

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13968 of 2025

Uday Kant Jha a sole proprietorship, having its Office At Malhad, P.O., P.S. and District- Supaul- 852131 through its sole proprietor, namely Uday Kant Jha, aged about 67 years (Male), Son of Ramchandra Jha, Resident of Ward No. 14, Malhad, P.S. and District- Supaul, Bihar - 852131.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Road Construction Department, Government of Bihar, 1st Floor, Visvesvaraya Bhawan, Nehru Path, Patna, Bihar 800015.
2. The Secretary, Road Construction Department, Government of Bihar, 1st Floor, Visvesvaraya Bhawan, Nehru Path, Patna, Bihar 800015.
3. The Executive Engineer, Road Construction Department, Road Division, Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Ms. Shrishti Singh, Advocate Mr. Pranav Kumar, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General Mr. Vikas Kumar, AC to AG

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

Date : 19-09-2025

Heard the parties.

2. The petitioner in the present writ application seeks the following main relief:

“(i) To issue an appropriate writ, order, direction in the nature of certiorari for quashing the proceeding bearing memo no. 5410 dated 14.08.2025 in NIT No. 01/RCD/Supaul/2025-26 of the Departmental Tender Committee to the extent that the present tender has been considered as fresh tender/ first time single tender since RKS Engicon was declared successful in the first tender



based on wrong facts, and accordingly, a decision has been taken to re-tender.

(ii) To issue an appropriate writ, order, direction in the nature of mandamus commanding the respondents to open the financial bid of the petitioner and consequently, award the work to the petitioner.

(iii) To issue an appropriate writ, order, direction in the nature of certiorari for quashing any consequential action taken pursuant to the impugned decision, including quashing of re-tender and creation of third-party interests.

(iv) To any other relief or reliefs for which the petitioner is found to be entitled to in the facts and circumstances of the case.

(v) To issue an appropriate writ/order/direction in the nature of certiorari for quashing the RE-NIT no. RCD/05/Supaul/2025-26 dated 18.08.2025 issued under the signature of the Executive Engineer, Road Construction Department, Road Division, Supaul (Annexure-P/8, Pg.8).

(vi) To issue an appropriate writ/order/direction in the nature of mandamus commanding the respondents to not proceed with RE-NIT no. RCD/05/Supaul/2025-26 dated 18.08.2025 during the pendency of the present writ petition.”

3. Learned counsel for the petitioner submits that the petitioner is a sole proprietorship firm, duly represented by its proprietor and has been engaged in the execution of civil works in the State of Bihar for the past 44 years, having successfully completed several projects for the State authorities. It is the grievance of the petitioner, as canvassed by learned counsel, that the impugned decision of the respondents to once again retender



the work in question is wholly arbitrary, irrational and unreasonable. It is submitted that after the petitioner had been declared technically qualified in the re-tender, the respondents were bound in law to proceed to open its financial bid and award the work. Instead, the respondents, without any valid justification, have annulled the process on a ground which bears no rational nexus with the tender under consideration.

4. Learned counsel for the petitioner submits that initially, the Road Construction Department, Road Division, Supaul, issued NIT No. 03/RCD/Supaul/2024-25 dated 19.03.2025 for widening and strengthening of the road from Sukhpur Bazar to Teleshwarnath Mandir of Karanpur Rajanpur Road (km 0.00 to 3.500) with an estimated cost of approximately ₹22.5 crores and stipulated completion period of nine months. The said tender was cancelled by the bid evaluation committee vide memo no. 621 dated 17.05.2025 (Annexure P/2) as only one bidder, R.K.S. Engicon Pvt. Ltd., had qualified technically.

5. It is submitted that pursuant thereto, a retender was issued vide NIT No. 01/RCD/Supaul/2025-26 dated 19.05.2025 (Annexure P/3), in which the petitioner duly participated. In the technical bid proceedings recorded under memo no. 3883 dated 20.06.2025 (Annexure P/4), out of four bidders, namely, Bikash



Kumar, Mahesh Kumar Singh Construction Pvt. Ltd., R.K.S. Engicon Pvt. Ltd. and the petitioner, only R.K.S. Engicon Pvt. Ltd. was again declared technically successful while the others, including the petitioner, were rejected.

