

**(2012) 03 PAT CK 0127**  
**In the Patna High Court**  
**Case No : CWJC No. 22753 of 2011**

Ziqitza Health Care Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

---

**Date of Decision :** 05-03-2012

**Acts Referred:**

**Citation :** (2012) 2 PLJR 402

**Hon'ble Judges :** S.N. Hussain, J

**Bench :** Single Bench

**Advocate :** Y.V. Giri and Ashish Giri, for the Appellant; Anisul Haque for the State, Mr. K.K. Sinha for the Respondent No. 4 and M/s Jitendra Singh, Aditya Prakash Sahay, for the Respondent No. 6, Rajesh Ranjan No. 1, Vivek Chib, Manas Prakash and Prabhat Kr. Singh, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner for the following reliefs:--

(i) To issue an appropriate writ/ order/direction in the nature of certiorari for quashing the recommendation made by the respondent authorities, for issuing the contract for operation of Basic Life Support Ambulance Service in all the districts of Bihar in favour of respondent no. 6 namely Dr. Jain Video, in the minutes of the meeting as put up in the website [www.statehealthsocietybihar.org](http://www.statehealthsocietybihar.org) on 9.12.2011 alongwith all other consequential order if any (Annexure-3).

(ii) To issue an appropriate writ/ order/direction in the nature of mandamus directing the respondent authorities to produce the copy of order granting tender for operation of Basic Life Support Ambulance Service in all the districts of Bihar in favour of respondent no. 6 namely Dr. Jain Video and quash the same.

(iii) To issue an appropriate writ/ order/direction in the nature of mandamus directing the respondent authorities to award the tender for operation of Basic Life Support Ambulance Service in all the districts of Bihar in favour of the

petitioner as they are the most qualified bidder in light of the qualifications laid down by the authority themselves for award of the said tender.

(iv) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

Learned counsel for the petitioner stated that the respondents-State Health Society, Bihar published a notice inviting tender in the local newspaper dated 26.8.2011 to operationalise and manage 504 Basic Life Support Ambulance (hereinafter referred to as "the BLSA" for the sake of brevity) in various districts of Bihar for providing reliable, trustworthy and quality emergency response service in the districts on the basis of 24 hours on every day of the week and the last date was fixed on 15.9.2011 for submitting tender in two parts, namely technical bid and financial bid, out of which technical bids were to be opened on 20.9.2011 in the presence of the parties and the financial bid of the technically qualified bidders were to be opened on 26.9.2011. The said respondents also issued request for proposal (RFP) setting out the qualifications and requirements in detail along with objectives. The basic qualifications of the bidders technical and financial were as follows:--

#### TECHNICAL BID

1. Experience of running Emergency Response service/ambulance in at least one of the States of India through PPP. Testimonials of such experience should be enclosed with EOI.
2. Should have at least one year experience of operating and managing basic life support systems ambulances. Testimonials of such experiences and list of customers should be enclosed with EOI. Experience of longer duration in this field would be preferred.
3. Reputed organizations/NGO's having sufficient experience and resources would be given priority.
4. Minimum average annual turnover of Rs. 1 crore during the last three financial years (2008-09, 2009-10, 2010-11),

#### FINANCIAL BID

The financial bid was to be given quoting the rate per BLSA (Operationalising and Managing Cost) per month on kilometer slab basis (inclusive of all taxes and liabilities) for (a) Tata Winger Ambulance, (b) Force Traveller Ambulance.

2. It was also stated that thereafter nine agencies filled up their tenders, including the petitioner and respondent no. 6, and after opening of the technical bid on 20.9.2011 only four agencies, including the petitioner and respondent no. 6 alongwith respondent nos. 7 and 8, were declared successful for opening the financial bid. It was also averred that financial bid was opened on 26.9.2011 in presence of seven members of the Committee and recommendation was made to award the tender in favour of respondent no. 6.

3. Learned counsel for the petitioner submitted that petitioner came to know about the said recommendation only on 9.12.2011 from the Website and hence he could not challenge the same earlier. He further submitted that the entire decision making process for awarding tender to respondent no. 6 was perverse and illegal as he did not contain the requisite qualification as provided under the RFP.

