IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20099 of 2025

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J and S Joint Venture (JV) having its office at Mohalla- Shri Krishna Nagar, Post Office and Police Station- Aurangabad and District- Aurangabad, Bihar, PIN Code- 824101 represented through its partner Mr. Sunil Kumar (Male) aged about- 53 years, Son of Shri Chandrakshekhar Sharma, resident of Shri Krishna Nagar, Post Office and Police Station- Aurangabad and District- Aurangabad, Bihar, PIN Code- 824101.

... ... Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. The Engineer-in-Chief-Cum-Special Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Chief Engineer, Public Health Engineering Department, Patna Region, Government of Bihar, Patna.
4. The Superintending Engineer, Public Health Engineering Department, Sasaram Circle, Government of Bihar, Sasaram, Bihar.
5. The Executive Engineer, Public Health Division, Aurangabad, Bihar.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Prafull Chandra Jha, Advocate Mr.Avinash Chandra, Advocate Mr. Keshav Kumar Jha, Advocate Mr. Rahul Kumar, Advocate
For the Respondents	:	Mr. Sajid Salim Khan, SC 25 Mr. S. Mushtaque, Advocate. Mr. Yasir Ashraf, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RANJAN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 14-07-2026

Heard learned counsel for the parties.

2. The present writ application has been filed seeking the following reliefs:

> *"i. For setting aside the retender NIT no.04/2025-26 (LoT/PRD) dated 02.12.2025 Published by Public Health Engineering Division Aurangabad, Public Health Engineering Department, Government of Bihar.*
>
> ii. *For direction to the competent authorities to allow the petitioner to start work in NIT No. 15/2024-25 (LoT PRD) because it was declared the L-1 (Lowest bidder) in that tender vide tender ID no. 89096, but all of a sudden on 02.12.2025, tender of petitioner got cancelled through an e-mail without giving a proper letter and without giving reason for cancellation of that tender and the above mentioned re-tender NIT no.04/2025-26 (LoT/PRD) got Published by Public Health Engineering Division Aurangabad, Public Health Engineering Department, Government of Bihar.*
>
> *iii. For any further relief/reliefs, direction/directions, or order/orders which are found admissible during the course of arguments."*

3. The brief facts of the present case are that the petitioner, J & S Joint Venture (JV), comprising M/s Maa Jagdamba Construction and M/s S.K. Construction, participated in a tender process initiated by the Public Health Engineering Department, Aurangabad Division, Government of Bihar, pursuant to NIT No. 15/2024-25 (LoT/PRD) dated 17.01.2025

for the design, construction, supply of materials, testing and commissioning of piped water supply schemes under the “Har Ghar Nal Jal” Nischay Yojana on a turnkey basis.

4. The petitioner submitted its bid within the prescribed time. During the pendency of the tender process, the Executive Engineer, Public Health Engineering Division, Aurangabad, by letter dated 09.08.2025, requested all participating bidders to extend the validity of their bids in terms of Clause 15.2 of the Standard Bidding Document. The petitioner furnished its consent and extended the bid validity up to 18.09.2025.

5. Thereafter, the Technical Evaluation Committee, vide Memo No. 1399 dated 12.09.2025, declared the petitioner technically qualified. Upon opening of the financial bids, the petitioner emerged as the lowest (L-1) bidder.

6. Subsequently, by Letter No. 3052 dated 03.10.2025, the Executive Engineer again sought the petitioner’s consent for further extension of bid validity on the ground that the tender process had not been concluded within the earlier extended validity period. The petitioner submitted its unconditional consent on the same day, undertaking to execute the work at the quoted rates. The Executive Engineer thereafter forwarded the

proposal for extension of bid validity to the higher authorities by Letter No. 3073 dated 06.10.2025, which was further recommended by the Chief Engineer through Letter No. 1717 dated 01.12.2025.

7. While the proposal for extension of bid validity was pending, the petitioner received an e-mail dated 02.12.2025 intimating that Tender ID No. 89096 had been cancelled.