6. It is urged that aggrieved by the rejection, the petitioner submitted a detailed objection dated 21.06.2025 (Annexure P/5), placing on record documents to establish his eligibility and also pointing out that R.K.S. Engicon Pvt. Ltd. lacked the requisite bid capacity. The said objection was duly considered by the Departmental Tender Committee in proceedings recorded under memo no. 5410 dated 14.08.2025 (Annexure P/6), wherein the petitioner was declared technically qualified and the other bidders, including R.K.S. Engicon Pvt. Ltd., were found technically disqualified. Therefore, this time the petitioner remained the sole successful bidder.

7. Learned counsel submits that once the petitioner was declared technically successful, the respondents were required in law to open the financial bid of the petitioner and proceed with the tender process. Instead, the authorities, in a most surprising and unreasonable manner, took the view that since R.K.S. Engicon Pvt. Ltd. did not have the required bid capacity, and therefore had been erroneously declared technically successful in the first tender, the



present process should be treated as a fresh tender/“first time single tender” and hence, re-tendering was recommended.

8. It is contended that such reasoning is perverse and unsustainable in law. The earlier qualification of R.K.S. Engicon Pvt. Ltd. in the first tender had no bearing on the retender process, particularly when the petitioner was found eligible and successful in the technical evaluation. It is submitted that the decision to annul the retender on this ground is devoid of logic, violative of Articles 14 and 19(1)(g) of the Constitution, and results in undue hardship and loss to the petitioner.

9. Learned counsel for the petitioner further submits that the impugned action is not in public interest as the work of widening and strengthening the road, which is of vital public importance, has already been delayed for over a year owing to repeated re-tendering. The respondents, instead of proceeding with the lawful course of action, have indulged in repeated cancellations which have the effect of stalling development work and wasting public resources. It is accordingly urged that this Court may set aside the impugned decision to re-tender, and direct the respondents to proceed with the financial bid of the petitioner in accordance with law.



10. By way of a supplementary affidavit, learned counsel for the petitioner has further urged that the decision to once again re-tender is not in public interest, and significantly, the respondent authorities have not advanced any justification demonstrating how the same serves public interest. On the contrary, it is pointed out that the petitioner had submitted a financial bid at 12% below the estimated cost of approximately ₹21.59 crores, thereby offering to execute the work at approximately ₹19.59 crores, which would have resulted in substantial savings of around ₹2.59 crores to the State exchequer. Furthermore, the project was to be completed within nine months. Floating a fresh tender for the third time, it is urged, only results in undue delay in execution of the project and frustrates public interest.

11. It is further submitted that in the second tender, when R.K.S. Engicon Pvt. Ltd. was the sole technically qualified bidder, the departmental tender committee had decided to proceed with the single tenderer (Annexure-P/4). However, when in the subsequent re-tender, the petitioner emerged as the sole technically qualified bidder, the authorities, in an arbitrary and discriminatory manner, chose to cancel the process and direct re-tender (Annexure-P/6).



12. Learned counsel has also placed reliance on Rule 163 of the Bihar Public Works Department Code, as amended by Notification No. 3162(S) dated 09.05.2016. It is contended that under the said provision, in the event of only one tender remaining even after re-tender, the matter is required to be considered settled by an authority not higher than one level of the competent authority. Provided, in cases where the Departmental Tender Committee headed by the Principal Secretary/Secretary is the competent authority, its decision is final and does not require approval of the Departmental Minister. The amended rule empowers the authority to decide on such tenders, but such decision is nonetheless amenable to judicial review on the touchstone of fairness, reasonableness, and public interest. In the present case, the impugned decision fails this test, as the authorities had already decided to open the financial bid of the earlier single tenderer, and there was no occasion or jurisdiction to review that decision merely because, in the subsequent round, the petitioner emerged as the only successful bidder.

It was also argued by learned counsel for the petitioner that in the facts of present case, the Departmental Tender Committee headed by the Secretary which has passed the impugned order dated 14/08/25 (Annexure P/6) was not the



competent authority. The competent authority, in fact, was Technical Bid Evaluation Committee and hence, the impugned order dated 14/08/25, not having been passed by the competent authority was in violation of the 'Proviso' to Rule 163(3) of the Bihar Public Works Department Code.