4. Learned counsel for the petitioner claimed that experience shown by respondent no. 6 was not its own experience rather it was the experience of his partner St. John Ambulance Association and that too in another State, namely Tamilnadu. He also claimed that even according to respondent no. 6 he had shown the training on 27.11.2011 which was much after the filing of the tender and was also not for one year. He argued that on the other hand the writ petitioner had long experience and hence preference was to be given to him as per RFP. Learned counsel for the petitioner further argued that the tender should have been awarded to the petitioner who was the fittest candidate.

5. In support of his claims, learned counsel for the petitioner relied upon three decisions of the Apex Court in case of Ramana Dayaram Shetty vs. International Airport Authority of India & Others reported in (1979 SCC 489; in case of Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others, ; in case of West Bengal State Electricity Board Vs. Patel Engineering Co. Ltd. and Others, .

6. On the other hand, learned counsel for respondent no. 6 opposed the contentions of learned counsel for the petitioner and stated that tender had already been awarded to him after opening of the financial bid on 26.9.2011 in presence of all the tenderers, whereafter letter of intent (L.O.I.) was given to respondent no. 6 by the authorities concerned on 9.12.2011 and agreement between them was executed on 22.12.2011.

7. Learned counsel for respondent no. 6 submitted that Annexure-5 attached to the writ petition is claimed by the petitioner to be a letter written by St. John Ambulance Association to a lawyer on 10.12.2011, but it is an absolutely forged and fabricated piece of paper prepared on 10.12.2011 immediately after LOI was issued by the authorities in favour of respondent no. 6 on 9.12.2011. In this connection, he produced a certificate of St. John Ambulance Association dated 2.7.2010 on its letter pad which certified that it had authorized its honorary Secretary to enter into joint bidding agreement dated 02nd July, 2010 with Dr. Jain Videos on Wheals Ltd. (respondent no. 6). Hence, learned counsel for respondent no. 6 claimed that the documents relied upon by the petitioner having been found prima facie forged merely to take undue advantage fraudulently, his writ petition is fit to be dismissed in limine without going into any detail. In this connection, he relied upon two decisions of the Apex Court in case of Prestige Lights Ltd. Vs. State Bank of India, ; and in case of K.D.Sharma vs. Steel Authority of India Limited and Others, reported in (2008)12 SCC 481.

8. Learned counsel for respondent no. 6 also averred that the company of writ

petitioner had a dubious past and there had been allegations against it that it had defrauded the State of Rajasthan which is supported by a news item published in Daily Hindi Newspaper of Rajasthan namely Dainik Bhaskar dated 6.12.2011 which was annexed to the counter affidavit. He submitted that on the other hand, respondent no. 6 is fully equipped and experienced and already operates Advances Mobile Medical Services in 4 States, namely Uttar Pradesh, Madhya Pradesh, Uttarakhand and Bihar serving more than 2.6 million patients having started its first service more than five years ago and even without St. Johns it is a major operator in its own right. Hence, he claimed that respondent no. 6 is the fittest and best of the tenderers and was rightly selected by the authorities concerned.

9. Learned, counsel for respondent nos. 3 and 4 fully supported the claim of respondent no.6 and submitted that the entire writ petition is based on falsehood and forgery. He also averred that 504 ambulances were purchased by the Society for being used by respondent no. 6 in whose favour LOI was issued on 9.12.2011 and agreement was executed between them on 22.12.2011.

10. After considering the averments made by learned counsel for the parties and perusing the materials on record it is quite apparent that the financial bid was admittedly opened on 26/27.9.2011 in presence of all the four tenderers, including the petitioner and respondent no. 6, whose technical bids were accepted earlier and thereafter tender was awarded in favour of respondent no. 6. It is also not in dispute that LOI was issued in favour of respondent no. 6 by the authorities on 9.12.2011, whereafter agreement was executed between them on 22.12.2011, but although this writ petition was filed on 15.12.2011, but neither the awarding of tender, nor issuance of LOI had been challenged by the petitioner in the instant writ petition, nor there is any material to suggest that any effort was made by the petitioner for obtaining any copy of the same. Hence, the relief sought in the writ petition only for quashing recommendation made by the authorities for issuing contract for the aforesaid purpose in favour of respondent no.6 is not sufficient and cannot be legally granted.