8. Learned counsel for the petitioner submits that the impugned cancellation of Tender ID No. 89096 is arbitrary, illegal and unsustainable in law. It is submitted that after the petitioner had been declared technically qualified and had emerged as the lowest (L-1) bidder, the respondents could not have cancelled the tender process without assigning any reason.

9. Learned counsel further submits that the Executive Engineer lacked the authority to cancel the tender after the financial bids had been opened and the petitioner had been declared the successful bidder. It is submitted that the impugned action is dehors the provisions governing the tender process and is therefore without jurisdiction.

10. Per contra, learned counsel appearing for the respondents submits that the cancellation of the tender is in

accordance with the terms and conditions of the Standard Bidding Document (SBD) and the Notice Inviting Tender (NIT). It is submitted that, in terms of Clause 15.1 of the SBD, the bid was valid only for a period of 180 days from the last date prescribed for submission of bids and, upon expiry of the said period, no further action could lawfully be taken in respect of the tender.

11. Learned counsel further places reliance upon Clause 30.1 of the SBD to submit that the notification of award and execution of the agreement are required to be completed within the period of bid validity. Since the bid validity had expired before the tender process could be concluded, the respondents were left with no option but to cancel the tender.

12. It is further submitted that, owing to the enforcement of the Model Code of Conduct during the Bihar Legislative Assembly Elections, the tender process could not be finalized within the period of bid validity. Consequently, after the expiry of the bid validity period, the Executive Engineer proceeded to cancel the tender in terms of the applicable provisions of the tender document.

13. Placing reliance upon Clause 24 of NIT No. 15/2024-25, learned counsel for the respondents further submits

that the tendering authority reserved the right to extend, accept or reject the tender without assigning any reason. It is, therefore, contended that the decision to cancel the tender and issue a fresh tender notification falls squarely within the contractual powers reserved under the NIT and does not warrant interference in exercise of writ jurisdiction.

14. In response to the aforesaid submissions, learned counsel for the petitioner submits that the stand sought to be taken by the respondents is wholly untenable. Drawing the attention of this Court to Clauses 15.1 and 15.2 of the Standard Bidding Document, it is submitted that while Clause 15.1 stipulates the initial period of bid validity, Clause 15.2 specifically provides the mechanism for extension of the bid validity with the consent of the bidders.

15. It is submitted that the respondents themselves invoked Clause 15.2 on more than one occasion by calling upon the petitioner to extend the bid validity, and the petitioner duly furnished its unconditional consent each time. Having consciously exercised the power under Clause 15.2 and extended the bid validity by obtaining the consent of the bidders, the respondents cannot now justify the cancellation on the ground that the bid validity had expired under Clause 15.1.

16. The following issue arises for consideration in the present case:

i. Whether, after having invoked the procedure under Clause 15.2 of the Standard Bidding Document and obtained the consent of the bidders for extension of the bid validity period, the respondents can subsequently justify the cancellation of the tender on the ground of expiry of bid validity under Clause 15.1 of the Standard Bidding Document?

ii. Whether, in the facts and circumstances of the present case, the decision of the respondents to cancel Tender ID No. 89096 and issue a fresh tender is legally sustainable?

Re. Issue No. (i)

17. Having considered the rival submissions and upon perusal of the materials available on record, this Court finds that the controversy centres around the interplay between Clauses 15.1 and 15.2 of the Standard Bidding Document (SBD) and the effect of the respondents' own conduct in invoking the latter provision.

18. Clause 15.1 & 15.2 of the SBD reads as follows:

> *"15.1: Bids shall remain valid for a period of 180 days after the deadline date for bid submission specified in Clause 20. A bid value*

for a shorter period shall be rejected by the Employer as non- responsive. In case of discrepancy in bid validity period between that given in the undertaking pursuant to Clause 12.1(v) and the Form of Bid submitted by the bidder, the Later shall be deemed to stand corrected in accordance with the former and the bidder has to provide for any additional security that is required.

15.2: In exceptional circumstances, prior to expiry of the original time limit, the Employer may request that the bidders may extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or by cable. A bidder agreeing to the request will not be required or permitted to modify his bid."