13. Learned counsel for the respondents by way of counter affidavit, has opposed the writ petition and has reaffirmed the fact that NIT No. 03/RCD/Supaul/2024-25 was issued vide letter no. 230 dated 19.03.2025 by the Executive Engineer, Supaul, for the work of widening and strengthening of Sukhpur Bazar to Teleshwarnath Mandir (Annexure-P/1 of the writ petition). In the technical bid evaluation, only one bidder, namely R.K.S. Engicon Pvt. Ltd., out of three participants, was found technically qualified. The Technical Bid Committee, vide memo no. 621 dated 17.05.2025, decided to cancel the tender process and directed for issuance of a re-tender. Accordingly, a fresh tender was issued on 19.05.2025 in which four bidders, including the petitioner, participated. In this round, once again, only R.K.S. Engicon Pvt. Ltd. was declared technically qualified, while the other three bidders, namely Bikash Kumar, Uday Kant Jha (petitioner), and Mahesh Kumar Singh Construction Pvt. Ltd., were declared non-responsive (Annexure-P/3). It is further submitted that since only



one bidder qualified in the technical bid, the matter was referred to the Departmental Tender Committee (DTC) on 11.06.2025. The DTC, in its meeting held on 19.06.2025, approved the single tender and directed for opening of the financial bid.

14. Learned counsel further submits that subsequently, one of the unsuccessful bidders, namely the present petitioner, submitted a representation against his disqualification. Upon reevaluation, the DTC found that the petitioner had indeed been wrongly disqualified in the technical evaluation and, conversely, that R.K.S. Engicon Pvt. Ltd. had been wrongly declared successful. The DTC, in its meeting held on 14.08.2025 (Annexure P/6), therefore held that only the petitioner was technically qualified.

15. Learned counsel for the respondents further submits that the DTC further observed that in the first tender process, only one bidder (R.K.S. Engicon Pvt. Ltd.) had qualified and that the Technical Bid Evaluation Committee, on 17.05.2025, had wrongly decided to go for re-tender at its own level, without placing the matter before the DTC. This was an incorrect decision. On due scrutiny, the DTC found that the earlier declaration of R.K.S. Engicon Pvt. Ltd. as technically successful was based on erroneous calculation of its bid capacity, which was in fact a sham



transaction. Consequently, the present process was treated as a first-time bid, and the DTC resolved to invite a fresh tender (Annexure-P/6).

It is also pointed out that during this period, there were administrative changes in the Department. The then Additional Chief Secretary of the Road Construction Department was transferred to the Industries Department vide Notification no. 11940 dated 01.07.2025, and a new Secretary was posted in the Road Construction Department vide Notification no. 11942 dated 01.07.2025, under Memo no. 11944 dated 01.07.2025. Since then, the said officer has been functioning as the administrative head of the Department. It is further submitted that pursuant to the decision of the DTC, a fresh NIT has been issued and the last date for submission of bids is 11.09.2025.

16. Learned counsel for the respondents submits that the proceedings of the DTC clearly record that the earlier declaration of R.K.S. Engicon Pvt. Ltd. as technically successful was based on erroneous calculation of its bid capacity, rendering the earlier transaction a sham. Therefore, the decision to invite a fresh tender cannot be termed arbitrary or malafide; rather, it is a balanced and reasonable decision taken in the larger public interest. It is accordingly urged that the writ petition is devoid of



merit, the allegations of arbitrariness are unfounded, and the impugned decision is perfectly valid in law. The respondents, therefore, pray for dismissal of the writ petition.

17. ISSUES IN QUESTION:

(a) Whether the cancellation of the tender process initiated under NIT No. 03/RCD/Supaul/2024-25 was valid, justified, and in accordance with law, or whether it suffers from arbitrariness and violation of Article 14 of the Constitution of India? And whether, and to what extent, this Court can exercise of its writ jurisdiction under Article 226 of the Constitution of India?

(b) Whether the Departmental Tender Committee (DTC) was correct in holding that the earlier qualification of RKS Engicon Pvt. Ltd. was based on erroneous calculation of bid capacity and amounted to a sham transaction, thereby necessitating a fresh tender?

(c) Whether the petitioner has acquired any vested or enforceable right merely by participating in the tender process or on the basis of technical qualification, so as to challenge the decision of cancellation?

