

# Shree Balajee Traders vs The State Of Jharkhand Through Its ... on 7 May, 2024

**Author: Navneet Kumar**

**Bench: Navneet Kumar**

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 3982 of 2023

Shree Balajee Traders, a Proprietorship concern, having its office Near Hero Service Centre, Kedia House, Tungri, PO-Chaibasa, PS-Sadar, District-West Singhbhum, PIN 833201, (Jharkhand), through its Proprietor, namely, Ajay Kumar Kedia, aged about 45 years, s/o late Atma Ram Kedia, r/o Near Gopal Garage, Tungri, PO-Chaibasa, PS-Sadar, District-West Singhbhum PIN 833201, (Jharkhand) ... .. Petitioner

Versus

1. The State of Jharkhand through its Secretary, School Education and Literacy Department, having its office at Project Bhawan, Dhurwa, PO-Dhurwa, PS-Jagannathpur, PIN 834004, Jharkhand
2. Jharkhand Education Project Council, through its State Project Director, having its office near JSCA Stadium, Stadium Road, Sector-III, Dhurwa, PO-Dhurwa, PS-Jagannathpur, PIN 834004, Jharkhand
3. Jharkhand Education Project, Saraikela-Kharsawan, through District Superintendent of Education-cum-District Project Officer, having its office at Samagra Shiksha Abhiyan Room No.17, 2nd Floor, Collectorate Building, Gourangdih, PO-Saraikela, PS-Saraikella, District-Saraikela-Kharsawan, PIN 833219, Jharkhand
4. District Education Officer-cum-District Programme Officer, Jharkhand Education Project, Saraikela-Kharsawan, having its office at Samagra Shiksha Abhiyan, 17, 2nd Floor, Collectorate Building, Gourangdih, PO-Saraikella, PS-Saraikella, District-Saraikela-Kharsawan, PIN 833219, Jharkhand
5. In-Charge, Kasturba Gandhi Girls School, Jharkhand Project Education Council, having its office at Samagra Shiksha Abhiyan, 17, 2 nd Floor, Collectorate Building, Gourangih, PO-Saraikella, PS-Saraikella, District-Saraikela-Kharsawan, PIN 833219, Jharkhand
6. Deputy Commissioner, Saraikela-Kharsawan, having its office at Gourangdih, Saraikela District Collectorate, PO-Saraikella, PS-Saraikella, District-Saraikela-Kharsawan, PIN 833219, Jharkhand
7. Vantech Enterprises, through its Proprietor, having its office at 942, Line No.5, Mohmadan Line, Sakchi, PO & PS-Sakchi, Town Jamshedpur, District-East Singhbhum, PIN 831001, Jharkhand
8. J. S. Sons, through its Proprietor, having its office at 4 th Floor, Sharda City, Mango, Town Jamshedpur, HN-33, PO & PS-Mango, District- East Singhbhum, PIN-831012 (Jharkhand) ... .. Respondents

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Petitioner

: Mr. Sumeet Gadodia, Advocate

Mr. Ranjeet Kushwaha, Advocate

For the State	: Mr. Mohan Kumar Dubey, AC to AG	
For the Respondent No.2	: Mr. Raj Vardhan, Advocate	
For the Respondent No.8	: Mr. Kushal Kumar, Advocate	
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7th May 2024 Per, Shree Chandrashekhar, A.C.J This writ petition has been filed by Shree Balajee Traders through its proprietor, namely, Ajay Kumar Kedia. The grievance of the petitioner-Firm is that the work order was not issued to it though it was declared L-1 bidder. On the contrary, a decision was taken by the Tender Committee on 24th June 2023 that in view of a pending complaint against the petitioner-Firm the work order cannot be issued in its favor.

