

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5041 of 2025

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Ritesh Ranjan S/o Mahendra Singh, R/o- Banjari, P.S.- Banjari, Post - Banjari,
Rohtas, Bihar - 821303.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Rural Works Department,
Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar,
Patna.
3. The Special Secretary, Rural Work Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aryan Sinha, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 07-05-2026

Heard learned counsel for the parties.

2. The present writ application has been filed for the
following reliefs:

*“(A) A writ in the nature of Certiorari or any
other appropriate writ/s, order/s direction/s
quashing the following:*

*(i) Notice Inviting Tender No. RRSMP-
03/2024-25, Tender No. RRSMP-07/2024-25
and Tender No. RRSMP- 08/2024-25 issued
by the Government of Bihar Rural Work
Department.*

*(B) A writ in the nature of mandamus or any
other appropriate writ/s, order/s direction/s for
the following reliefs:*

*(i) To direct the Respondent Authorities to
ensure that 15% of the Tender work will be*



reserved for unemployed Engineer in light of the Memo No. 1399 dated 31.01.2008 and Memo No. 2390 dated 10.04.2015.

(ii) To restrain the Respondent Authorities from clubbing or packaging of the Tenders.

(iii) To direct the Respondent Authorities to comply the resolutions issued vide Memo No. 1399 dated 31.01.2008 and Memo No. 2390 dated 10.04.2015 while issuing the tenders in the state of Bihar.

(iv) To direct the Respondent Authorities not to complete the tender process till the pendency of the Writ Petition.

(v) To direct the Respondent Authorities to allow the Petitioner to participate in the Tenders in questions.

(C) To any other relief/s to which the petitioner is found entitled to.”

3. The brief facts of the present case, as pleaded, are that the petitioner, an unemployed engineer registered as a Class-III contractor under the Rural Works Department, Government of Bihar, is aggrieved by issuance of the impugned tenders under the Rural Road Strengthening and Management Program (MMGSUY). The grievance is that though Government policy decisions vide Memo No. 1399 dated 31.01.2008, Resolution dated 16.08.2013 and Letter No. 2390 dated 10.04.2015 were framed to provide limited value works and opportunities to unemployed engineers, the respondent authorities have allegedly clubbed several roads into single large packages, thereby increasing the tender value beyond the



permissible limit and excluding Class-III contractors from participation.

4. Learned counsel for the petitioner submits that under policy framework i.e. Memo No. 1399 dated 31.01.2008, Resolution dated 16.08.2013 and Letter No. 2390 dated 10.04.2015, a portion of tender works is required to be reserved for unemployed engineers. It is further submitted that the clubbing of roads into large packages has the effect of defeating the object of the policy and depriving similarly situated contractors from participation.

5. It is further submitted that while issuing Notice Inviting Tender Nos. RRSMP-03/2024-25, RRSMP-07/2024-25 and RRSMP-08/2024-25 under MMGSUY, the respondent authorities have clubbed several roads into single packages having estimated bid values beyond the permissible limit for Class-III contractors, thereby depriving the petitioner and similarly situated unemployed engineers from participating in the tender process.

6. Per contra, learned counsel for the respondents submits that the impugned tenders have been floated under the Rural Road Strengthening and Management Programme launched pursuant to approval granted by the Bihar Council of



Ministers on 14.11.2024 as part of the Mukhya Mantri Gramin Sadak Unnayan Yojna, which involves long-term maintenance and management of roads for a period of seven years

7. It is submitted that considering the magnitude of the scheme, the respondent authorities, as a matter of policy decision, have prepared block-wise/sub-division-wise packages in terms of Resolution No. 1718 dated 15.11.2024. It is further submitted that the eligibility conditions have been relaxed and participation through Joint Venture (JV) has also been permitted so as to enable contractors of different categories to participate in the tender process. According to the respondents, the petitioners have neither been excluded from participation nor is there any violation of Articles 14 and 19(1)(g) of the Constitution of India.

8. In view of the rival submissions advanced on behalf of the parties, the principal issue which arises for consideration before this Court is as to whether, in exercise of powers under Article 226 of the Constitution of India, this Court can direct the respondent authorities to provide or carve out 15% reservation/allotment for unemployed engineers and Class-III contractors under the impugned tender process, particularly when the manner of packaging of works, formulation of



eligibility conditions and structuring of tenders have been undertaken by the State as a matter of policy decision keeping in view the nature, magnitude and long-term maintenance requirements of the scheme in question.

9. At the outset, it appears that the grievance of the petitioner essentially relates to the manner in which the respondent authorities have structured and packaged the impugned tenders under the Rural Road Strengthening and Management Programme, whereby multiple roads have been clubbed into larger packages allegedly affecting eligibility of unemployed engineers and Class-III contractors.