(d) Whether the decision of the respondents to invite a fresh tender is a fair, reasonable, and bonafide exercise of



administrative discretion in public interest, warranting no interference by this Court in exercise of its writ jurisdiction?

FINDINGS:

Issue 1: Whether the cancellation of the tender process initiated under NIT No. 03/RCD/Supaul/2024-25 was valid, justified, and in accordance with law, or whether it suffers from arbitrariness and violation of Article 14 of the Constitution of India? And whether, and to what extent, this Court can exercise of its writ jurisdiction under Article 226 of the Constitution of India?

Having considered the rival contentions advanced by learned counsel for the parties and upon perusal of the materials available on record, this Court proceeds to examine the validity of the cancellation of the tender process in question.

The learned counsel for the petitioner has submitted that the decision of the respondent authorities to cancel the tender, despite the petitioner having offered a rate substantially below the estimated cost, is arbitrary and not supported by any cogent reason. It is contended that the action of the respondents is contrary to public interest, inasmuch as the petitioner had quoted a bid nearly Rs. 2.59 Crores below the sanctioned estimate and was willing to complete the project within the stipulated period. It is



further urged that the respondents, having in the past decided to proceed with a single tenderer, cannot now take a diametrically opposite view only because the petitioner has emerged as the successful bidder.

Learned counsel for the petitioner has also submitted that in the facts of present case, the Departmental Tender Committee headed by the Secretary which has passed the impugned order dated 14/08/25 (Annexure P/6) was not the competent authority. The competent authority, in fact, was Technical Bid Evaluation Committee and hence, the impugned order dated 14/08/25, not having been passed by the competent authority was in violation of the 'Proviso' to Rule 163(3) of the Bihar Public Works Department Code.

Per contra, learned counsel for the respondents has submitted that the Departmental Tender Committee (DTC), in its meeting dated 14.08.2025, after re-evaluating the bids, found that the earlier qualification of R.K.S. Engicon Pvt. Ltd. was based on an erroneous calculation of bid capacity. The Committee further observed that such qualification amounted to a sham transaction, and accordingly, the earlier technical evaluation stood vitiated. In such circumstances, the respondents were left with no option but to cancel the process and invite fresh tenders, so as to ensure



transparency and fairness in the award of the contract. It is contended that the decision of the DTC is reasoned, balanced and in public interest, and therefore cannot be said to be arbitrary.

During the course of argument, learned counsel for the respondents has also countered the submission made by learned counsel for the petitioners by contending that the Departmental Tender Committee headed by the Secretary was/is the competent authority and therefore, the impugned order/decision dated 14/08/25 has been passed by the competent authority, and was thus, in consonance with the 'Proviso' to Rule 163(3) of the Bihar PWD Code.

This Court is mindful of the fact that the scope of judicial review in contractual matters, particularly in the award of tenders, is extremely limited. The Court does not sit as an appellate forum over the decision of the tendering authority. It is settled law that interference is warranted only when the decision is shown to be arbitrary, irrational, mala fide, or violative of Article 14 of the Constitution of India.

In **Tata Cellular v. Union of India** reported in (1994) 6 SCC 651, the Hon'ble Supreme Court, while delineating the contours of judicial review in tender matters, held at para 94:



“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.”

[Emphasis Supplied]

Similarly, in **Michigan Rubber (India) Ltd. v. State of Karnataka** reported in **(2012) 8 SCC 216**, the Hon'ble Supreme Court at para- 19 & 20 observed:

“19) 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 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 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 fundamental right to carry on business with the Government.

20) 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 negative, then there should be no interference under Article 226”

[Emphasis Supplied]

Applying these principles to the facts of the present case, it emerges that the decision of the DTC to cancel the tender process was not taken lightly, but was premised upon the finding that the earlier qualification of a bidder was based on erroneous calculation, rendering the process flawed. Once such irregularity came to light, the authority was justified in recalling the tender in order to preserve transparency and fairness.

The contention of the petitioner that the cancellation causes financial detriment to the State, as the petitioner had quoted below the estimated cost, cannot be accepted as conclusive. Public interest is a broad concept, which includes not merely financial



savings but also fairness, equal treatment of bidders, and the avoidance of any process tainted by irregularity.