19. A conjoint reading of the aforesaid clauses shows that while Clause 15.1 prescribes the initial period of bid validity, Clause 15.2 provides the procedure to be followed where extension of such validity becomes necessary. It enables the employer to seek extension of the bid validity by obtaining the consent of the participating bidders.

20. In the present case, it is not in dispute that the respondents themselves invoked Clause 15.2 by calling upon the bidders to extend the validity of their bids. It is equally undisputed that the petitioner, along with the other participating

bidders, furnished its consent pursuant thereto. Subsequently, the respondents again sought extension of the bid validity and the petitioner once again furnished its unconditional consent. Thus, the respondents themselves elected to proceed in terms of Clause 15.2 of the SBD and set in motion the procedure contemplated therein.

21. Significantly, the impugned communication cancelling the tender does not disclose any reason whatsoever for such cancellation. It is only during the course of hearing that the respondents have sought to justify the impugned action by placing reliance upon Clause 15.1 of the SBD and contending that the bid validity had expired. It is this stand of the respondents which has brought the issue of bid validity under Clause 15.1 into focus.

22. Once the respondents themselves proceeded under Clause 15.2 by seeking extension of the bid validity and obtaining the consent of the bidders, a question naturally arises as to whether they could thereafter justify the cancellation solely on the ground that the bid validity had expired under Clause 15.1. The respondents cannot, on the one hand, invoke the machinery contemplated under Clause 15.2 and call upon the bidders to extend the validity of their bids and, on the other

hand, rely upon the very expiry of the original bid validity under Clause 15.1 as the basis to sustain the cancellation. Such a course of action is prima facie inconsistent with the scheme of the SBD.

23. At the same time, this Court notices that no material has been brought on record by either side to indicate that the competent authority ultimately passed a formal order extending the bid validity. However, the absence of such a formal order does not dilute the admitted position that the respondents themselves initiated the process envisaged under Clause 15.2, sought the consent of the bidders and acted upon such consent by processing the proposal for extension. Indeed, the respondents have not denied these foundational facts. Therefore, even if the process did not culminate in a formal order of extension, it cannot be overlooked that the procedure under Clause 15.2 had been consciously invoked by the respondents themselves.

24. The Hon'ble Supreme Court has consistently held that a tendering authority is bound by the terms of the tender document and is expected to act fairly, consistently and in accordance with the procedure prescribed by it. In ***West Bengal State Electricity Board v. Patel Engineering Co. Ltd.,*** reported

in ***(2001) 2 SCC 451***, the Hon'ble Supreme Court emphasised that the conditions of the tender are required to be adhered to strictly. The relevant part of the said order reads as follows:

> ***"24.*** *The controversy in this case has arisen at the threshold. It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency. The bidders have or should have assistance of technical experts. The degree of care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract. The appellant, Respondents 1 to 4 and Respondents 10 and 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfil prequalification alone are invited to bid, adherence to the instructions cannot be given a go-by by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and our constitutional values. The very purpose of issuing rules/instructions is to ensure their enforcement lest the rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under the ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in*

the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the rules, it has to be done strictly in compliance with the rules. We have, therefore, no hesitation in concluding that adherence to the ITB or rules is the best principle to be followed, which is also in the best public interest."

25. Viewed in the aforesaid backdrop, this Court is of the considered opinion that the respondents cannot derive support from Clause 15.1 in isolation after having admittedly invoked the mechanism provided under Clause 15.2. The defence founded solely on the expiry of bid validity, therefore, cannot be accepted without first explaining the consequence of the respondents' own decision to invoke the procedure prescribed for extension of the bid validity.

Re. Issue No. (ii)

26. Having answered Issue No. 1, this Court now proceeds to examine the legality of the impugned cancellation of Tender ID No. 89096 and the consequential issuance of the

fresh tender.

27. It is a settled proposition of law that a bidder, merely because it has emerged as the lowest bidder, does not acquire an indefeasible right to insist upon the award of the contract. Equally, the authority inviting the tender is vested with the power to cancel the tender process or invite fresh tenders, if the circumstances so warrant. However, such power is not immune from judicial scrutiny and is required to be exercised in a fair, transparent and non-arbitrary manner.

