

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.16089 of 2025**

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Kaushal Kishore S/o Sahja Sharma, R/o Village-Bishunpura, P.O.-Manikpur,  
P.S. Kurtha, District-Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Rural Work Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Rural Work Department, Government of Bihar, Patna.
3. The Engineer in Chief cum Additional Commissioner cum Special Secretary, Rural Work Department, Government of Bihar, Patna.
4. Nodal Officer MMSGUY, Rural Works Department, Govt. of Bihar, Patna.
5. The Chief Engineer Rural Works Department, Bihar, Patna.
6. The Chief Engineer (2), Rural Works Division, Gaya.
7. Superintending Engineer, Rural Works Department, Aurangabad.
8. The Executive Engineer, Rural Works Department, Arwal.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate  
Mr. Rajesh Kumar, Advocate  
Mr. Priyansh Ranjan, Advocate

For the Respondent/s : Mr. Sanjay Prasad, AC to AAG-4

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**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**  
**and**  
**HONOURABLE MR. JUSTICE SHAILENDRA SINGH**  
ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

3      25-03-2026                      Heard the parties.

2. Following is the relief sought for in the present writ  
application:-

*“I. For quashing the letter dated  
15.09.2025 issued by the Tender Committee  
constituted under the Chairmanship of Respondent  
No.-3, communicated vide E-letter dated 16.09.2025*



*by the Respondent No.-5, as contained in Annexure-P:7 by which the Petitioner who was duly selected in financial bid being L-1 against NIT No-RRSMP/10/25-25, Package No- RRSMP/25-26 (Tender ID 143239) has been cancelled and order for re-tender has been made.*

*II. For commanding the Respondents to continue the contract and issue work order in favour of the Petitioner as he has been duly selected being L-1 for the execution of the said contract work.*

*III. For issuance of such other appropriate order or direction which may deem fit and proper in the facts and circumstances of the present case.”*

3. The brief facts of the present case are that an e-tender bearing No. RRSMP-10/2025-26 was invited under the signature of the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary on 03.07.2025 for execution of works under the Rural Road Strengthening and Management Program (RRSMP), which was uploaded on the departmental portal on 05.07.2025. The last date for submission of bids was initially fixed as 01.08.2025 and was subsequently extended to 08.08.2025. The petitioner, being eligible, participated in the tender process for Package No. RRSMP/25-26 (Tender ID 143239), Arwal-2. During the technical evaluation, one of the bidders, namely Praveen Kumar (ID No. 624777), was declared disqualified on account of non-



submission of payment certificate and Form 26AS as required for verification of Annual Turnover under the bid conditions. Opportunity was granted to the bidders to raise objections; however the said bidder did not avail the same. Thereafter, the financial bid was opened and the petitioner was declared L-1 (lowest bidder). The case of the petitioner was also recommended for issuance of work order by the Executive Engineer. Subsequently, the Tender Committee, vide decision dated 15.09.2025 (communicated on 16.09.2025), cancelled the tender process and directed re-tendering on the ground that the disqualified bidder was not afforded adequate opportunity.

4. The order under challenge is the Letter dated 15.09.2025 (Annexure- P/7) issued by the Tender Committee, which is reproduced hereinbelow:-

“बिहार सरकार

ग्रामीण कार्य विभाग

दिनांक:- 15/09/2025 को सम्पन्न विभागीय निविदा समिति की बैठक की कार्यवाही

उपस्थिति:-

- (i) श्री दीपक कुमार सिंह, अपर मुख्य सचिव, ग्रामीण कार्य विभाग।
- (ii) ई0 जय किशोर ठाकुर, अभियंता प्रमुख, ग्रामीण कार्य विभाग।
- (iii) ई0 चन्द्रशेखर आजाद, मुख्य अभियंता-3 (भागलपुर)।
- (iv) ई0 अनिल कुमार, मुख्य अभियंता-2 (गया)।
- (v) श्री आमीर नैय्यर, आंतरिक वित्तीय सलाहकार, ग्रामीण कार्य विभाग।