In the present case, there is no material placed before this Court to suggest that the decision of the DTC suffers from mala fides or extraneous considerations. On the contrary, the record demonstrates that the decision was guided by technical evaluation and considerations of transparency. The Court's interference would be justified only if the cancellation was shown to be vitiated by mala fides, patent arbitrariness, discrimination, or absence of any rational basis. Judicial restraint, therefore, demands that this Court not substitute its view for that of the expert Tender Committee.

It is also appropriate to hold that the impugned order dated 14/08/25 (Annexure P/6) has been passed by the competent authority, i.e., by the Secretary of the Departmental Tender Committee. Learned counsel appearing for the petitioners, although referred to बिहार सरकार, पथ निर्माण विभाग, पटना, सं०सं०-प्र०-०६ / द०बि०-नियम-०३-०२ / ०४-६२२८(S) / पटना, दिनांक ३०. १२.२०२१, but failed to show from the said notification that the competent authority would be Tender Bid Evaluation Committee and not the Departmental Tender Committee. In such circumstance, the contention of the petitioner that the impugned



order has not been passed by the competent authority and thus, is not in conformity with the Proviso to the Rule 163(3) of the Bihar PWD Code, is untenable and thus, rejected.

Accordingly, this Court is of the considered view that the cancellation of the tender process under NIT No. 03/RCD/Supaul/2024-25 does not suffer from arbitrariness or violation of Article 14 of the Constitution of India. This Court does possess the power of judicial review in tender matters, the same is extremely limited and must be exercised with great restraint. Therefore, the action of the respondents is found to be valid, justified and in accordance with law and this court would not interfere.

Issue 2: Whether the Departmental Tender Committee (DTC) was correct in holding that the earlier qualification of RKS Engicon Pvt. Ltd. was based on erroneous calculation of bid capacity and amounted to a sham transaction, thereby necessitating a fresh tender?

The controversy in the present issue revolves around the correctness of the conclusion reached by the Departmental Tender Committee (DTC) that the earlier qualification of RKS Engicon Pvt. Ltd. was the result of an erroneous calculation of bid capacity,



and that such qualification constituted a sham transaction, justifying the decision to invite a fresh tender.

The learned counsel for the petitioner has strenuously urged that the DTC had no occasion to issue a re-tender process, once the Technical Bid Evaluation Committee had already declared the petitioner as qualified and the DTC itself, in its meeting dated 19.06.2025, had directed the financial bid to be opened. It is submitted that the subsequent review by the DTC, holding that the earlier evaluation was erroneous, amounts to revisiting a concluded matter, which is impermissible in law and contrary to the principle of finality in decision-making.

On the other hand, learned counsel for the respondents has supported the action of the DTC, contending that once it was brought to light through representation that there had been an error in the calculation of bid capacity, the DTC, being the competent authority, was not only empowered but in fact duty bound to examine the correctness of the technical evaluation. It is contended that allowing a technically disqualified bidder to proceed further would undermine the integrity of the tender process, and therefore, the decision of the DTC to correct the error and treat the earlier transaction as a sham was lawful and justified.



This Court is conscious of the fact that the DTC is the competent authority under the 'Proviso' to Rule-163(3) of the Bihar PWD Code to take a decision in such matters. The amended rule contemplates that in cases of single tenderers or in cases where irregularities come to light, the DTC headed by the Principal Secretary/Secretary is empowered to take a final decision, subject to the test of fairness and reasonableness.

The law is well-settled that technical evaluation of bids is primarily the domain of expert bodies, and judicial review in such matters is limited to examining whether the decision is vitiated by mala fides, perversity, or is so unreasonable that no reasonable authority could have arrived at it.

On careful perusal of the materials on record, it is evident from the record that the DTC, upon re-evaluation, came to the conclusion that the earlier qualification of RKS Engicon Pvt. Ltd. was based on an erroneous calculation of bid capacity. Once such defect was noticed, the DTC rightly held that the earlier process was vitiated, as allowing such technical error to persist would undermine the fairness of the process and could potentially confer undue advantage on a bidder who was otherwise not eligible. The DTC, therefore, treated the earlier transaction as a sham and proceeded to direct fresh tendering.



