

IN THE HIGH COURT OF JUDICATURE AT PATNA

Pramod Kumar Ray

v

The State Of Bihar and ors.

Civil Writ Jurisdiction Case No. 19423 of 2015

19-05-2023

**(Hon’ble Mr. Justice P. B. Bajanthri
and Hon’ble Mr. Justice Arun Kumar Jha)**

Issue for Consideration

Whether the cancellation of the petitioner’s successful tender, awarded through lottery, without notice or hearing, was legally sustainable.

Headnotes

Petitioner was declared successful on the basis of draw of lottery. However, this tender was cancelled and fresh bids were invited. Scheme for which tender was floated was recommended by the MP of the concerned constituency who directed it to be cancelled and further directed to re-tender the scheme. Cancellation of tender in this manner prima facie appears to be against the established cannons of law. But at the same time, it has been cancelled without giving any opportunity of hearing to the petitioner. Not providing opportunity to the petitioner before cancelling its contract amounts to violation of the principles of natural justice as well as it smacks of arbitrariness. (Para 6, 7)

Petitioner at this point of time cannot be granted the relief as prayed by him due to happening of certain later events. Court directs the official respondents to pay compensation, which is quantified at Rs. 50,000/- towards litigation cost to the petitioner (Para 8, 11)

Case Law Cited

UMC Technologies (P) Ltd. v. Food Corporation of India, (2021) 2 SCC 551

List of Acts

Guidelines of the Member of Parliament Local Area Development Scheme (MPLADS)

List of Keywords

Tender cancellation

Lottery system

Cartelization

Principles of natural justice

MPLADS guidelines

Compensation

Case Arising From

Cancellation of tender for construction of Marriage Building at Bahri Mahadev Asthan, Piro Prakhand, Bhojpur, initially awarded to petitioner through lottery under NIT No. 06/2015-16, and re-tendering through NIT No. 15/2015-16.

Appearances for Parties

For the Petitioner: Mr. Deepak Kumar Sinha, Advocate

For the Respondents: Mr. Rajesh Kumar, GP-19; Mr. Dadanjeet Kumar, GP-20

Headnotes Prepared by Reporter:

Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19423 of 2015

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Pramod Kumar Ray, Son of Sri Chandradeo Ray, resident of Village-Jaisidih,
P.O. - Chakia, P.S. - Piro, District Bhojpur, Ara.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Planning and Development Department,
Government of Bihar, Patna.
3. The Chief Engineer, Office of Chief Engineer, Local Region Engineering
Organization Asthania Kshetr Planning and Development Department,
Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
4. The Superintending Engineer, Asthania Kshetria, Abhiyantan Sangathan,
Patna.
5. The Executive Engineer, Asthania Kshetria Abhiyantran Sangathan, Karya
Pramandal - 2, Jagdishpur, Bhojpur, Ara.
6. Director General, Vigilance Investigation Bureau, Vigilance Department,
Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar Sinha, Advocate
For the Respondent/s : Mr. Rajesh Kumar, GP-19
Mr. Dadanjeet Kumar, GP-20

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 19-05-2023

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed claiming the
following reliefs :-

“(i) For command and directions to the



respondents to make agreement immediately with the petitioner for construction work of Marriage Building in the Bahri Mahadev Asthan of Piro Prakhand (District Bhojpur) accordance with the result of tender in pursuant to Short time tender invitation informant no.06 (Asthan) years 2015-16 issued/published by Executive Engineer, Asthan Kshetra Abhiyantram Sang Asthan Karya-Pramandal-2, Jagdishpur Bhojpur under planning and Development Department in which petitioner is participating in due process and finally succeeded by way of lottery accordance with law.

(ii) To further command and direct the respondents to set aside the fresh tender advertisement i.e. tender invitation information No.15/Asthan/Year 2015-16 published in Newspaper Hindustan, dated 12.12.2015 issued by the same authority and for the same work without noticing the petitioner without and cancelling the earlier tender in which petitioner was succeeded to get tender as well as also set aside the earlier tender cancelling order if any passed by the authority of department for which petitioner has no knowledge or information.

