

**(2002) 04 PAT CK 0030**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 4063 of 2000**

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|-----------------------------|----|------------|
| Christy Fried Gram Industry | Vs | APPELLANT  |
| State of Bihar and Others   |    | RESPONDENT |

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**Date of Decision :** 11-04-2002

**Acts Referred:**

Constitution of India, 1950 — Article 226, 47

**Citation :** (2002) 2 BLJR 1010 : (2002) 2 PLJR 606

**Hon'ble Judges :** S.K. Katriar, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

S.K. Katriar, J.—Heard Mr. Ajay Tripathi for the petitioner and Mr. A.P. Jittu, learned SC II.

2. This is the petitioner's third attempt. The Government of Bihar had published notice dated 25.3.1999 inviting tenders for supply of "ready-to-eat nutritious food" for the integrated child development scheme in the State of Bihar. The petitioner as well as another firm (M/s. Modern Food Industries Ltd.) submitted their tenders. The price quoted by the latter was Rs. 17 per k.g. with an escalation clause, whereas the petitioner quoted a firm price of Rs. 21.97 per k.g. The sample of other firm failed to pass the quality test because the protein content was not up to the ICDS norms. The petitioner's product was tested and found up to the required level of quality. No final decision was taken in the matter leading to CWJC No. 4 of 2000 in this Court which was disposed of by order dated 28.4.2000 (Annexure-5), with the direction to the Minister, Department of Welfare, Government of Bihar, to reconsider the matter and pass a final order after negotiation with the petitioner in the best interest of the beneficiaries of the scheme. The State Government reconsidered the matter and passed an order averse to the petitioner leading to the second writ petition, namely, CWJC No. 9533 of 2000, which was disposed of by order dated 27.7.2001 (Annexure-9), whereby the matter was once again remitted back to

the Minister concerned for a fresh order in accordance with the observations made therein. The observations made by the Hon"ble Single Judge in the last paragraph of the judgment is relevant in the present context and is set out here in below for the facility of quick reference:

Regardless of the out come after remand, it is made clear that ICDS is a laudable project and it is a public as well as constitutional duty of respondents to enforce it without delay. Hence, the Department of Welfare is directed to take all possible steps including, if required, tender or re-tender to ensure that the RTE food is made available to the beneficiaries under the ICDS without any delay and in any case within a period of six months from today. This direction is being issued in larger public interest with a view to ensure compliance with a scheme which is in accordance with and aims to secure one of the Directive Principles of State Policy provided under Article 47 of the Constitution of India.

Pursuant to the said order of this Court on the second writ petition, the Minister has passed the impugned order dated 13.11.2001 (Annexure 10), whereby he has rejected the petitioner's tender. Hence, the present writ petition.

3. I have considered the submissions advanced by the learned Counsel for the parties. This Court would like to remind itself of the self-imposed restrictions in exercise of the powers conferred on it under Article 226 of the constitution of India and which are indicated in the aforesaid order dated 28.4.2002. Annexure-5, passed in CWJC No. 4 of 2000. The same restrictions are relevant in the present context and, in that view of the matter, this Court refuses to entertain the present writ petition. The respondent authorities cannot be impelled to accept a tender. So far as the question of acceptance of the rates or the quality of the product is concerned, the respondent authorities are the best Judges. They have by the impugned order rejected the petitioner's tender. This being a commercial decision, this Court would not like to interfere with the same.

4. Before I part with the records of this case, I would like to remind the authorities of the observations made by this Court on the first writ petition as well as on the second writ petition the relevant portion of which is already reproduced above as to the importance of the scheme which does not seem to have adequately impressed the respondent authorities. This Court stated in the second order that the scheme is covered by the provisions of Article 47 of the Constitution of India, and is meant for the welfare of the segment of the population who are children up to the age of six years, pregnant ladies and women in lactation, living below the poverty line, and the Government should not sit over the matter and allow it to linger in the manner as has happened. This aspect of the matter has although been overlooked by the respondents thereby ignoring the future of the society. Part IV of the Constitution of India enumerating the Directive Principles of the State Policy are part of the constitutional duties and functions of the Government. Dr. Amartya Sen, the Nobel Laureate, has propounded the theory that literacy rate improved in the under-developed countries where mid-day meals were provided to students in

primary schools. I can understand the rejection of the petitioner's tender, but no step seems to have been taken for alternative arrangement. This Court expresses its uneasiness and displeasure over the approach and attitude of the respondent authorities.

5. The writ petition is dismissed with the above observations.