This Court finds that the action of the DTC cannot be characterised as either arbitrary or ultra vires. Rather, it was an exercise undertaken to rectify an error and to ensure that only technically eligible bidders were considered. In **South Delhi Municipal Corporation v. Ravinder Kumar, (2015) 15 SCC 545**, the Supreme Court at para 19 emphasised that ensuring fair competition and correcting irregularities in the tender process is an essential part of maintaining transparency in public procurement which can be inferred from the paragraph quoted herein:

“For the reasons stated above, the High Court has failed to see that the appellant-Corporation adopted a fair and transparent method by inviting the bids for the re-tender notice issued by it. The High Court has not found any malafide intention on the part of appellant-Corporation in inviting the fresh bids after taking the decision to cancel its earlier tender notice. The appellant-Corporation, being the custodian of public finance, took its decision objectively with a bonafide intention to serve the best interest of the public in general. Thus, for the foregoing reasons, the appellant- Corporation has not committed any wrong in cancelling its earlier tender notice and issuing subsequent tender notice afresh inviting bids from the eligible contractors.”



This Court finds substance in the fact that the cancellation of the tender process initiated under NIT No. 01/RCD/Supaul/2024-25, even after the petitioner had been declared qualified in the technical bid, is legally sustainable in view of Clause 15 of the NIT which reads as “15. The undersigned reserves the right to extend or cancel or reject the tenders at any time without assigning any reason thereof. No cost what so ever shall be claimed on such account by the bidder”. The jurisprudence on this point is well settled. In ***State of Jharkhand v. CWE-Soma Consortium (2016) 14 SCC 172***, the Hon’ble Supreme Court authoritatively held that so long as a formal letter of acceptance has not been issued, no bidder acquires a vested right to be a part of the tender process. At paragraph 13, the Court categorically observed:

“The appellant-state was well within its rights to reject the bid without assigning any reason thereof. This is apparent from clause 24 of NIT and clause 32.1 of SBD which reads as under:-

Clause 24 of NIT: “Authority reserves the right to reject any or all of the tender(s) received without assigning any reason thereof.” Clause 32.1 of SBD: “...the Employer reserves the right to accept or reject any Bid to cancel the bidding process and



reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer's action.”

In light of the aforesaid judgment and considering the facts on record, this Court is of the opinion that the DTC was within its jurisdiction and authority to review the earlier evaluation, to hold that the qualification of RKS Engicon Pvt. Ltd. was erroneous, and to treat the same as a sham transaction. The conclusion so arrived at cannot be faulted as being perverse or unreasonable. The Court cannot sit in appeal over the administrative decision of the Government unless malafides or patent arbitrariness are established, neither of which is made out in the present case.

Accordingly, this Court holds that the cancellation of NIT No. 01/RCD/Supaul/2024-25, despite the petitioner being qualified in the technical bid, was within the lawful discretion of the respondents, duly supported by Clause 15 of the NIT, and cannot be interfered with under Article 226 of the Constitution.

ISSUE 3: Whether the petitioner has acquired any vested or enforceable right merely by participating in the tender



process or on the basis of technical qualification, so as to challenge the decision of cancellation?

The petitioner has argued that once he was declared technically qualified in the retender process, a vested right accrued in his favour for consideration of his financial bid, and therefore, the subsequent cancellation of the tender has caused grave prejudice to him. Learned counsel for the petitioner has placed reliance on the principles of fairness in State action under Article 14 of the Constitution to contend that rejection of his bid after technical qualification was arbitrary and unjustified.

Per contra, learned counsel for the respondents has submitted that mere participation in a tender process, or even technical qualification, does not confer any enforceable right to award of the contract. It is urged that the law is well-settled that bidders have only a right to fair treatment and equality in the matter of consideration, but no vested right to insist upon acceptance of their bids or to completion of the process.

This Court finds substance in the submission of the respondents. The legal position governing this issue has been settled beyond doubt by a catena of judgments of the Hon'ble Supreme Court. In **Meerut Development Authority v.**



Association of Management Studies, (2009) 6 SCC 171, the

Court held:

“17. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the Authority inviting tenders to



enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.”

[Emphasis Supplied]

Applying the said principle, this Court is of the considered view that the petitioner, by virtue of being declared technically qualified in the re-tender, did not acquire any vested or enforceable right to insist upon the opening of his financial bid or the award of contract in his favour. His right was limited to being considered on equal terms with other bidders, free from arbitrariness or discrimination. The decision of the respondents to cancel the process and invite a fresh tender, even after technical qualification of the petitioner, does not confer upon him any legal right to challenge cancellation on the ground of loss of entitlement.