(iii) For which petitioner is entitled for”.

3. Briefly stated the facts of the case, according to the petitioner, are that a short NIT No. 06/2015-16 was issued for construction work of marriage building in the Bahri Mahadev Asthan of Piro Prakhand (District-Bhojpur). Pursuant to the aforesaid tender, the petitioner participated in the process of tender. In the aforementioned tender, total participants were 33,



out of which, 29 contractors were qualified after opening the tender and all the qualifying 29 contractors have quoted identical rate. Due to which, the authority resorted for selection by means of lottery system in which petitioner was chosen as successful bidder on 11.07.2015. When the respondents authority slept over the matter and agreement was not executed for construction of marriage building and even no information has made available to the petitioner in respect of execution of agreement, then the petitioner approached the Executive Engineer of the department on 10.08.2015 and Superintending Engineer and Chief Engineer on 08.10.2015 for redressal of his grievance, but no avail. All of a sudden, the petitioner came to know that a fresh NIT No. 15/2015-16 was issued by the same authority for the same work.

4. The learned counsel for the petitioner submitted that respondents have not followed the procedure of law of contract before canceling the tender and have ignored the conditions mentioned in column 17(ii) and (iv) of tender having knowledge that after due process by way of lottery system, tender was processed and the petitioner was declared a successful bidder. The learned counsel further submitted that aforesaid tender was cancelled only on the basis of recommendation of the Member of Parliament (MP) of the concerned constituency, in arbitrary



manner as the tender was not allotted to the persons (contractor) who was close to the local MP and hence purposefully, it was not communicated to the petitioner, which is against the law. The learned counsel further submitted that a fresh tender was published on 12.12.2015 and being aggrieved by this action, the petitioner filed the present writ petition before this Court and during pendency of this writ petition, the respondent has executed the fresh tender and declared the name of successful bidders, i.e., Sri Manish Kumar in Group No.1, Sri Vishnu Shankar Tiwary, in Group No.2 and Sri Anand Kumar, in Group No.3 on 18.01.2016 by the same process, same rate as earlier tender and by way of lottery and the successful bidders were directed to make agreement within one week. The learned counsel further submitted that the action of respondents authority is completely unconstitutional, illegal, without jurisdiction against the rules of contract as well as law of land and the colourable exercise of their power. The learned counsel further submitted that there is no occasion to issue fresh tender for the same purpose.

5. On the other hand, the learned counsel for the respondents submitted that in NIT No. 06/2015-16, there was tender for three groups. In group no. 1, there were 29 numbers of tenderers, in group no. 2 there were 21 numbers of tenderers



and in group no 3, there were 25 numbers of tenderers. All successful tenderers have quoted the same rate, that is, the BOQ rate. None of them had quoted different rate. Thus, a cartel has been formed. The learned counsel further submitted that cartel has been defined in the dictionary as a cartel is an association of similar companies or business that have grouped together to prevent competition and to control prices. As there was also same case because all the contractors participating in tenders made a group and quoted the same rate that is BOQ rate without any competition. That's why the charge of cartelization made by the concerned M.P. could not be deny and the tender for all three groups was cancelled under Article 16 of NIT 06/ 2015-16 and fresh tender was invited in that very tender a facility for none payment of BOQ cost for previous tenderers was informed by a notice. The learned counsel further submitted that a tender is an open bidding system in which all registered contractors are supposed to participate without any prejudice and to make fare competition. But quoting same rate, i.e., BOQ rate means that the tenderers have made an association to avoid competition. The learned counsel further submitted that tender was cancelled as per the clause 16 of the NIT and by the competent authority. Hence, no interference is required by this Court.

