

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14167 of 2024

JMD Services Private Limited a company, having its Registered Office at Plot No. 60, Nandanpuri, Khajpura, Maurya Path, Patna-14 through its Director, namely, Rakesh Kumar Singh, aged about 40 years (Male), Son of Gautam Singh, Resident of Defence Colony, Near Family Quarter Shahpur, P.O. and P.S.- Shahpur, District - Patna, Bihar-801503.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna-800015.
2. The Additional Chief Secretary, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna-800015.
3. The Officer on Special Duty, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna-800015.
4. The Bihar Medical Services and Infrastructure Corporation Ltd., through its Managing Director, Swasthya Bhawan, Sheikhpura, Patna- 800014.
5. The Managing Director, Bihar Medical Services and Infrastructure Corporation Ltd., Swasthya Bhawan, Sheikhpura, Patna- 800014.
6. The Chief General Manager, Bihar Medical Services and Infrastructure Corporation Ltd., Swasthya Bhawan, Sheikhpura, Patna- 800014.
7. The General Manager (Administration), Bihar Medical Services and Infrastructure Corporation Ltd., Swasthya Bhawan, Sheikhpura, Patna-800014.

... ... Respondent/s

with

Civil Writ Jurisdiction Case No. 14186 of 2024

Shiva Protection Force (P) Ltd. a company, having its Registered Office at Main Road Hinoo, Ranchi, Jharkhand, India, 834002, with its Branch Office at 71/47, Akashwani Road, Khajpura, Bailey Road, Patna-800014, through its Director, namely, Rakesh Kumar, aged about 49 years (Male), Son of Mahendra Singh, Resident of Flat No. 402, Premium Royal Apartment, Shoubhagya Sharma Path, Behind Sai Corporate Park, Rukanpura, P.S.- Rupaspur, District Patna, Bihar- 800014.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Government of Bihar, 1 Floor, Vikas Bhawan, Bailey Road, Patna-800015.
2. The Additional Chief Secretary, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna-800015



3. The Officer on Special Duty, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna-800015.
4. The Bihar Medical Services and Infrastructure Corporation Ltd., through its Managing Director, Swasthya Bhawan, Sheikhpura, Patna-800014.
5. The Managing Director, Bihar Medical Services and Infrastructure Corporation Ltd., Swasthya Bhawan, Sheikhpura, Patna-800014.
6. The Chief General Manager, Bihar Medical Services and Infrastructure Corporation Ltd., Swasthya Bhawan, Sheikhpura, Patna-800014.
7. The General Manager (Administration), Bihar Medical Services and Infrastructure Corporation Ltd., Swasthya Bhawan, Sheikhpura, Patna-800014.
8. The Principal, Bhagwan Mahavir Institute of Medical Sciences College, Pawapuri, Nalanda.

... ... Respondent/s

===== with
Civil Writ Jurisdiction Case No. 14226 of 2024

Intelligence Security of India, a company, having its Registered Office at 1 Floor, 30, Road No. 2, Patliputra Colony, Patna-800013 through its Director, namely, Ajit Kumar Singh, aged about 56 years (Male), Son of Ramyash Singh, Resident of Gujral Path, Geeta Mansion, Parwati Lane, Keshari Nagar, P.S.-Patliputra, District - Patna, Bihar- 800024.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Government of Bihar, st1 Floor, Vikas Bhawan, Bailey Road, Patna-800015.
2. The Additional Chief Secretary, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna-800015.
3. The Officer on Special Duty, Health Department, Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna-800015.
4. The Bihar Medical Services and Infrastructure Corporation Ltd., through its Managing Director, Swasthya Bhawan, Sheikhpura, Patna-800014.
5. The Managing Director, Bihar Medical Services and Infrastructure Corporation Ltd., Swasthya Bhawan, Sheikhpura, Patna-800014.
6. The Chief General Manager, Bihar Medical Services and Infrastructure Corporation Ltd., Swasthya Bhawan, Sheikhpura, Patna-800014.
7. The General Manager (Administration), Bihar Medical Services and Infrastructure Corporation Ltd., Swasthya Bhawan, Sheikhpura, Patna-800014.