Accordingly, this issue is answered against the petitioner, holding that no vested or enforceable right accrued to him merely on the basis of technical qualification, and his challenge to the cancellation cannot be sustained on this ground.

ISSUE 4: Whether the decision of the respondents to invite a fresh tender is a fair, reasonable, and bona fide exercise of administrative discretion in public interest, warranting no interference by this Court in exercise of its writ jurisdiction?



The question which now arises for determination is whether the decision of the respondent authorities to invite a fresh tender, after noticing irregularities in the earlier technical evaluation and disqualification of bidders, can be said to be a fair and reasonable administrative action in furtherance of public interest, or whether it warrants interference by this Court under Article 226 of the Constitution.

Learned counsel for the petitioner has contended that the decision to invite a fresh tender is wholly unjustified, arbitrary, and contrary to public interest, inasmuch as the petitioner had already offered to execute the project at a cost substantially below the estimated value, and any further delay only escalates costs and deprives the public of timely infrastructure development. It is urged that the repeated cancellation of tenders defeats the very purpose of ensuring speedy completion of public works.

Per contra, learned counsel for the respondents has submitted that the tendering authority retains the power to cancel or annul the process if such decision is necessitated by the circumstances of the case, particularly where errors in bid evaluation are discovered. It is argued that ensuring transparency and fairness in public procurement is itself a matter of public



interest, and that courts ought not to interfere unless the decision is shown to be malafide or manifestly arbitrary.

This Court finds merit in the submissions advanced by the respondents. It is a settled proposition of law that judicial review of administrative decisions in tender matters is limited. The Court does not sit as an appellate authority to re-evaluate the wisdom of the decision, but only to ensure that the decision-making process is fair, reasonable, and free from arbitrariness which has already been discussed in a plenty of judgments by the Hon'ble Apex Court

Applying these principles to the present case, it is evident from the record that the Departmental Tender Committee, upon discovering that the earlier qualification of RKS Engicon Pvt. Ltd. was erroneous and that the evaluation had been carried out on wrong facts, concluded that the tender process was vitiated and required to be treated as a first-time tender. The decision to invite a fresh tender was therefore not taken with an intention to delay the project or cause prejudice to the petitioner, but to maintain transparency and fairness in the bidding process.

While this Court is mindful of the delay caused in execution of the project due to repeated tendering, it cannot be lost sight of that adherence to fairness and elimination of irregularities



is itself a facet of public interest. An infrastructure project of significant financial magnitude must not proceed on flawed evaluation or questionable technical qualification.

Accordingly, this Court is of the opinion that the decision of the respondents to invite a fresh tender is a fair, reasonable, and bonafide exercise of administrative discretion, undertaken to safeguard transparency and competitive fairness, and thus warrants no interference under Article 226 of the Constitution.

18. In light of the detailed findings recorded hereinabove on each of the issues, this Court is of the considered view that the cancellation of the tender process under NIT No. 03/RCD/Supaul/2024-25 and the consequential decision to invite a fresh tender cannot be said to be arbitrary, capricious, or violative of Article 14 of the Constitution of India. The Departmental Tender Committee, upon a reasoned evaluation of the record, found material infirmities in the earlier technical evaluation, and its decision to treat the previous process as a nullity and to initiate a fresh tender process is a matter falling squarely within its administrative discretion. Unless the impugned action is shown to be arbitrary, malafide, irrational, or in disregard of public interest, the writ court must exercise restraint.



This Court finds that the petitioner has not acquired any vested or enforceable right merely by participating in the tender or by being technically qualified. The respondents have taken a fresh policy decision in order to ensure transparency, fairness, and effective competition in the award of a high-value public contract. Such action is in furtherance of public interest and not in derogation of it. Accordingly, this Court, therefore cannot infer that the impugned cancellation suffers from any infirmity warranting interference under Article 226 of the Constitution.

19. The writ petition is hereby dismissed. Pending interlocutory applications, if any, shall also stand disposed of. No order as to cost.

(P. B. Bajanthri, ACJ)

(Alok Kumar Sinha, J)

Prakash Narayan

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