

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10325 of 2023

Medicare Environmental Management Pvt. Ltd., a company registered under the Companies Act, 1956/2013 through its Authorized Representative Shri Ankit Kumar, S/o Shri Yogendra Prashad Shah, aged about 28 years, R/o Adarsh Colony, East of Janta Flats, Bhootnath Road, B.H. Colony, PS-Kankarbagh, District-Patna, Bihar.

... .. Petitioner/s

Versus

1. State of Bihar through the Principal Secretary, Department of Environment, Forest and Climate Change, Government of Bihar, Vikas Bhawan, Patna.
2. The Principal Secretary, Department of Environment, Forest and Climate Change, Government of Bihar, Vikas Bhawan, Patna.
(Respondent Nos. 1 and 2 were deleted *vide* order dated 28.07.2023)
3. The Chairman, Bihar State Pollution Control Board, Parivesh Bhawan, Plot No. NS-B/2, Patliputra Industrial Area, Patliputra, Patna, Bihar.
4. The Member Secretary, Bihar State Pollution Control Board, Parivesh Bhawan, Plot No. NS-B/2, Patliputra Industrial Area, Patliputra, Patna, Bihar.
5. M/s Sangam Mediserve Pvt. Ltd. having its Registered Office of 189 Sector-D, Shantipuram, Phaaphamnu, Prayagraj- 211012 (UP).

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 12296 of 2023

M/s Sangam Mediserve Pvt. Ltd. having its Registered office at 189 Sector-D, Shantipuram, Phaaphamnu, Prayagraj (Uttar Pradesh) through its Authorized Representative, namely, Pawan Kumar Singh, Male, Aged About 36 Years, Son of Ram Kumar Singh, Resident of 40 no Gomti, New Basti, Gohri, P.S.-Phaphamau, District-Allahabad (Uttar Pradesh).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health and Family Welfare, Government of Bihar, Vikash Bhawan, Baily Road, Patna.
3. The Principal Secretary, Department of Environment, Forest and Climate Change, Government of Bihar, Vikash Bhawan, Patna.
4. The Bihar State Pollution Control Board, through the Member-Secretary,



Parivesh Bhawan, Plot No. NS-B/2 Patliputra Industrial Area, Patliputra,
Patna

5. The Member-Secretary, Bihar State Pollution Control Board, Parivesh
Bhawan, Plot No. NS-B/2 Patliputra Industrial Area, Patliputra, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 10325 of 2023)

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv.
Mr. Brisketu Sharan Pandey, Adv.
Mr. Mdan Kumar, Adv.

For the BSPCB : Mr. Abhimanyu Singh, Adv.

For Respondent No. 5 : Mr. Ajit Kumar Sinha, Sr. Adv.
Mr. Mohit Agarwal, Adv.

For the State : Mr. Ajay, GA-5

(In Civil Writ Jurisdiction Case No. 12296 of 2023)

For the Petitioner/s : Mr. Ajit Kumar Sinha, Sr. Adv.
Mr. Mohit Agarwal, Adv.
Ms. Sushila Agarwal, Adv.
Mr. Rahul Kumar, Adv.

For the BSPCB : Mr. Abhimanyu Singh, Adv.

For the State : Mr. Dhurjati Kumar Prasad, GP-14

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 07-05-2025

Both the writ petitions have been taken up
together and are being disposed off by this common
judgment.

2. Heard Shri Y.V. Giri, the learned Senior
Advocate for the petitioner in C.W.J.C. No. 10325 of
2023 (Medicare Environmental Management Pvt. Ltd.



Vs. State of Bihar & Ors.) and Shri Ajit Kumar Sinha, the learned Senior Advocate for the petitioner in C.W.J.C. No. 12296 of 2023 (M/s Sangam Mediserve Pvt. Ltd. Vs. The State of Bihar & Ors.). The respondents/Board and the State have also been represented through their respective lawyers.

3. In both the aforementioned writ petitioners, the prayer is for setting aside the order dated 26.06.2023 issued under the signature of the Member Secretary, Bihar State Pollution Control Board, Patna, whereby the entire tender, bearing NIT No. CL/884/2022/2010 dated 22.12.2022, for the entire seven locations was cancelled despite the respondents/Board having issued the letter of selection for locations at Muzaffarpur and Bhagalpur in favour of Medicare Environmental Management Pvt. Ltd. (petitioner in C.W.J.C. No. 10325 of 2023) and for locations Gopalganj and Purnia in favour of M/s Sangam Mediserve Pvt. Ltd. (petitioner in C.W.J.C. No. 12296 of



2023).