28. The Hon'ble Supreme Court in ***Tata Cellular v. Union of India,*** reported in ***(1994) 6 SCC 651*** held that although the scope of judicial review in contractual matters is limited, the Court is empowered to interfere where the decision-making process is found to be arbitrary, irrational, mala fide or in violation of the prescribed procedure. The relevant part of the said order reads as follows:

> *"**77.** The duty of the court is to confine itself to the question of legality. Its concern should be:*
>
> *1. Whether a decision-making authority exceeded its powers?*
>
> *2. Committed an error of law,*
>
> *3. committed a breach of the rules of natural justice,*

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

29. The respondents have placed reliance upon Clause 24 of the Notice Inviting Tender to contend that the tendering authority reserved the right to accept, reject or cancel the tender without assigning any reason. There can be no quarrel with the proposition that such a power is available under the tender conditions. Nevertheless, the existence of such a clause does not place the exercise of that power beyond the scope of judicial review. Even where the tender conditions reserve a discretion to cancel the tender without assigning reasons, such discretion cannot be exercised in a manner inconsistent with the other conditions governing the tender process or in a manner that is arbitrary.

30. As noticed while deciding Issue No. 1, the respondents themselves invoked Clause 15.2 of the Standard Bidding Document, sought the consent of the participating bidders for extension of the bid validity and acted upon such consent by processing the proposal for extension. Having consciously proceeded under the mechanism envisaged under Clause 15.2, the respondents have sought to sustain the impugned cancellation by placing reliance upon Clause 15.1 on the ground that the bid validity had expired. Such a stand is not in consonance with the procedure adopted by the respondents

themselves during the tender process.

31. Though the record does not disclose that a formal order extending the bid validity was ultimately issued by the competent authority, it is equally true that the respondents have not disputed that the process contemplated under Clause 15.2 had been initiated by them and that the requisite consents had been obtained from the participating bidders. Once such a course was consciously adopted, the respondents were required to justify why the process initiated under Clause 15.2 was not carried to its logical conclusion. In the absence of any explanation in this regard, the subsequent reliance upon Clause 15.1 alone cannot be accepted as a legally sustainable basis for the impugned action.

32. Applying the aforesaid principles to the facts of the present case, this Court is of the considered opinion that while the respondents undoubtedly possessed the power under Clause 24 of the NIT to cancel the tender, the justification now sought to be advanced for exercise of such power is incompatible with the course adopted by them under Clause 15.2 of the Standard Bidding Document. The decision-making process, therefore, cannot be said to be consistent with the governing tender conditions and, to that extent, warrants

interference in exercise of the writ jurisdiction of this Court.

33. Accordingly, Issue No. 2 is answered in favour of the petitioner.

34. Before parting, this Court also notices that by order dated 07.04.2026, the operation of the fresh tender, namely, Re-Tender NIT No. 04/2025-26 (LoT/PRD), had already been stayed. Consequently, there is no question of any substantive progress having been made pursuant to the said re-tender.

35. In view of the foregoing discussion and the findings recorded on the issues framed hereinabove, the impugned communication dated 02.12.2025 cancelling Tender ID No. 89096 is quashed. Consequently, the Re-Tender NIT No. 04/2025-26 (LoT/PRD) dated 02.12.2025 is also quashed.

36. The matter is remitted to the competent authority to take a fresh decision in respect of Tender ID No. 89096 strictly in accordance with the terms and conditions of the Standard Bidding Document and the Notice Inviting Tender, keeping in view the observations made hereinabove. It shall be open to the competent authority to pass an appropriate reasoned decision, if so advised, in accordance with law.

37. Accordingly, the present writ petition stands allowed.

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

(Sudhir Singh, ACJ)

Ranjan Kumar Jha, J: ***I agree***

(Ranjan Kumar Jha, J.)

Sujit/-

AFR/NAFR	AFR
CAV DATE	07.07.2026
Uploading Date	14.07.2026
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