6. Having considered the material available on record



and further considering the rival submission, it is not in dispute that the petitioner was declared successful on the basis of draw of lottery. However, this tender was cancelled and fresh bids were invited. This fact is apparent from Annexure-C annexed with the counter affidavit of the respondents. Perusal of this document shows that the scheme for which tender was floated was recommended by the MP of the concerned constituency who directed it to be cancelled vide letter dated 19.09.2015 and further directed to re-tender the scheme. Cancellation of tender in this manner *prima facie* appears to be against the established cannons of law. But at the same time, it has been cancelled without giving any opportunity of hearing to the petitioner.

7. Not providing opportunity to the petitioner before cancelling its contract amounts to violation of the principles of natural justice as well as it smacks of arbitrariness. The Hon'ble Apex Court in the case of ***UMC Technologies (P) Ltd. v. Food Corpn. of India, (2021) 2 SCC 551***, in paragraph 13, held as under :

“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority



concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Custodian General, Evacuee Property [Nasir Ahmad v. Custodian General, Evacuee Property, (1980) 3 SCC 1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard”.

8. On the aforesaid ground, the petitioner has been able to make out a *prima facie* case in his favour. But the petitioner at this point of time cannot be granted the relief as prayed by him due to happening of certain later events. As per submission made by the petitioner, during pendency of this writ petition, the respondent has executed the fresh tender and awarded the same to the successful bidder on 18.01.2016.

9. Thereafter, this Court vide order dated 15.02.2016 has passed the following order :

“Heard learned counsel for the parties.



Learned counsel for the petitioner submits that if the intention of the respondents was fair, then even the first tender, which was cancelled, was on the basis that all the tenderers have given the same rate for which lottery was required, but the second time round also, the same situation has prevailed and the person has been chosen on the basis of lottery and thus, when the petitioner was the successful tenderer in the first lottery, the same should not have been cancelled.

Having considered the rival contentions, this Court does not feel comfortable to give a clean chit to the fact that 25 tenderers would quote the same rate, not once but on two occasions. This clearly indicates that an unhealthy nexus and management by the tenderers is prevailing, which can only be termed as cartelization and cannot be permitted in a public system. The Court feels that the tenderers have made a pact among themselves and quoting similar rates, whoever is successful in the lottery, an arrangement would be made that everybody is happy or in the alternative all are just fronts having common interest at the cost of hoodwinking the system.

Thus, this Court deems it appropriate to refer the matter to the Vigilance Investigation Bureau under the Vigilance Department for conducting a thorough enquiry with regard to connection of all the tenderers who participated in both the tenders in question to find out as to whether there was any common strategy adopted to defeat genuine bidding.

The report of the enquiry be submitted to



the Court latest by 11.03.2016 and the matter be listed under the heading "For Orders" on 15.03.2016.

Accordingly, let the Vigilance Investigation Bureau, Department of Vigilance, Government of Bihar, Patna be impleaded as respondent no. 6.

Learned counsel for the State shall ensure that copy of the entire brief along with copy of the present order is transmitted to the Director General of Vigilance Investigation Bureau latest by day-after-tomorrow for compliance".

10. Pursuant thereto, a report has been submitted by the Superintendent of Police, Vigilance Investigation Bureau and from perusal of this report, it is very much obvious that the petitioner and other contractors were involved in cartelization and they quoted the same rate in agreement with each other. Furthermore, the tender was floated for a scheme recommended by the MP of concerned constituency under his MPLADS (Member of Parliament Local Area Development Scheme) funds. Clause 3.15 of the Guidelines of MPLADS empowers the MP concerned to cancel his recommended scheme. So, the letter dated 27.11.2015 has been issued in the light of the direction of the local MP and the same cannot be faulted on account of incompetence. However, the fact remains that it was without any proper notice to the person concerned who was going to be



affected by the aforesaid order. Since this is a matter of the year 2015 and no further action could be taken at this belated stage of time, the petitioner could be only be compensated in terms of money towards the litigation cost and other expenses along with the mental agony undergone for these many years.

11. Under these circumstances, this Court directs the official respondents to pay compensation, which is quantified at Rs.50,000/- towards litigation cost to the petitioner within a period of three months from today.

12. With the aforesaid observations and directions, this writ petition stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	12.05.2023
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Transmission Date	N.A.

