IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16046 of 2025

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Amit Kumar-Alok Kumar, Patna (JV) (In short A A Patna (JV)), through its power of attorney holder Mr. Alok Kumar, aged about 38 Years (Male), Son of Shri Binay Kumar Sinha, Resident of Mohalla- Vijay Nagar, Hanuman Nagar, Kankarbagh, House No. F/40, P.O- Bahadurpur, P.S- Patrakar Nagar, District- Patna-20.

... ... Petitioner

Versus

1. Bihar Urban Infrastructure Development Corporation Ltd. (A Govt. of Bihar Undertaking), BUIDCo Ltd. through its Chairman, West Boring Canal Road, (Rajapur Pul), Patna-1.
2. The Chairman, Bihar Urban Infrastructure Development Corporation Ltd. (A Govt. of Bihar Undertaking), BUIDCo Ltd. West Boring Canal Road, (Rajapur Pul), Patna-1.
3. The Managing Director-Cum-Chairman of Tender Committee, Bihar Urban Infrastructure Development Corporation Ltd. (A Govt. of Bihar Undertaking), BUIDCO Ltd. West Boring Canal Road, (Rajapur Pul), Patna-1.
4. The State of Bihar though the Engineer-in-Chief-Cum Member of Tender Committee, Urban Development and Housing Department, Old Secretariat, Bihar, Patna-15.
5. The Chief General Manager-Cum-Member of Tender Committee, Bihar Urban Infrastructure Development Corporation Ltd. (A Govt. of Bihar Undertaking), BUIDCo Ltd. West Boring Canal Road, (Rajapur Pul), Patna, Bihar- 800001.
6. The General Manager (South Wing)-Cum-Member of Tender Committee, Bihar Urban Infrastructure Development Corporation Ltd. (A Govt. of Bihar Undertaking), BUIDCo Ltd. North Bihar Wing, West Boring Canal Road, (Rajapur Pul), Patna, Bihar-800001.
7. The Internal Financial Advisor-Cum-Member of Tender Committee, Urban Development and Housing Department, Old Secretariat, Bihar, Patna-15.
8. The Development Commissioner-Cum Chairman of Board of Director, Bihar Urban Infrastructure Development Corporation Ltd. (A Govt. of Bihar Undertaking), BUIDCo Ltd, Bihar, Patna.

... ... Respondents

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Appearance :

For the Petitioner : Mr. Ramakant Sharma, Sr. Advocate, Mr. Manish Sahay, Advocate, Mr. Anil Kumar Sinha, Advocate, Mr. Siddharth Aditya, Advocate, Mr. Amrit Kirti, Advocate and Mr. Aman Raj, Advocate

For the Respondents : Mr. Lalit Kishore, Sr. Advocate, Mr. R.K. Prayadarshi, Advocate, Mr. Ayush Kumar, Advocate and Mr. Kanishka Shankar, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

7 27-07-2026 Heard learned counsel for the parties.

2. The following reliefs have been sought by the petitioner in the present writ application:-

> *"1 (I) For issuance of appropriate writ including a writ in the nature of writ of Certiorari quashing the reasoned order of Board of Directors, issued vide Letter No. 924 dated 26.03.2025 under signature of Managing Director of BUIDCo, Patna, as contained in Annexure-P-13 series, whereby and whereunder the Board of Director has rejected valid tender of the petitioner in most arbitrary manner and directed to invite fresh tender.*
>
> *(II) For commanding and directing the concerned respondent to allot the said work in favour of the petitioner in terms of NIT No. BUIDCo/Yo 2069/2021-113 dated 13.12.2023, in which the petitioner was declared single bidder in 2nd tender.*
>
> *(III) For issuance of an appropriate writ including a writ in the nature of Mandamus restraining the respondents to invite fresh tender for the work in question during pendency of this writ application.*
>
> *(IV) For issuance of any other appropriate writ (s)/Order (s), direction(s) as may be deemed fit and proper in the facts and*

circumstances of the case.

3. The present writ petition arises out of the tender process initiated by the respondent, Bihar Urban Infrastructure Development Corporation Ltd. (BUIDCo), for construction of a Storm Water Drainage System at Bodh Gaya.

4. Initially, BUIDCo issued Notice Inviting Tender (NIT) No. BUIDCo/Yo-2052/21-105 dated 12.10.2023. The petitioner participated in the tender process by submitting its bid along with the prescribed earnest money deposit. The petitioner emerged as the sole bidder. Consequently, the tender was cancelled by the respondents on 12.12.2023.