4. In both the writ petitions, the further challenge is to the fresh notice inviting e-Tender for the same locations for setting up and operating a Common Bio-Medical Waste Treatment Facility (*hereinafter referred to as the CBWTF*).

5. In accordance with the Bio-Medical Waste Management Rules, 2016, which, *inter alia* provides for treatment and disposal of bio-medical waste, a revised guideline was published for setting up of CBWTF, which mandated taking into account the gap analysis of the generation and treatment of bio-medical waste. Pursuant to this assessment, the Bihar Pollution Control Board was of the view that there was need for setting up seven CBWTF, one each in Patna, Gopalganj, Madhubani, Purnia, Sasaram, Muzaffarpur and Bhagalpur.

6. A notice inviting e-Tender for selection of entrepreneurs/service provider for setting up and



operating Common Bio-Medical Waste Treatment Facility (CBWTF) in Bihar was floated on 22.12.2022. By a single tender, bids were invited for setting up and operating seven CBWTFs. at seven different locations referred to above. The bidding was in two parts, namely, technical and financial. Both the bids had to be submitted simultaneously through e-procurement portal.

7. In the bid, referred to above, the petitioner/Medicare Environmental Management Pvt. Ltd. (C.W.J.C. No. 10325/2023) was found technically qualified for Muzaffarpur, Bhagalpur, Patna and Sasaram, whereas M/s Sangam Mediserve Pvt. Ltd. (petitioner in C.W.J.C. No. 12296 of 2023) was found to be technically qualified for Muzaffarpur, Sasaram, Gopalganj and Purnia. Both the petitioners furnished their financial bids for each of the locations. The financial bid consisted of ten columns and the bidders were required to fill the quoted rate of collection, transportation, treatment and disposal of bio-medical



waste in column Nos. 3, 4, 5, 6, 7 and 8. In column – 3, the rate for non-bedded HCFs were to be given on monthly basis. In column – 4, the rate for standalone lab/diagnostic centre were to be given on monthly basis. In column – 5, the rate for veterinary hospitals were to be given on monthly basis. In column – 6, the rate for PHC/APHC. were to be given on per Kg. basis. In column – 7, the rate for HCFs. of less than ten beds were to be given on monthly basis and in column – 9, the rate for HCFs. of more than ten beds were to be given on per bed/per day basis. The rates quoted in column Nos. 3, 4, 5, 6, 7 and 8 were to be added up and the resulting value was to be divided by six (6) and this value was to be entered in column – 9. Any bidder quoting minimum value in column – 9 would be declared successful. However, this process had a caveat that before division, the rate quoted in column – 8 was to be multiplied by thirty (30) and the resulting value was to be taken for summation with respect to column No. 8.



8. The financial bids of the petitioners for the locations referred to above were found to be requirement-compliant. They were selected on the basis of the rates quoted by them in column - 9 of the financial bid. After their selection for the respective locations, referred to above, the petitioners were issued selection letters.

9. It was only after the issuance of the selection letters, that the Bihar Pollution Control Board came to take notice that the rate quoted by M/s Sangam Mediserve Pvt. Ltd. (petitioner in C.W.J.C. No. 12296 of 2023) in column - 9 was erroneous as he had only added the rates quoted in rest of the columns and had divided the result of such addition by six (6) and the result of such division was mentioned in column - 9. He was required to multiply the rate quoted in column - 8 by thirty (30) before dividing the total summation by six (6). It was, thus, found that M/s Sangam Mediserve Pvt. Ltd. (petitioner in C.W.J.C. No. 12296 of 2023) was



wrongly declared to be L-1 for locations Gopalganj and Purnia and, in fact, the rate quoted by one M/s Superb Hygienic Disposals would otherwise have been the lowest.

10. The Bihar Pollution Control Board, therefore, had few options in order to remedy the defect/error. The first of the options was to cancel the selection letter of M/s Sangam Mediserve Pvt. Ltd. (petitioner in C.W.J.C. No. 12296 of 2023) and declare the L-2 for such locations as L-1. The other option was to cancel the result of the two locations and issue fresh tender for the said two locations. And the third option was to cancel the entire tender and issue fresh tender separately and not in cluster.

11. After evaluation of the afore-noted options which the Board had, a decision was taken to cancel the entire tender as it was a composite tender (one tender for all the seven locations) and a fresh tender to be issued for each of the locations and not a



composite tender.