2. बैठक में 4515 (MMGSUY) योजना के अवयव के रूप में ग्रामीण सड़क सुदृढीकरण एवं प्रबंधन कार्यक्रम अन्तर्गत E-Tendering के माध्यम से प्राप्त की गयी 02 निविदाओं (Tender Id-141673 एवं 142021) का तकनीकी बीड पर अभियंता प्रमुख की अध्यक्षता में गठित तकनीकी बीड समिति द्वारा तकनीकी बीड का निष्पादन किया गया है उक्त दोनों निविदाओं का वित्तीय बीड खुलने के



उपरांत उक्त निविदा के L1 निविदाकार का ATO के जाँच के क्रम में Payment Certificate गलत पाया गया है एवं 01 निविदा (Tender Id-143239) में निविदाकार Praveen Kumar द्वारा Bid में ATO के साक्ष्य के रूप में जमा किए जाने वाले 26AS/ Payment Certificate Online जमा नहीं रहने के कारण अयोग्य घोषित किया गया है एवं वित्तीय बीड कार्यपालक अभियंता द्वारा खोलने जाने के अनुशंसा के आलोक में खोल दिया गया है जबकि निविदाकार Praveen Kumar द्वारा ATO के साक्ष्य के रूप में 26AS/ Payment Certificate की मांग की जानी चाहिए थीं चूंकि CMBD की कंडिका 24.2 में Substantially Responsive ATO की मांग की गयी है। CMBD में ATO के जांच हेतु 26AS/ Payment Certificate की मांग की जानी है।

उक्त तीनों निविदाओं के संबंध में विभागीय निविदा समिति द्वारा निम्नवत् निर्णय लिया जाता है।

Arwal	RRSMP /25-26 Arwal/ 02 (Tender Id- 143239)	08.08.2 5	769. 34	3	KAUSHAL KISHORE (BID ID-625917)	671.59964	इस निविदा के तकनीकी बीड का मूल्यांकन दिनांक 06.09.25 को वित्तीय बीड कार्यपालक अभियंता के आलोक में खोला गया है। इस निविदा में Praveen Kumar को 26AS/ Payment Certificate में संलग्न नहीं किये जाने के कारण अयोग्य घोषित किया गया है एवं Praveen Kumar को इस संबंध में पूछा नहीं जा सकी है। CMBD की कंडिका 24.2 में Substantially Responsive हेतु ATO की मांग की गयी है। इसमें 26AS/ Payment Certificate का उल्लेख नहीं किया गया है। CMBD की कंडिका 4.4(a) में ATO का सत्यापन हेतु Payment Certificate/26AS की आवश्यकता किया गया है। Payment Certificate/26AS एक Historical Data है जो पूर्व से Generated होता है। अतएव इससे ATO का सत्यापन हेतु निविदाकार से इसकी मांग किया जाना न्यायोचित है जबकि इस निविदा में Praveen Kumar को यह मौका नहीं मिला। चूंकि इस निविदा का वित्तीय बीड खुल चुका है एवं दर की गोपनीयता भंग हो गयी है। अतएव इस परिस्थिति में Praveen Kumar से 26AS/ Payment Certificate की जांच नहीं की जा सकती है। अतएव इस निविदा को रद्द करते हुए पुनर्निविदा करने का निर्णय लिया जाता है।
					M/S MAA KAMAKHYA CONSTRUCTIO N AND CO. (BID ID-626550)		

5. Learned counsel for the petitioner submits that the impugned action is arbitrary, unreasonable, and violative of Article 14 of the Constitution of India. It is further submitted that a concluded stage of tender evaluation cannot be nullified on untenable and extraneous considerations.

6. Learned counsel further submits that even the basis of the impugned action is factually unsustainable. It is pointed out that the petitioner has brought on record, by way of supplementary affidavit, a letter dated 12.09.2025 (Annexure-P/8 to the supplementary affidavit) issued by the concerned



bidder, namely Praveen Kumar, addressed to the competent authority, wherein he has categorically stated that he had mistakenly not submitted the requisite certificates and that he has neither filed any objection nor intends to do so in future.