5. Thereafter, a fresh NIT No. BUIDCo/Yo-2069/2021-113 dated 13.12.2023 was issued on substantially the same terms. The petitioner again participated in the re-tender process and once again remained the sole bidder. The Technical Bid Evaluation Committee found the petitioner technically qualified and recommended its bid. The Tender Committee, in its meeting dated 16.02.2024, resolved that after consideration of objections, if any, the financial bid would be opened and placed before it for approval. Subsequently, the financial bid of the petitioner was opened and recommended by the Technical Bid Evaluation Committee, and the Tender Committee, in its

meeting dated 05.03.2024, decided to place the matter before the Board of Directors, being the authority one level above the Tender Committee.

6. However, before any decision was taken by the Board of Directors, the respondent issued a tender cancellation notice dated 24.05.2024 citing "unavoidable circumstances". Aggrieved thereby, the petitioner submitted a representation and also obtained the relevant file notings under the Right to Information Act, alleging that although the Tender Committee had resolved to place the matter before the Board of Directors, the proposal was not so placed and the tender was cancelled at the level of the Managing Director. Thereafter, a fresh tender was also issued.

7. The petitioner challenged the cancellation dated 24.05.2024 before this Court in CWJC No. 10276 of 2024. By order dated 11.12.2024, this Court recorded the submission on behalf of BUIDCo that the matter would be placed before the Board of Directors for consideration and directed that the Board should pass a speaking order, which would be communicated to the petitioner, while observing that the petitioner would be at liberty to challenge the decision of the Board, if so advised.

8. Pursuant to the aforesaid order, the Board of

Directors passed a reasoned order, communicated to the petitioner vide Letter No. 924 dated 26.03.2025, deciding not to accept the petitioner's bid, inter alia, on the grounds that the administrative approval contemplated operation and maintenance for five years, whereas such provision had not been incorporated in the tender documents, and that there was only a single bidder in the re-tender process.

9. Learned counsel for the petitioner submits that the impugned decision of the Board of Directors dated 26.03.2025 is arbitrary, illegal and contrary to the Government guidelines contained in the Gazette Notification dated 03.10.2016. It is submitted that once the petitioner was found to be the sole technically qualified bidder in the second tender process and its financial bid had been recommended by the Technical Bid Evaluation Committee, the matter was rightly required to be considered by the Board of Directors, being the authority one level above the Tender Committee. However, the Board has rejected the petitioner's bid on grounds which are wholly extraneous to the tender conditions.

10. It is further submitted that the principal reason assigned by the Board, namely, non-inclusion of the provision relating to five years' operation and maintenance in the tender

documents, is wholly untenable, as the respondents themselves had issued the tender without incorporating such a condition. The petitioner cannot be made to suffer for any omission on the part of the tendering authority. It is further contended that the work in question did not involve construction of any Drainage Pumping Station (DPS), and therefore, there was no requirement of operation and maintenance. In support thereof, reliance is placed upon subsequent tenders issued by the respondents for similar drainage works wherein no provision for operation and maintenance was incorporated.

11. Learned counsel further submits that the Board has adopted a discriminatory approach inasmuch as, in several other cases involving a single bidder, the Board has approved the award of contracts, even where the quoted rates were above the estimated cost, whereas the petitioner's bid, which was 5.01% below the estimated cost, has been rejected without any rational basis. Such differential treatment is stated to be arbitrary and violative of Article 14 of the Constitution.

12. It is further submitted that the reasons assigned in the impugned order are merely a pretext to deny the petitioner the contract. According to the petitioner, the respondents have acted with mala fide intent by repeatedly cancelling the tender

process despite the petitioner having been found technically qualified and financially suitable. The petitioner also contends that its detailed representation seeking reconsideration of the Board's decision has not been duly considered.

13. On the aforesaid grounds, it is prayed that the impugned decision of the Board of Directors communicated vide Letter No. 924 dated 26.03.2025 be quashed and the respondents be directed to act in accordance with law in respect of the petitioner's bid.

14. Per contra, learned counsel appearing for the respondents submits that the project for construction of the Storm Water Drainage System at Bodh Gaya is a significant public infrastructure project undertaken under the *Atmanirbhar Bihar Saat Nishchay-2* programme. It is contended that the administrative approval granted by the State Government specifically included provision and financial allocation for operation and maintenance of the drainage system for a period of five years, as the same forms an integral component of the successful implementation of the project.

15. It is submitted that in the earlier two rounds of tendering only a single bidder had participated. In view of the lack of adequate competition, the competent authority decided

to cancel the earlier tender processes and issue a fresh tender. It is further submitted that, with a view to encouraging wider participation, certain eligibility conditions were also relaxed through an addendum issued after the pre-bid meeting.