12. This decision has been challenged by both the petitioners as being arbitrary, unreasonable and based on no logic.

13. It has been argued on behalf of the petitioners that before cancelling the entire tender, the successful bidders ought to have been noticed.

14. The further submission on behalf of the petitioner/Medicare Environmental Management Pvt. Ltd. (C.W.J.C. No. 10325/2023) was that for one of the bidders, namely, M/s Sangam Mediserve Pvt. Ltd., having submitted an erroneous and wrongly filled-up financial bid, the entire tender ought not to have been cancelled. The Board would have had some justification for cancelling the tender with respect to locations at Gopalganj and Purnia, but there would absolutely be no rationale for cancelling the entire tender even if it be a composite tender of all the seven locations. In this circumstance, because of the wrong assessment of L-1



bidder for locations Gopalganj and Purnia, which was eventuated because of the faulty submission of financial bid by M/s Sangam Mediserve Pvt. Ltd. (petitioner in C.W.J.C. No. 12296 of 2023), the effort of the Board should have been to segregate the respective tenders and go ahead with the selection of the bidders in whose financial bids there was no problem and which selection was completely unaffected by the wrong bidding of M/s Sangam Mediserve Pvt. Ltd. (petitioner in C.W.J.C. No. 12296 of 2023).

15. In support of the afore-noted arguments, the learned Senior Advocates for the petitioners have submitted that the annulment of the entire bidding process was not be resorted to that casually. Merely having the power with the Bihar Pollution Control Board of rejecting the bids would not entitle it to exercise such power arbitrarily. There was no reason for the Board to have ignored the already accepted bid and go for re-tendering for some fault on the part of one of bidders,



which could be segregated as the composite tender was for seven locations. In Government contracts, the authorities are expected to uphold fairness, equality and rule of law while dealing with contractual matters. The “Right to Equality” under Article 14 of the Constitution of India is breached whenever an arbitrary decision is taken. No casual ground would justify cancellation of an earlier tender and the decision to re-tender the entire process.

16. In support of the afore-noted contentions, reference has been made of the decision of the Supreme Court in ***Mihan India Ltd. Vs. GMR Airports Ltd. & Ors. : (2022) 19 SCC 69***. In the afore-noted case, for development of a Multi-Model International Passenger and Cargo Hub Airport at Nagpur, bids were invited but before the agreement could be executed with the highest bidder, the bidding process was annulled without any direction for fresh tender process.



17. It may be noted here that the GMR Airports Ltd., which was declared as a selected bidder on offering the highest revenue share, actually had preferred a writ petition before the Nagpur High Court when the concession agreement furnished by it was not being responded to by the authorities.

18. When a notice was issued in the afore-noted case to Mihan India Ltd., the entire bidding process was annulled. The justification for annulment of the entire tender process was the lack of clarity about the criteria for selection of the bidder based on the highest revenue share quoted; frequent changes in the eligibility criteria with respect to airport experience; and frequent changes in the bid document, leading to deviation from the standard document for PPP projects. The GMR Airports Ltd. questioned such clarifications from it as arbitrary and violative of Article 14 of the Constitution of India.

19. In this context, the Supreme Court was



of the view that once the selection of the concessionaire had been declared, then raising objections at the stage of the execution of the concession agreement in the garb of asking clarification with respect to certain formalities, amounted to arbitrary exercise of powers by the authorities, which is not permissible under the law. The Supreme Court relied upon its own judgment in ***Union of India Vs. Dinesh Engineering Corporation : (2001) 8 SCC 491***, wherein while dealing with the rejection of the bid of the respondent therein by the Railways in a tender floated for procurement of certain items of spare parts for use in GE governors, the Supreme Court had held that the power to reject bids cannot be exercised arbitrarily; merely because the Railways had the power to do so. Any arbitrary exercise of power to reject bids was held to be violative of Article 14 of the Constitution of India.

20. The Supreme Court in this instance ***[Dinesh Engg. (supra)]***, while taking note of the



principle that the Courts while judging the constitutional validity of executive decisions, must grant certain measures of “freedom of play” in the joints to the executive, also held that a public authority, even in contractual matters, should not have unfettered discretion and in contracts having commercial elements. Even though some extra discretion is to be conceded to such authorities, they are bound to follow the norms recognized by the Courts while dealing with public property.