The said matter is reproduced as under:-

“ DATE:-12/9/2025  
सेवा में,  
अपर सचीव महोदय  
ग्रामीण कार्य विभाग, पटना

विषय:- कार्य प्रमण्डल अरवल R.R.S.M.P टेंडर ईडी 0143239 में तकनीकी निविदा के संबंध में।

महाशय,

उपर्युक्त विषय के संदर्भ में कहना है कि मैं इस निविदा में भाग लिया था मुझे इस निविदा में A.T.O. संबंधित Payment Certificate एवं 26AS / शपथ पत्र में तकनीकी निविदा में असफल किया गया है। इस निविदा में मेरे द्वारा Payment Certificate एवं 26AS/ शपथ पत्र भुलवश नहीं लग पाया था इसमें मेरे द्वारा परिवाद/आपत्ति भी नहीं दिया गया है और भविष्य में नहीं दिया जाएगा।

अतः श्रीमान से अनुरोध है कि मेरे द्वारा दिए गये आवेदन पर उचित निर्णय लेने कि कृप्या किए जाए।

प्रतिलिपि:-

1. अभियंता प्रमुख महोदय
2. नोडल R.R.S.M.P ग्रामीण कार्य विभाग
3. कार्यपालक अभियंता ग्रामीण कार्य विभाग, अरवल।  
विश्वासभाजन  
प्रवीण कुमार”

7. It is further submitted that the said letter was forwarded by the Executive Engineer vide Memo No. 1490 dated 13.09.2025 (Annexure- P/9 to the supplementary



affidavit) to the higher authority, thereby leaving no ambiguity regarding the position of the said bidder. The said document is reproduced as under:-

“पत्रांक 1490 / अरवल, दिनांक 13.09.2025  
प्रेषक,  
कार्यपालक अभियंता,  
ग्रामीण कार्य विभाग,  
कार्य प्रमण्डल, अरवल।  
सेवा में,  
अभियंता प्रमुख,  
ग्रामीण कार्य विभाग,  
बिहार, पटना।

विषय:- टेन्डर आई0डी0-143239 में संवेदक प्रवीण कुमार द्वारा दिये गये पत्र के संबंध में।

महाशय,

उपर्युक्त विषय के संबंध में कहना है कि टेन्डर आई0डी0-143239 में संवेदक प्रवीण कुमार ने भाग लिया था उन्हें इस निविदा में संलग्न ATO के साथ सिविल कार्य के साक्ष्य के रूप में Payment Certificate एवं 26AS नहीं संलग्न करने के कारण उन्हें इस निविदा में असफल किया गया था।

संवेदक प्रवीण कुमार द्वारा अपने पत्र के माध्यम से यह सूचित किया गया है कि वे भूलवश Payment Certificate एवं 26AS / शपथ पत्र नहीं लगा पाये थे और इनके द्वारा कोई परिवाद/आपत्ति नहीं दिया गया है और भविष्य में नहीं दिया जायेगा। (प्रवीण कुमार द्वारा दिये गए पत्र की छाया प्रति संलग्न)।

अनु0-यथोक्त।

विश्वासभाजन

ह0/-

कार्यपालक अभियंता  
ग्रामीण कार्य विभाग,  
कार्य प्रमण्डल, अरवल।”

8. In view thereof, learned counsel submits that the very foundation of the impugned decision stands vitiated as the concerned bidder himself has accepted that he had mistakenly



not submitted the requisite documents and waived any right to object. It is, thus, submitted that the impugned order is unsustainable in law and is liable to be set aside.

9. *Per contra*, learned counsel for the respondents submits that the impugned decision has been taken after due scrutiny by the Departmental Tender Committee in order to ensure fairness and transparency in the tender process. It is submitted that as per Clause 4.4A(a) of the CMBD, submission of documents for verification of Annual Turnover (ATO), including payment certificate/26AS, is mandatory. Although, Clause 24.2 of the CMBD pertains to substantial responsiveness, the requirement under Clause 4.4A(a) being essential could not be dispensed with. It is further submitted that since the financial bids had already been opened, the confidentiality of rates stood compromised, and therefore, it was not feasible to seek any further clarification from bidders. In such circumstances, the decision to cancel the tender was justified.

10. Learned counsel further submits that as per Clause 33 of the NIT, the competent authority reserves the right to cancel the bidding process at any stage prior to award of contract without assigning any reason. It is further submitted



that the impugned decision is strictly in accordance with the aforesaid clauses and does not warrant interference.