11. It would be interesting to note here that although arguments on behalf of the parties in the instant case had been concluded and order had been reserved-by this Court on 23.12.2011, but much later while this writ petition was awaiting its verdict I.A. No. 158 of 2012 was filed by the petitioner on 6.1.2012 only for amendment in paragraph 1 of the writ petition by way of further challenging the agreement dated 22.12.2011 entered into between the respondent State Health Society and respondent no. 6 on the same grounds on which recommendation of the authorities in favour of respondent no. 6 was challenged by the petitioner in the main writ petition. Since the challenge of the petitioner with respect to the recommendation of the authorities in favour of respondent no. 6 as well as to the agreement between them for the work in question, are based on the same set of facts and grounds, which had already been argued at length by learned counsel for all the contesting parties, there is no occasion to repeat the same exercise

again and hence the entire matter of petitioner's challenge is being considered and decided here.

12. So far the question of experience of respondent no. 6 is concerned, the material on record especially the Agreement dated 2.7.2010 (Annexure-A) clearly proved that St. John Ambulance Association had entered into a joint bidding agreement with respondent no. 6 and hence it was clearly a joint venture as claimed by respondent no. 6. In the said circumstances, the experience of the various constituents of the joint venture had to be taken into consideration at the time of ascertaining experience of respondent no. 6. In the said circumstances, the authorities while considering the experience of respondent no. 6 was quite justified in relying upon the experience of the joint venture. Respondent no. 6 had also been able to show that it had already operated Advance Mobile Ambulance Services in several states serving several million patients for more than five years. This view finds support from two decisions of the Apex Court in case of New Horizons Limited and Another Vs. Union of India (UOI) and Others, ; and Ganpati RV-Talleres Alegria Track Pvt. Ltd. Vs. Union of India (UOI) and Another, .

13. The petitioner has himself annexed corrigendum of expression of interest of the respondent-State Health Society as Annexure-2 to the writ petition which provided that experience of running emergency response service/ambulances in at least one of the States of India through Public Private Partnership (PPP) and hence in view of the aforesaid clause in the corrigendum of expression of interest, the joint venture (JV) cannot be excluded.

14. It may be stated in this regard that the petitioner has claimed that a letter dated 10.12.2011 (Annexure-5 to the writ petition) had been issued by Honorary Treasurer of St. John Ambulance denying any agreement with respondent no. 6, but it has been expressly denied by the respondents and had also been falsified by the certificate dated 2.7.2010 (Annexure-A/1) issued by St. John Ambulance Association through its authorized signatory. This certificate was followed by the agreement itself between them. In the said circumstances, no reliance can legally be placed upon Annexure-5.

15. Furthermore, the financial bid is concerned mainly with financial aspect and the impugned recommendation clearly shows that the authorities concerned as per their minutes had opened all the financial bids and had considered the same in detail and only thereafter had recommended respondent no. 6 for issuance of tender, in the said circumstances, there is no defect in the decision making procedure of the authorities, rather respondent no. 6 had been rightly selected as L-1 in transparent, fair and open manner without any extraneous reason.

16. In the said circumstances, it is quite apparent that the case laws relied upon by learned counsel for the petitioner in case of Ramana Dayaram Shetty (supra); in case of Dutta Associates Pvt. Ltd. (supra); and in case of W.B. State Electricity Board (supra) are with respect to a completely different sets of fact which are

not at all similar to the facts and circumstances of this case. In the said circumstances, this Court does not find any illegality in the recommendation of the authorities and issue of LOI in favour of respondent no. 6 on 9.12.2011, nor does it find any illegality in the agreement entered into between the respondent-State Health Society and Dr. Jain Videos On Wheels Ltd. (respondent no. 6) dated 22.12.2011. Accordingly, this writ petition is dismissed.