... ... Respondent/s

===== with



Civil Writ Jurisdiction Case No. 14739 of 2024

M/s Lion Security Guard Services, Registered Proprietorship Concern, Having its Registered Office at B-2/6, Vineet Khand, Gomti Nagar, Lucknow through its Proprietor Mr. Randhir Singh, aged about 59 Years Old, Son of Manager Singh, R/o 3/311, Vivek Khand, P.S.-Gomti Nagar, Lucknow, U.P.-226010.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Government of Bihar, 1st Floor Vikas Bhawan, Bailey Road, Patna-800015.
2. The Additional Chief Secretary, Health Department, Government of Bihar, 1st Floor Vikas Bhawan, Bailey Road, Patna-800015.
3. The Officer on Special Duty, Health Department, Government of Bihar, 1st Floor Vikas Bhawan, Bailey Road, Patna-800015.
4. The Bihar Medical Service and Infrastructure Corporation Limited, through its Managing Director, 2nd and 3rd Floor, Swasthya Bhawan, Behind IGIMS, Sheikhpura, adjacent to State Health Society, Patna, Bihar-800014.
5. The Managing Director, Bihar Medical Service and Infrastructure Corporation Limited, 2nd and 3rd Floor, Swasthya Bhawan, Behind IGIMS, Sheikhpura, adjacent to State Health Society, Patna, Bihar-800014.
6. The Chief General Manager (Supply Chain), Bihar Medical Service and Infrastructure Corporation Limited, 2nd and 3rd Floor, Swasthya Bhawan, Behind IGIMS, Sheikhpura, adjacent to State Health Society, Patna, Bihar-800014.
7. The General Manager (Administration), Bihar Medical Service and Infrastructure Corporation Limited, 2nd and 3rd Floor, Swasthya Bhawan, Behind IGIMS, Sheikhpura, adjacent to State Health Society, Patna, Bihar-800014.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Ms. Shrishti Singh, Advocate Mr. Pranav Kumar, Advocate Mr. Devashish Giri, Advocate
For the State	:	Mr. P.K. Shahi, AG Mr. P.K. Verma, AAG-3 Mr. Vikas Kumar, Advocate Mr. Amish Kumar, Advocate
For the BMSICL	:	Mr. Arvind Kumar, AC to GA-9 Mr. Lalit Kishore, Sr. Advocate Mr. Vikash Kumar, Advocate Mr. Ayush Kumar, Advocate Mr. Kanishka Shankar, Advocate
For the Respondent	:	Mr. Prabhat Ranjan, Advocate



**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

Date : 04-04-2025

The central issues in all the writ petitions are:(a)

Whether the Government/ Government Agency is justified in cancelling the tender which was issued inviting bidders for empanelment of agencies only on the ground of one of the conditions in the tender being technically incorrect and not in conformity with the Private Securities Agencies (Regulation) Act, 2005 (hereinafter referred to as the 'Act of 2005')?; (b) Whether the contract with the successful bidders under the tender could be cancelled without issuing notice to them?; (c) Whether the faulty condition in the tender could be segregated and the already entered into contract could be saved?; (d) Whether the State has the authority to cancel the tender when the selection process has not been adversely commented upon in any manner or that after the allocation of work orders, the contractor had made any



default in terms of the contract?; and (e) Whether the action of the State in cancelling the tender in its entirety smacks of malafides?

2. The Bihar Medical Services and Infrastructure Corporation Limited (hereinafter referred to as 'the BMSICL') had floated a tender for empanelment of agencies for outsourcing different job profiles. In the 'Instructions to the Bidder', which was part of the tender document, it was mentioned that for the outsourcing of security guards, if an agency or a bidder does not have a licence under the Act of 2005, the agency will source the same from a security firm having licence in accordance with the Act of 2005 in the State, thereby permitting even unlicensed bidders to participate in the bid.

3. The Act of 2005 specifies in Section 4 thereof that no person shall carry on or commence the business of private security agency, unless he holds a licence issued under the Act. The proviso to Section 4, however, permits that the person carrying on the business of



private security agency, immediately before the commencement of the Act, may continue to do so for a period of one year from the date of such commencement and if he has made an application for such licence within the said period of one year, till the disposal of such application. The second proviso to Section 4 further stipulates that no private security agency shall provide private security abroad without obtaining permission of the controlling authority, which shall consult the Central Government before according such permission.

4. It would further be necessary, for the disposal of these writ petitions, to indicate that there were various positions, *viz.*, that of Manager, Assistant Manager, Electrician, Sweeper, etc. for which outsourcing agency had to be empanelled. Out of several such positions (ten in number), only one related to the supply of security guard/office boy/lift operator/ fireman.

5. The writ petitioners had applied under the bid and were successful for being allotted the work of



supplying manpower for all positions including the security guards.

6. Later, on a review of the tender process, it was found that the relaxed condition in the tender document of permitting even the unlicensed bidders was not appropriate and thus a decision was taken to cancel all the tenders.

7. This was not a knee-jerk reaction. In fact, the Health Department, as it appears from the records, had constituted a committee under the Chairmanship of the Secretary, Health, which committee had discussed several issues, especially with regard to relaxing the terms of the tender, in violation of the provision contained in the Act of 2005, permitting such bidders also to participate who did not have a licence under the Act of 2005 with the only condition that, if selected, they would supply the manpower/security guards only from the licensed agencies.

