IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.339 of 2026

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Anand Kumar Gupta Son of Suraj Narayan Gupta, Resident of Ward No. 22, Mahajan Toli No.1, PS and District Arrah at Bhojpur, Bihar 802301, Director of Mildwave Marketing Private Limited having its registered office at 1/2/H/20 Jiban Krishna Gosh Road, Kolkata, West Bengal- 700037.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. Veer Kunwar Singh University, Ara through its Registrar, Veer Kunwar Singh University, Ara, District Ara at Bhojpur.
4. Registrar, Veer Kunwar Singh University, Ara, District Ara at Bhojpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ravi Ranjan, Advocate
For the Respondent/s	:	Mr.Ajay Kumar, AC to GP-4
For the University	:	Mr.Rajesh Pd. Chaudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RITESH KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

2 29-01-2026 Heard learned counsel for the parties.

2. Following reliefs are sought for in the present writ petition:

"(i) For issuance of an appropriate writ in the nature of Certiorari or any other writ of similar nature for quashing the tender no. 1/2025 dated 23-12-2025 invited by Respondent University for supply of manpower services at Veer Kunwar Singh University, Ara as also another tender being Tender no.

1/2025 dated 23-12-2025 for supply of security services on the ground that said tenders are thoroughly illegal and in contravention of norms prescribed by General Financial Rules.

(ii) For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the Respondent University not to proceed ahead in Tender no. 1/2025 as far as supply of manpower to Veer Kunwar Singh University, Ara as also for tender no. 1 for supply of security service for said university, is concerned as said tenders are thoroughly illegal and acting further on its will constitute further illegality.

(iii) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner is entitled under the facts and circumstances of the case."

3. The brief facts of the case are that the Respondent Registrar, in terms of its office order dated 23.12.25, issued a notice inviting tender vide 'Tender No. 01/2025/Manpower Services' under two bid systems for providing manpower services at Veer Kunwar University, Ara. Along with said notice inviting tender, tender documents containing the terms and conditions were also provided. Further, the Respondent University issued another tender being 'Tender No.

1/2025/Security Services' dated 23.12.2025 for the supply of security services with the same terms and conditions. The petitioner, who is a director of a company by the name Mildwave Marketing Pvt. Ltd., has alleged that the terms and conditions prescribed in both the tenders are arbitrary and prescribed in such a manner that only large firms can apply for said tenders. Being aggrieved by such arbitrary tender conditions, which have ousted the petitioner from participation in the tender process, the present writ petition has been preferred before this Hon'ble Court.

4. Learned counsel for the petitioner submits that the terms and conditions of the tender is unreasonable, tailormade to benefit few selected categories of entrants and is not based upon principle of fair play and competition. Learned Counsel for the petitioner points out that as per stipulations of the terms of the agreement, minimum 9 years of experience has been demanded and an average turnover of Rs.25 crore for the last three financial years has been prescribed. The said arbitrary condition so imposed is clear indicator of favoritism as due to said arbitrary clause, new and medium capable firms will be ousted naturally. These conditions so imposed are not only highly irrelevant in services like manpower outsourcing but also

decreases competitiveness, and run contrary to the spirit of the General Financial Rules.

5. Learned counsels for the respondents submit that the terms and conditions prescribed in the impugned tender are reasonable, justified, and non-discriminatory in nature. It is submitted that the tendering authority, being the expert body, is best placed to assess its requirements and to determine the eligibility criteria necessary for the effective execution of the services in question. Learned counsels further submit that the conditions incorporated in the tender have been framed after due consideration and are neither arbitrary nor vitiated by any favoritism towards any selected categories of entrants. Moreover, it is pointed out that the eligibility criteria have been formulated solely in furtherance of public interest, with the object of ensuring efficient and reliable service delivery, and not to serve individual interest of any person.

6. The limited question that arises for consideration is, whether the court can, in exercise of its writ jurisdiction, vary, modify or alter tender conditions, when such prescription lies within the exclusive prerogative of the tendering authority.

7. Upon perusal of the materials available on record and submissions made on behalf of the parties, it is evident that

the tender notices have been challenged mainly on two grounds: first, that the tender notice prescribes a minimum nine years of experience; and secondly, that the average turnover of the participant is required to be Rs. 25 crores for the last three financial years. These conditions have been alleged to be unreasonable and arbitrary.

8. However, it is apparent that the aforesaid conditions are not indicator of biasness or favouritism, rather it has been framed by the tendering authority keeping in view the nature and requirements of the work to be performed. The authority inviting the tender, being the owner or employer of the work, who authored the tender document, is the best person to understand its functional needs and to determine the appropriate eligibility criteria for ensuring proper execution of the work. In this regard, it is relevant to take note of the decision of ***Directorate of Education v. Educomp Datamatics Ltd.***, reported in ***(2004) 4 SCC 19***, wherein Division Bench of the Hon'ble Supreme Court observed that:

> *"11. This principle was again restated by this Court in Monarch Infrastructure (P) Ltd. v. Commr., Ulhasnagar Municipal Corpn. [(2000) 5 SCC 287] It was held that the terms and conditions in the tender are prescribed by the Government bearing in mind the nature of contract and in such*

matters the authority calling for the tender is the best judge to prescribe the terms and conditions of the tender. ……

12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide."

9. Similarly, in the case of ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.***, reported in ***(2016) 16 SCC 818***, the Hon'ble Supreme Court has observed that:

"15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to

understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."

10. Further, the Hon'ble Supreme Court in the case of ***Jagdish Mandal v. State of Orissa***, reported in ***(2007) 14 SCC 517***, while explaining the scope of judicial review in tender matters, observed as follows:

"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. …….”*

11. Similarly, in the case of ***Uflex Ltd. v. State of T.N***., reported in ***(2022) 1 SCC 165***, the Hon'ble Supreme Court has observed that:

> *"47. Insofar as the participating entities are concerned, it cannot be contended that all and sundry should be permitted to participate in matters of this nature. In fact, in every tender there are certain qualifying parameters whether it be technology or turnover. The Court cannot sit over in judgment on what should be the turnover required for an entity to participate. ....”*

12. In light of the foregoing discussions and settled

position of law, this Court is of the view that the issue before us for consideration is to be answered in the negative. It is well recognized that the terms and conditions of a tender are formulated by the tendering authority after taking into account the nature of the work, the level of expertise required, and the need to ensure effective and reliable execution of the services. In such matters, the tendering authority is most suitably placed to assess its requirements, and the Court must not substitute its own view for that. The scope of judicial review in tender matters is extremely limited and arises only in cases of arbitrariness or unreasonableness.

13. Further, it is well settled that the nature of works and services undertaken through tender processes varies from case to case. In the present case, having regard to the nature, scope, and requirements of the work involved, it cannot be said that the eligibility conditions prescribed in the tender notice are arbitrary or unreasonable. Owing to such variation in works and services, it is neither feasible nor desirable to prescribe any rigid or strait-jacket formula for laying down eligibility criteria. The authority inviting the tender is required to frame such conditions keeping in view the specific requirements, scope, and complexities of the work involved. Consequently, each tender

must necessarily be examined on the touchstone of its own facts and requirements.

14. In view of the aforesaid discussion and the settled legal position, we find no substance in the challenge raised by the petitioner.

15. Accordingly, the present writ application stands dismissed.

16. Pending application(s), if any, shall stand disposed of.

(Sudhir Singh, J)

(Ritesh Kumar, J)

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