10. This Court finds that the respondent-State has justified the impugned action by stating that the scheme involves large-scale construction, strengthening and maintenance of rural roads for a substantial period of seven years, and therefore requires efficient planning, monitoring and execution. It is state that block-wise/sub-division-wise packaging has been adopted pursuant to Resolution No. 1718 dated 15.11.2024 as a matter of administrative and policy decision.

11. It is now well settled that fixation of tender conditions, structuring of public contracts, determination of



eligibility criteria and formulation of procurement methodology fall primarily within the executive domain of the executive. Judicial review in such matters is limited to examining the decision-making process and not the merits of the decision itself. Courts do not sit in appeal over policy decisions of the State in contractual matters unless such action is shown to be arbitrary, *mala fide*, discriminatory or violative of statutory constitutional provisions.

12. In ***Tata Cellular vs. Union of India*** reported in ***(1994) 6 SCC 651***, the Hon'ble Supreme Court held that the Court is concerned only with the manner in which those decisions have been taken and not with the merits of the decision itself. The relevant part of the said order reads as follows:

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular



decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.”

13. In ***Jagdish Mandal vs. State of Orissa & Ors.*** reported in ***(2007) 14 SCC 517***, the Hon’ble Supreme Court observed that interference in tender matters is warranted only where the process is *mala fide*, arbitrary or irrational and no reasonable authority could have arrived at such decision. The Court cautioned that judicial review should not be used to protect private interest at the cost of public interest. The relevant part of the said order reads 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. 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.”

14. Further, in ***Michigan Rubber (India) Ltd. vs. State of Karnataka & Ors.*** reported in ***(2012) 8 SCC 216***, the Hon’ble Supreme Court reiterated that framing of eligibility conditions and tender terms is essentially a policy decision and Courts should not interfere unless such conditions are arbitrary or tailor-made to favour someone. The relevant part of the said order reads as follows:

“23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely



within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. 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"? And

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no



interference under Article 226.”

15. Reference may also be made to ***Afcons Infrastructure Ltd. vs. Nagpur Metro Rail Corporation Ltd. & Ors.*** reported in ***(2016) 16 SCC 818***, wherein the Hon’ble Supreme Court held that the employer or author of the tender documents is the best judge of its requirements and Courts must defer to such understanding unless perversity or *mala fide* is apparent on the face of the record. The relevant part of the said order reads as follows:

“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.”

16. Similarly, in ***Silppi Constructions Contractors vs. Union of India & Ors.*** reported in ***(2020) 16 SCC 489***, the Hon’ble Supreme Court emphasized that Courts must exercise



restraint in contractual matters and must not interfere unless there is clear arbitrariness or mala fide. The relevant part of the said order reads as follows:

“19. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big



blunder. In fact, the courts must give “fair play in the joints” to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.”

17. Applying the aforesaid settled principles to the facts of the present case, this Court finds that the impugned tenders have been floated pursuant to a large-scale infrastructure and maintenance programmes involving long-term obligations. The packaging of works and structuring of tenders has been undertaken on the basis of administrative requirements and policy considerations of the State.

18. Merely because the petitioner or similarly situated contractors are unable to participate due to scale of packages does not, by itself, render the tender conditions arbitrary or unconstitutional. The respondents have also demonstrated that participation through Joint Venture (JV) has been permitted and eligibility conditions have been relaxed to broaden participation.

19. So far as reliance on Memo No. 1399 dated 31.01.2008, Resolution dated 16.08.2013 and Letter No. 2390 dated 10.04.2015 is concerned, the same reflect policy intent of the State to provide opportunities to unemployed engineers. However, such policy does not create an enforceable right to



compel the State to structure tenders in a particular manner or to mandate reservation in contract awards, especially in large-scale infrastructure projects.

20. It is also well settled that Courts cannot direct the State to frame tender conditions in a particular manner or impose reservation/allotment in contractual matters, as such directions would amount to encroaching upon the policy domain of the executive. Unless the policy is shown to be manifestly arbitrary or unconstitutional, judicial interference is not warranted.

21. In view of the aforesaid discussion, this Court is of the considered opinion that no direction can be issued to the respondent authorities to provide 15% reservation/allotment of tender works or to interfere with the structuring and packaging of the impugned tenders, as the same has been undertaken pursuant to a policy decision of the State for execution of a large-scale rural road strengthening and maintenance programme. The fixation of eligibility conditions and manner of packaging of works fall within the exclusive domain of the executive and cannot be interfered with in exercise of writ jurisdiction unless shown to be arbitrary or *mala fide*, which is not the case here.



22. The issue is, therefore, answered in negative.

23. Accordingly, the present writ application stands dismissed.

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

(Sudhir Singh, J)

(Shailendra Singh, J)

Anushka/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13.05.2026
Transmission Date	

