard to *mala fide* or it is not the case of the petitioner that the decision has been taken to favour someone.

23. So far as I.A. No. 2 of 2025 filed by the petitioner is concerned, it is required to be observed that the petitioner has



participated in the re-tender process, though the present petition is pending. In the said tender process, the petitioner has failed to point out about the pendency of the proceedings before the Court and, therefore, the respondent authority has rejected the technical bid of the petitioner. We are of the view that while rejecting the technical bid of the petitioner in the re-tender process also the respondent authority has not committed any error.

24. In view of the aforesaid discussions, we are not inclined to exercise powers of judicial review under Article 226 of the Constitution of India.

25. Accordingly, the writ petition stands dismissed.

**(Vipul M. Pancholi, CJ)**

**Partha Sarthy, J : I agree.**

**(Partha Sarthy, J)**

P.K.P./-

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