21. While deciding ***Mihan India Ltd. (supra)***, the Supreme Court in paragraph 64 of the decision also took note of the summation in ***City & Industrial Development Corporation of Maharashtra Ltd. Vs. Shishir Realty (P) Ltd. : (2002) 16 SCC 527***, which reads as follows:

64.

“75. Before we state the conclusions, this Court would like to reiterate certain well established tenets of law



pertaining to Government contracts. When we speak of Government contracts, constitutional factors are also in play. Government bodies being public authorities are expected to uphold fairness, equality and rule of law even while dealing with contractual matters. It is a settled principle that right to equality under Article 14 abhors arbitrariness. Public authorities have to ensure that no bias, favouritism or arbitrariness are shown during the bidding process. A transparent bidding process is much favoured by this Court to ensure that constitutional requirements are satisfied.

76. Fairness and the good faith standard ingrained in the contracts entered into by public authorities mandates such public authorities to conduct themselves in a non-arbitrary manner during the performance of their contractual obligations.

77. The constitutional guarantee against arbitrariness as provided under Article 14, demands the State to act in a fair and reasonable manner unless public interest demands otherwise. However, the degree of compromise of any private legitimate interest must correspond proportionately to the public



interest, so claimed.

78. At this juncture, it is pertinent to remember that, by merely using grounds of public interest or loss to the treasury, the successor public authority cannot undo the work undertaken by the previous authority. Such a claim must be proven using material facts, evidence and figures. If it were otherwise, then there will remain no sanctity in the words and undertaking of the Government. Businessmen will be hesitant to enter Government contract or make any investment in furtherance of the same. Such a practice is counterproductive to the economy and the business environment in general.”

22. Applying the afore-noted principle, in that case and finding the objections by the public authority in support of cancellation of tender to be arbitrary, the Supreme Court did not approve of such cancellation of tender in its entirety.

23. Grounds of public interest or loss to the treasury cannot undo the work already taken by the



authority.

24. In the present set of facts in these two writ petitions, the situation is different.

25. The financial bid of M/s Sangam Mediserve Pvt. Ltd. (petitioner in C.W.J.C. No. 12296 of 2023), which was found to be L-1 for two locations, namely, Gopalganj and Purnia, was erroneous. Without following the proper procedure of multiplication and division with respects to the rates, the rate quoted in column - 9 of the financial bid, which only was relied upon for declaration of the lowest/highest bidder, was skewed. Thus, for the two locations, namely, Gopalganj and Purnia, there was an alternative of declaring the L-2 for those two locations as L-1. This could but have led to spate of litigation as many of the contenders/bidders had participated and offered their bids for number of locations.

26. Since it was a composite tender, any wrong assessment of any one of the bidders to be the



lowest or the highest for a particular location would have had a cascading/waterfall effect on all the tenders. In the circumstances and in all fitness of things, it appears that the Bihar Pollution Control Board took a decision of cancelling the entire tender process and re-tendering it.

27. To us, the decision does not appear to be arbitrary or fanciful or imbued with any *mala fides*.

28. There is no gainsaying that over a period of time, the Courts have recognized the crucial role of the judiciary in preventing the abuse of power and maintaining public confidence in the administrative process through various doctrines and principles. The interplay between judicial review and administrative discretion is a dynamic process.

29. In ***Mahabir Auto Stores and Ors. Vs. Indian Oil Corporation and Ors. : (1990) 3 SCC 752***, the Supreme Court expressed doubts over the correctness of the earlier position of law that actions of the State in the private contractual field cannot be



questioned in the writ jurisdiction and held that such restraint, even in some cases, is not advisable [also refer to ***Dwarkadas Marfatia & Sons Vs. Board of Trustees of the Port of Bombay : (1989) 3 SCC 293; LIC & Anr. Vs. Consumer Education & Research Centre & Ors. : (1995) 5 SCC 482; Shrilekha Vidyarthi (Kumari) & Ors. Vs. State of U.P. & Ors. : (1991) 1 SCC 212; Verigamto Naveen Vs. Govt. of A.P. & Ors. : (2001) 8 SCC 344; and Binny Ltd. & Anr. Vs. V. Sadasivan & Ors : (2005) 6 SCC 657***].

30. In ***ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India Ltd. & Ors. : (2004) 3 SCC 553***, which judgment was the turning point in the scope of judicial review of contractual matters, the law has been summarized as follows:

(a) *In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable; and*

(b) *Merely because some disputed*



questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

31. However, it was also cautioned in **ABL** (*supra*) that the power to issue writs under Article 226 is discretionary and plenary and, therefore, it should only be exercised to set right the arbitrary actions of the State of its instrumentality in matters relating to contractual obligations.