16. Learned counsel further submits that, since the petitioner was again the sole bidder, the matter was placed before the Board of Directors in compliance with the earlier order passed by this Court. The Board, in its 79th meeting held on 25.03.2025, examined the entire matter and noticed a serious defect in the tender documents, namely, that although the administrative approval had earmarked a sum of Rs. 434.18 lakhs towards operation and maintenance for five years, the said essential component had inadvertently not been incorporated in any of the tender documents.

17. It is further submitted that the Board, being the competent authority, found the omission to be a substantial defect going to the root of the tender process. Accordingly, it resolved to cancel the tender and directed issuance of a fresh tender incorporating the mandatory provision relating to operation and maintenance.

18. Learned counsel further submits that the impugned decision was taken in public interest and on the basis

of expert and technical considerations. According to the respondents, if the contract were to be awarded on the basis of an incomplete tender document omitting the operation and maintenance component despite the same forming part of the administrative approval, it could give rise to serious financial and audit objections, including by the Accountant General, apart from adversely affecting the implementation of the project. It is, therefore, contended that the decision of the Board is neither arbitrary nor mala fide but is a bona fide administrative decision taken to rectify a material defect in the tender process.

19. On the aforesaid grounds, learned counsel for the respondents submits that the writ petition is devoid of merit and is liable to be dismissed.

20. The following issues arises for consideration before this Court:

> (1) Whether the petitioner, merely by being the sole successful bidder in the tender process, acquired any vested or enforceable right to insist upon award of the contract?
>
> (II) Whether the decision of the Board of Directors dated 25.03.2025, cancelling the tender process on account of the omission of the mandatory operation and maintenance component from the tender documents and directing issuance of a fresh tender, suffers

from any arbitrariness, illegality or mala fides warranting interference by this Court under Article 226 of the Constitution of India?

Re. Issue No. (i)

21. The undisputed factual position is that although the petitioner was found to be the sole technically qualified bidder in the second round of tender and its financial bid was also opened, no Letter of Acceptance was ever issued in its favour, no work order was awarded and no agreement came to be executed. The petitioner's claim is founded solely on the premise that being the only successful bidder in the re-tender process, it became entitled to the award of the contract.

22. The contention cannot be accepted. It is a settled principle of law that participation in a tender process, even as the lowest or sole bidder, does not by itself create a vested or enforceable right to obtain the contract. The State or its instrumentalities are under no legal obligation to accept any bid merely because it is the only bid received or because the bidder has been found technically and financially responsive. The right of a bidder is confined to a fair, transparent and non-arbitrary consideration of its bid.

23. In ***Raunaq International Ltd. v. I.V.R. Construction Ltd., reported in (1991) 1 SCC 492*** the Hon'ble

Supreme Court held that the award of a public contract is essentially a commercial decision and the Court does not sit as an appellate authority over such decisions. Judicial review is confined to examining the decision-making process and not the merits of the decision itself. The Court observed that even the lowest tenderer has no enforceable right to insist that the contract be awarded in its favour. The relevant portion of the said order reads as follows:

> *"9. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations. These would be:*
>
> *(1) the price at which the other side is willing to do the work;*
>
> *(2) whether the goods or services offered are of the requisite specifications;*
>
> *(3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job*

is also important;

(4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;

(5) past experience of the tenderer and whether he has successfully completed similar work earlier;

(6) time which will be taken to deliver the goods or services; and often

(7) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services.

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

10. What are these elements of public interest? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public *buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work — thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.*

11. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the

> *two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers."*

24. Similarly, in ***Michigan Rubber (India) Ltd. v. State of Karnataka, reported in (2012) 8 SCC 216*** the Hon'ble Supreme Court authoritatively held that fixation of tender conditions and the decision whether or not to accept a bid fall within the realm of executive policy. Unless the decision is shown to be arbitrary, discriminatory, mala fide or intended to favour someone, the Court ought not to interfere in contractual matters under Article 226 of the Constitution. The relevant portion of the said order reads as follows:

> ***"23.*** *From the above decisions, the following*

principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers,

interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

***24.** 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"? and

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no *interference under Article 226."*

25. Again, in ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd. reported in (2016) 16 SCC 818***, the Hon'ble Supreme Court held that author of the tender document is the best person to understand and appreciate its requirements constitutional courts must exercise restraint in tender matters and should not substitute their own decision for that of the employer unless the decision-making process is vitiated by arbitrariness, mala fides or perversity. The relevant portion of the said order reads as follows:

> ***"13.*** *In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.*
>
> ***15.*** *We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this*

> *understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."*

26. Thus, merely because the petitioner remained the sole bidder in the second tender process, it did not acquire any indefeasible or vested right to demand issuance of a Letter of Acceptance or award of the contract. Until the competent authority accepts the bid and communicates such acceptance, the bidder possesses only a right to fair consideration of its bid and not a right to the contract itself.