8. One of the clauses of the tender papers, *viz.*,



Clause-8 provided that there could be no subletting or subcontracting permissible under any circumstance and the contract would be terminated in case the service provider sublet it to other contractors.

9. On a careful consideration of all the issues which had cropped up because of the relaxed tender condition, it was decided that the entire tender be cancelled and a fresh tender be published within a week, strictly following the Act of 2005 and other applicable rules and the process be completed within a month. As an interim arrangement, it was decided that the currently working agencies like the petitioners will continue to work till finalization of fresh tender so that there is no disruption of services.

10. The contention of the petitioners is that eight out of ten enlisted contractors had the licence under the Act of 2005, whereas two others obtained the licence later.

11. However, the decision to cancel the contract



was taken because of the relaxed/ wrong tender condition of permitting unlicensed bidders as well.

12. The primary contention on behalf of the petitioners is that the tender was for enlistment of contractors for supply of manpower for various positions; only one of which was for supply of security guards, which supply contract required the bidder to have a licence under the Act of 2005. No such licence is required for supply of other positions in the health organizations of the Government.

13. In that case, the faulty condition could be segregated and only such selected bidders could have been allowed to operate in the field who had the licence for supply of security guards.

14. The tender floated was carried to its logical conclusion and no complaint whatsoever was made with respect to the selection of the bidders or with respect to any lethargy, unpreparedness or lack of infrastructure of any one of the selected bidders to perform their part of



the obligation.

15. In that event, it has been argued that instead of cancelling the tender in its entirety, an attempt ought to have been made to salvage the contract which had been entered into between the BMSICL and the petitioners.

16. The reasons for such submission is that public tenders are the corner stone of governmental procurement process, ensuring transparency, competition and fairness in the allocation of public resources. The sanctity of public tenders and of contracts is a fundamental principle that underpins the stability and predictability of legal and commercial relationships. When public authorities enter into contracts, they create legitimate expectations that the State will honour its obligations. Arbitrary or unreasonable terminations undermine these expectations and erode the trust of private players from the public procurement processes and tenders. Once a contract is entered into, there is a



legitimate expectation, that the obligations arising from the contract would be honoured and that the rights arising from it will not be arbitrarily dissolved, except for breach or non-compliance of the terms agreed thereunder. The public authorities ought to be circumspect in disturbing or wriggling out of contractual obligations for no apparent good reason.

17. The second strand of argument on behalf of the petitioners is that in any view of the matter, before cancelling the tender and terminating the contract with respect to petitioners, notice to the petitioners was a must and it cannot be argued that not noticing the petitioners has not caused any prejudice to them as the entire tender has been withdrawn on account of one of the conditions in the tender to be faulty or not in consonance with the Act of 2005.

18. The decision of the government in cancelling the entire tender and calling for a fresh tender does not appear to be purposive or for preserving public interest.



19. Lastly, it has been submitted, though not specifically pleaded, that the unilateral cancellation of tender process which was not faulted on any other count except for the relaxed condition for supply of security guards, smacks of malafides for accommodating or giving contract to favoured contractors.

20. The contention on behalf of the State is that with such faulty condition in the tender requirement, the purity of the tender process can definitely be presumed to have been compromised. It would have been unfair if the entire tender process was not cancelled and only that part of process which required supplying of security guards, were to be segregated.

21. It matters not that most of the selected bidders had the requisite licence but with the tender process having been discovered to be incorrect, it was only in the fairness and fitness of things and for preserving the sanctity of tenders and contracts emanating therefrom that the decision of cancellation of



tender has been taken.

22. The fact that fresh tender has been directed to be floated with no proscription of the petitioners not participating in the said bid is clearly reflective of lack of any malafides. The interim arrangement also confirms that the action taken by the State is neither vindictive nor with any oblique purpose with any special motive, but only with a view of course correction.

23. During the course of arguments, the learned Advocates appearing for the petitioners have submitted that assuming the stand of the State that there was a technical fault in the tender document, only the authority, *viz.* the BMSICL, an agency of the State was required to take a decision.

24. In the present case, the State has entered in the arena with a unilateral decision asking the BMSICL to cancel the contract. The action of the State is nothing but a hurried action without any basis, triggered only by a Member of the Bihar Legislative Assembly having piloted



a starred question on the floor of the House.

25. There does not appear to be any dispute about the assertion that according to the terms of the tender papers, the bid of the petitioners was evaluated and the petitioners were found to be successful bidders.

26. The BMSICL entered into a contract with all the petitioners and they were allocated work. Nonetheless, on the ground of faulty tender condition, the Government took a decision to cancel the entire tender. There could have been another step to correct the same but in the event of the State having taken a decision, which cannot be faulted on legal grounds, there cannot be any judicial intervention.