11. The limited issue for consideration before this Court is whether the respondent authorities were justified in cancelling the tender process on the ground of alleged denial of opportunity to a bidder, when such bidder had, prior to the impugned decision itself, waived his right to submit the requisite documents or raise any objection.

12. Having heard learned counsel for the parties and upon consideration of the materials available on record, it transpires that the sole foundation of the impugned decision dated 15.09.2025 is that one bidder, namely Praveen Kumar, was disqualified for non-compliance of Clause 24.2 of the CMBD and non-submission of 26AS/Payment Certificate as required under Clause 4.4A, and that he was allegedly not afforded adequate opportunity to respond to such disqualification.

13. However, the materials on record unequivocally demonstrate that prior to the impugned decision itself, the said bidder had waived his right to submit the requisite documents or to raise any objection. The letters dated 12.09.2025 and 13.09.2025 (Annexure- P/8 & P/9), clearly establish that the



said bidder consciously accepted his disqualification and categorically stated that he neither intends to file any objection nor to pursue the matter further.

14. In such circumstances, the very foundation of the impugned decision becomes unsustainable and collapses. The doctrine of waiver, which is a well-recognized principle in law, postulates that where a person, with full knowledge of his rights, voluntarily abandons or relinquishes the same, he cannot subsequently be heard to complain. The Hon'ble Supreme Court in **Krishna Bahadur v. Purna Theatre**, reported in **(2004) 8 SCC 229** has held that a right can be waived by the party for whose benefit it exists, even by conduct. The relevant part of the said judgment reads as follows:

*“10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct.”*

15. Applying the aforesaid principle to the present case, once the concerned bidder had, before the decision dated 15.09.2025, consciously and waived his right to object or to



furnish documents, there remained no subsisting right or grievance which required protection or consideration by the respondent authorities. In such a situation, for the authorities to subsequently rely upon an alleged denial of opportunity to that very bidder as a ground for cancelling the entire tender process is not only contradictory but also manifestly arbitrary.

16. This Court is unable to comprehend as to how a ground, which had already ceased to exist by virtue of Annexure-P/8 could have been resurrected to justify cancellation of the tender. Such an approach clearly reflects non-application of mind and consideration of an irrelevant factor, while ignoring material facts available on record.

17. Further, it is well settled that while the State and its instrumentalities possess discretion in contractual matters, such discretion is not absolute and must conform to the mandate of fairness, transparency, and non-arbitrariness under Article 14 of the Constitution. In **Tata Cellular v. Union of India**, reported in (1994) 6 SCC 651, the Hon'ble Supreme Court observed that judicial review is concerned with the decision-making process, and interference is warranted where the decision is arbitrary or based on irrelevant considerations. The relevant part of the said judgment reads as follows:-

*“94. The principles deducible from the*



above are:

(1) *The modern trend points to judicial restraint in administrative action.*

(2) *The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*

(3) *The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*

(4) *The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*

(5) *The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*

(6) *Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”*

18. Likewise, in **Jagdish Mandal v. State of Orissa**,



reported in **(2007) 14 SCC 517**, it has been held that if a decision is so arbitrary that no reasonable authority could have arrived at it, the Court would be justified in interfering.

*“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."*

19. In the present case, the cancellation of the tender is based on a ground which is demonstrably factually incorrect and legally untenable, inasmuch as the bidder concerned had already waived his right. The decision, therefore, suffers from arbitrariness, non-consideration of relevant material, and reliance on a non-existent ground.

20. This Court also finds that once the tender process



had progressed to the stage where the petitioner was declared L-1, the respondents were expected to act in a fair and reasonable manner, and any decision to annul such process ought to be supported by cogent and valid reasons. The reason assigned in the present case falls short of such standard.

21. Accordingly, this Court is of the considered opinion that the impugned decision dated 15.09.2025 cancelling the tender process suffers from serious infirmity and cannot be sustained in law.

22. Consequently, the order dated 15.09.2025 is set aside and the writ application is, accordingly, allowed.

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

**(Sudhir Singh, J)**

**(Shailendra Singh, J)**

Sachin/A.F.R.-

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