
(2021) 02 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7166, 7846, 7856, 7921 Of 2020

Vivek Jha

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 02 PAT CK 0043

Hon'ble Judges : Anil Kumar Upadhyay, J

Bench : Single Bench

Advocate : Shashi Bhushan Kumar Manglam, Lalit Kishore, Braj Bhushan Mishra, S.D. Yadav, Vikash Kumar

Final Decision : Disposed Of

Judgement

All the batch of writ applications involve the same question of fact and law and with consent of the parties, all the writ applications have been heard

together and they are being disposed of by this common judgment.

Petitioner in CWJC No. 7166 of 2020 is aggrieved by the notification contained in Memo No.7806 dated 30.09.2016 contained in Annexure-5 of

CWJC No. 7166 of 2020.

Mr. S.B.K. Manglam, learned counsel for the petitioner, would submit that in this case the tender of the petitioner was found responsive by the

technical committee, yet Board of Directors have decided to cancel the tender of the petitioner and invite fresh tender.

Mr. Lalit Kishore, learned Advocate General appearing on behalf of the State, would submit that in the very first process of tender, no one submitted

tender and therefore, inviting fresh tender was compulsion of the respondents and fresh tender should be read as the first tender for all practical

purposes. Referring to Clause 27 of Annexure-2, learned Advocate General would submit that in case of the first tender, the respondents were

justified in taking decision to invite fresh tender on the ground of solitary tender.

On perusal of the materials available on record and documents appended to the writ applications, the Court finds that earlier tender was invited but

there was no response to the first tender and as a matter of compulsion, the respondents have to invite fresh tender. In the fresh tender, petitioner

submitted his tender as his tender was found to be responsive by the technical committee. However, in the meeting of the Board, it was decided to

invite fresh tender as the petitioner was solitary tenderer. In the case of solitary tender in the process of first tender, then no reason is required to be

assigned except that the single tender was the reason for fresh tender but if it is construed as second tender then in that situation, the respondents are

under obligation to assign reasons for inviting fresh tender if they decline to accept the tender submitted by the petitioner if found in order and

responsive by the technical committee.

Mr. Manglam, learned counsel appearing on behalf of the petitioners in other batch of cases, would submit that in all cases there was second tender

and therefore, reason was required to be assigned by the respondents whereas learned Advocate General would submit that since there was single

tender there is no reason except single tender for inviting fresh tender is enough.

Learned Advocate General further submits that the matter relates to construction of hospital and in larger public interest, the Court should not interfere

in the affairs of the Board unless decision of the Board is arbitrary. He refers to the judgment of the Apex Court in the case of State of Jharkhand Vs.

CWE-SOMA Consortium [(2016) 14 SCC 172] and submits that while exercising judicial review, the matters involving public interest like construction

of hospital unless the decision is arbitrary and shock conscientious of the Court, Court should not interfere. Ordinarily scope of judicial review is limited

and the Courts are not expected to interfere in the decision of the authority. The Court may exercise power of review very sparingly in case involving

larger public interest under Article 226 of the Constitution. The respondents have themselves decided vide Annexure-5 that in case after evaluation by

the technical committee the technical bid is found responsive, the authority higher may take appropriate decision in case of single bid.

In CWJC No.7166 of 2020 there was dispute whether there was second tender being fresh tender to invite on account of no response to the very first

tender notice but in other cases there is no dispute that the first tender was rejected on the ground of solitary response and in the process of second

tender, the respondents have taken decision to reject the tender on the ground that the tender of the petitioners was solitary one.

On consideration of the rival submissions, the Court finds that the present case is case of fresh tender and in case of fresh tender, technical bid of the

petitioners was found to be responsive. The Board exercising power in terms of Annexure-5 was required to give reason not necessarily detailed but

precise reason for inviting fresh tender in the process of evaluation of fresh tender. Since in the present case evaluation was not done objectively, and

the Board has not assigned any reason except single tender which is applicable in the case of first tender, the Court is of the view that the respondents

are required to give reason for rejecting the tender of petitioner, the Court is constrained to remit the matter back without quashing the order of

rejection of the tender of the petitioners to the Board of Directors to re-examine the claim and tender of the petitioners, the Board has to give reason

for rejection of tender at the earliest preferably within a period of 15 days from the date of receipt/production of a copy of this order. The decision of

the Board as contained Annexure-A to the counter affidavit shall not come in the way of the respondents in taking fresh decision within a period of 15

days of the receipt/ production of a copy of this order.

In the larger public interest, the respondents are directed to take fresh decision within a period of 15 days from the date of receipt/production of a

copy of this order. The fate of the tender of the petitioners shall abide by fresh decision to be taken by the respondents. Similarly in other cases of

rejection of Tender the Board has to give reason for rejection.

Accordingly, all the writ applications are disposed of. It is made made clear that remand of these cases will not be construed as a direction to the

respondents to accept the tender of the petitioners as valid and binding on the respondents.