27. In ***Sterling Computers Limited vs. M/s M & N Publications Limited & Ors. : (1993) 1 SCC 445***, the Supreme Court had clearly laid down that while exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any



infirmity in the decision making process. A Court can certainly examine whether the decision making process is reasonable, rationale, not arbitrary and violative of Article 14 of the Constitution of India; but it could not sit in appeal over the correctness of the decision in general.

28. In *Tata Cellular vs. Union of India* :
(1994) 6 SCC 651, the freedom of the Government in matters of contract was espoused. A fair play in the joints, the Supreme Court asserted, would be a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. In cases of contract, the decision of the Government must not only be tested by the application of Wednesbury principle of reasonableness but also that such action is free from arbitrariness and not affected by bias or actuated by malafides.

29. In *Jagdish Mandal vs. State of Orissa & Ors. (2007) 14 SCC 517*, it was held that judicial review of administrative action is only intended to prevent



arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made lawfully and not to check whether choice or decision is sound. When a power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions in which principles of equity and natural justice stay at a distance. Before interfering in any decision of the State in such matters, two primary questions are required to be evaluated, *viz.* :

(i) Whether the process adopted or decision made by the authority is malafide or intended to favour someone or whether the process adopted or decision made is arbitrary and irrational? and

(ii) Whether public interest is affected?

30. If the answers of these two posers are in the negative, there ought not be any interference under



Article 226 of the Constitution of India.

31. In ***Subodh Kumar Singh Rathour vs. Chief Executive Officer and others : 2024 SCC OnLine SC 1682***,

Chief Executive Officer and others : 2024 SCC OnLine SC 1682, a tender inviting bid was cancelled by

the authority on the ground of tender having technical fault, the conditions being non-specific and not well-defined which created ambiguity resulting financial losses.

The challenge to the cancellation of tender failed before the High Court. The Supreme Court, on finding that there was nothing on record to suggest that the technical fault in the tender had resulted in financial losses or there being a possibility of fetching higher licence fee, directed for salvaging the tender. It had been argued that the technical fault in the tender, which if rectified, would have created a possibility of generating more revenue, which did not find favour with the Supreme Court. The Supreme Court was of the view that when a contract is evaluated, the mere possibility of more money in the public coffers might not itself be said to serve public interest. Public



interest cannot be conflated with an evaluation of monetary gain or loss alone. The Supreme Court in this instance has specified that public interest cannot be used as a pretext to arbitrarily terminate the contracts. There must be clear and demonstrable ramification or detriment on the public interest to justify any such action. It was also held that considerations of public interest ought not to be narrowly confined. A decision to terminate a contract or cancel the tender must be based on careful consideration of all relevant factors including the potential harm to the integrity and sanctity of contractual relationships.

32. The facts of the present case are absolutely different. The technical flaw in the tender was that the tender condition had been relaxed, we repeat, which was in derogation of the Act of 2005. Segregating that part of the tender paper and salvaging the tender and resultant contract would have been a difficult and onerous task. If the tender condition would not have been relaxed in



derogation of the Act of 2005, perhaps many other persons, especially licensees under the Act would have applied and the BMSICL would have had a larger pool to select from. It has also to be taken into account that the enlistment under the tender was of the agencies which had to supply manpower in hospitals.

33. In recent past, offences committed by the outsourced personnel had created lot of controversy with respect to the very process of selecting such agencies.

34. We have not been able to diagnose any malafides in the action of the State.

35. True it is that the evaluation of the tender started after a starred question was moved by one of the members of the Legislative Assembly but the action was based on a report of the High Level Committee which had deliberated on all the issues concerning the tender in question.

36. Though some of the petitioners have raised questions about the correctness of the allegation that



they are not the licensees but the issue pales into insignificance once it is found that the action of the State in cancelling the tender and taking a decision to float a fresh tender within a stipulated time, not preventing the petitioners from participating in such tender, any interference in that decision which cannot be called to be arbitrary or against public interest, would be unjustified.

37. We have also taken into account that in a contract of this kind, there is not expected to be any infrastructure investment by anyone of the contractors. It cannot, therefore, be said that the decision overlooked the interest of the contractors.

38. As noted above, in the interim arrangement, the petitioners have been permitted to keep on supplying the manpower till fresh tender is floated and fresh contracts are made thereafter.

39. There is every possibility of the petitioners coming out successful in the fresh tender.

40. Considering all these facts, we uphold the



decision of the respondents in cancelling the tender in its entirety.

41. All the writ petitions are dismissed.

(Ashutosh Kumar, ACJ)

Partha Sarthy, J : I agree.

(Partha Sarthy, J)

Rajesh/Saurav

AFR/NAFR	NAFR
CAV DATE	27.03.2025
Uploading Date	04.04.2025
Transmission Date	NA