27. In view of the settled legal position, this Court holds that the petitioner, merely by being the sole successful bidder in the second round of tender, did not acquire any vested or enforceable right to insist upon the award of the contract. In the absence of any Letter of Acceptance, work order or concluded contract, no legal right accrued in favour of the

petitioner which could be enforced through a writ under Article 226 of the Constitution.

28. Accordingly, Issue No. I is answered against the petitioner and in favour of the respondents.

Re. Issue No. (ii)

29. Having held that the petitioner acquired no vested right to the award of the contract, the next question which falls for consideration is whether the decision of the Board of Directors cancelling the tender process is so arbitrary or irrational as to warrant interference by this Court.

30. The impugned decision reflects that the Board of Directors considered the matter pursuant to the liberty granted by this Court and noticed that although the administrative approval granted by the State Government specifically contemplated operation and maintenance of the Storm Water Drainage Scheme for a period of five years and earmarked funds for the said purpose, the tender documents issued by the respondents did not incorporate any such condition. The Board was of the opinion that operation and maintenance constituted an integral component of the project and that omission of such an essential condition rendered the tender documents materially defective. Consequently, it resolved to cancel the tender and

issue a fresh tender incorporating the omitted requirement.

31. The reasons assigned by the Board cannot be said to be extraneous or irrelevant. Whether operation and maintenance ought to form part of the scope of work is essentially a technical and administrative decision lying within the domain of the employer. It is not for the Court, in exercise of judicial review, to substitute its own opinion for that of the expert body on matters relating to formulation of tender conditions or the scope of the work. The Court is only concerned with the legality of the decision-making process and not with the correctness of the decision itself.

32. The contention of the petitioner that operation and maintenance was unnecessary in the absence of a Drainage Pumping Station is essentially an assertion on the technical merits of the project. Such an issue falls within the expertise of the employer and its technical authorities. Merely because the petitioner holds a different view regarding the necessity of the operation and maintenance component would not render the Board's decision arbitrary or mala fide.

33. It is equally well settled that an employer is entitled to cancel a tender process where it finds that the tender conditions suffer from a material defect or do not adequately

reflect its actual requirements. A bidder cannot compel the employer to proceed with a defective tender merely because it has emerged as the sole successful bidder.

34. In ***Silppi Constructions Contractors v. Union of India, reported in (2020) 16 SCC 489*** the Hon'ble Supreme Court reiterated that courts should exercise great restraint in tender matters and should not interfere merely because another view is possible. Judicial review is confined to examining whether the decision-making process is vitiated by arbitrariness, mala fides or perversity. The relevant portion of the said order reads as follows:

> ***"19.*** *This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into*

between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. *The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of* *contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."*

35. In the present case, no material has been placed before this Court to establish that the decision of the Board was actuated by mala fides, favouritism or an intention to benefit any particular party. On the contrary, the record discloses that the decision was founded upon the perceived necessity of incorporating an essential component of the project in the tender documents before proceeding with the award of work. Such a

decision falls squarely within the administrative discretion of the employer and cannot be said to be so arbitrary or irrational as to invite interference under Article 226 of the Constitution.

36. This Court is, therefore, of the considered view that the decision of the Board of Directors to cancel the tender process and direct issuance of a fresh tender incorporating the operation and maintenance component is based on relevant considerations and lies within the administrative and contractual domain of the employer. The petitioner has failed to establish any arbitrariness, mala fides, discrimination or violation of any statutory or constitutional provision in the decision-making process. Consequently, the impugned decision does not warrant interference in exercise of the writ jurisdiction under Article 226 of the Constitution.

37. Accordingly, Issue No. II is answered in favour of the respondents and against the petitioner.

38. In view of the findings recorded hereinabove on the issues framed for determination, this Court is of the considered opinion that the petitioner has failed to make out any case warranting interference under Article 226 of the Constitution of India.

39. Accordingly, the present writ petition stands

dismissed.

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

(Sudhir Singh, ACJ)

(Rajesh Kumar Verma, J)

U.K./-A.F.R.

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