32. In ***Noble Resources Ltd. Vs. State of Orissa & Anr. : (2006) 10 SCC 236***, a distinction was made between matters where the contract is at the threshold and at the stage of breach. At the stage of the threshold of a contract, the Court's scrutiny would be more intrusive, but in the latter, the Court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution of India.

33. At the stage of entering into a contract,



the State acts purely in its executive capacity, and is bound by the obligations of fairness. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it, may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness [refer to ***Joshi Technologies International Inc. Vs. Union of India &Ors. : (2015) 7 SCC 728***].

34. There could be no dispute about the exercise of writ jurisdiction in disputes at the stage prior to the award of contract or after the contract comes into existence or even after the termination or breach of he contract, but with a caution that it should be exercised only if the decision of the executive is questioned and proved to be violative of Article 14 of the Constitution or is found to be arbitrary or in viewed with *mala fides*.

35. To ascertain whether an act is arbitrary or



not, the Court has to refer to the facts and circumstances of each case.

36. Is there any principle behind the decision which has been questioned?

37. If yes, then whether such decision is wise or unwise or wrong or the circumstances of the context was capable of an alternative decision?

38. These would not be the questions which would attract the gaze of the Court. There has to be a total non-application of mind without due regard to the rights of the parties in public interest for any decision to be called arbitrary.

39. We are conscious of the decision of the Supreme Court in ***Subodh Kumar Singh Rathour Vs. Chief Executive Officer & Ors : 2024 SCC OnLine SC 1682***, wherein the Supreme Court was testing whether the action of the State or its instrumentality in cancelling the tender, in its entirety, is arbitrary or unfair and is violative of Article 14 of the Constitution of India.



40. In that case, two of the grounds for cancellation of the tender, viz., (a) there being a technical fault in the tender and (b) change in policy, were not found to be good reasons to justify the action of cancellation of the entire tender. The facts of that case revealed that the decision of the Government was based on a mere possibility of fetching higher license fee and the technical fault in the tender, as was suggested in favour of the decision for cancellation, was found to be non-existent.

41. With those facts, the Supreme Court in ***Subodh Kumar Singh Rathour*** (*supra*), while holding that public tenders are a cornerstone of Government procurement process, ensuring transparency, competition and fairness in the allocation of public resources, emanating from the *doctrine* of Public Trust, found that the sanctity of public tender was violated. Cancellation of a contract deprives a person of his valuable rights and is a very drastic step. There could be



significant investments by the parties. The failure on the part of the Courts, it was held, to zealously protect the binding nature of a lawful and valid tender, would erode public faith in contracts and tenders. The Supreme Court went on to State that arbitrary terminations of contract create uncertainty and unpredictability, thereby discouraging public participation in the tendering process.

42. In the ***Principal Chief Conservator of Forests & Ors. Vs. Suresh Mathew & Ors. [SLP (C) No(s). 12353 - 12355 of 2021]***, however, the re-tender was validated on the ground that the Government is the protector of financial resources of the State and it has every right to cancel and call for fresh tender, it is in the nature of protecting financial interest of the State.

43. In the facts of the present case, the situation presented is absolutely different. It was a composite tender where the declaration with respect to L-1 bidder for two locations was found to be faulty. It



would not have been fair to the other bidder in that case. Since most of the bidders had participated and had offered their request for various locations, the result for all the locations would have been affected by declaration of M/s Sangam Mediserve Pvt. Ltd. (petitioner in C.W.J.C. No. 12296 of 2023) as L-1 in a particular location.

44. Precisely for this reason, which, we are of the opinion is not arbitrary, the entire tender was cancelled and, simultaneously, a fresh tender was issued separately for each of the locations. The parties never got an opportunity of any investment and it was only at the threshold stage when the agreement would have been entered into by the successful bidders, that this decision was taken.

45. The reason for cancelling the tender, in its entirety, does not appear to us to be arbitrary or *mala fide*.

46. Whether it is wise or unwise or that a



better option could have been exercised by the respondents/Board has not been addressed by us for the reasons of our limitations of the jurisdiction.

47. Both the writ petitions are, thus, dismissed.

48. Interlocutory application/s, if any, in both the writ petitions, also stand disposed off accordingly.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Praveen-II/-

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