2. The petitioner-Firm has made the following prayers:

"(i) For issuance of an appropriate writ/order/direction, for quashing/setting aside the decision of the District Purchase Committee dated 24.06.2023 of Jharkhand Education Project, Saraikela-Kharsawan (Annexure-9), wherein pursuant to the complaint made by private Respondent No.7-Vantech Enterprises, a decision has been taken that the Petitioner's firm cannot be allotted any work order in respect of Kasturba Gandhi Girls School as being wholly illegal, arbitrary, unreasonable, actuated with malice in law and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

(ii) For issuance of further appropriate writ/order/direction, for quashing/setting aside the proceedings of Jharkhand Education Project, Saraikela-Kharsawan dated 28.06.2023 (Annexure-10), wherein despite the fact that the Petitioner-firm was selected as the Lowest Bidder (L-1) for award of work for supply of food grains, daily use and medicate items for Kasturba Gandhi Girls Residential School, Nimdih and Jharkhand Girls Residential School, Kugru, a decision has been taken to award the work to the 2nd Lowest Bidder i.e. J.S. Sons (Respondent No.8) in a most arbitrary, illegal, unreasonable manner, contrary to the terms and conditions of the Notice Inviting Tender and actuated with malice in law, just in order to favour the Respondent No.8.

(iii) For issuance of further appropriate writ/order/direction, including Writ of Mandamus, directing the Respondents particularly Respondent No.3 to allot the work supply of food grains, daily use and medicate items to the Petitioner for Kasturba Gandhi Girls Residential School, Nimdih and Jharkhand Girls Residential School, Kugru, especially in view of the fact that the Petitioner pursuant to Notice Inviting Tender was declared as technically qualified and was declared L-1 bidder for supply of the said items in the aforesaid schools.

(iv) For issuance of any other writ(s)/order(s)/direction(s) as Your Lordships may deem fit and proper in the facts and circumstances of the case."

3. A Notice Inviting Tender (in short, NIT) was issued by the Jharkhand Education Project for supply of stationary and other items to the Kasturba Gandhi Residential Girls School, Jharkhand Girls Residential Schools and Netaji Subhash Chandra Bose Residential Schools. The petitioner-Firm on being declared technically qualified was issued a communication for rate negotiation after being declared L-1 bidder. The petitioner-Firm further pleads that for Kasturba Gandhi Girls Residential School, Nimidih and Jharkhand Girls Residential School, Kugru it was selected as the agency for supply of stationary and other items from 1st August 2023. However, on a complaint made by the respondent no.7-Vantech Enterprises, a communication was made to the petitioner-Firm on 21st June 2023 and it was directed to put forth its explanation before the District Purchase Committee on 24th June 2023.

4. The learned counsel for the petitioner-Firm submits that this is not a condition in the NIT that a bidder shall not be awarded supply order pending any proceeding against it. On the contrary, the petitioner-Firm itself made a disclosure in its affidavit that Misc. Case No. 1 of 2021 is pending against it in the Court of District Magistrate-cum-Deputy Commissioner at West Singhbhum, Chaibasa.

5. Clause 20 of the NIT provided that a bidder shall be ineligible to participate in any tender if he has been put under black-list category or there was an order against it on the ground of any corrupt/fraudulent practices.

6. This is well settled that even in contractual matters the State and its instrumentalities should act reasonably and follow the procedure prescribed in law. The mandate under Article 14 of the Constitution of India shall apply in the matters where the State and its instrumentalities decided to create a contractual obligations with private parties [refer, "Mahabir Auto Stores v. Indian Oil Corpn." (1990) 3 SCC 752]. This is also too well settled that the writ Court in exercise of jurisdiction under Article 226 of the Constitution of India shall not interfere with the decision of the employer if it is found not wholly arbitrary, unjust or actuated with malice in law.

7. In "Silppi Constructions Contractors v. Union of India" (2020) 16 SCC 489 the Hon'ble Supreme Court has discussed the law on the subject in the following words:

"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."

8. There is no condition in the NIT that pending any inquiry/proceeding against a bidder it shall not be permitted to participate in tender or shall not be awarded the work under the NIT. However, on an anticipation that in the pending inquiry the bidder shall be exonerated a decision in its favor to award work cannot be taken. After all, the Courts do not take decisions on mere probability (refer, "Razia Begum v. Sahebzadi Anwar Begum" AIR 1958 SC 886). The articles for supply under the NIT require food safety and maintenance of hygiene. This is also important to indicate that the articles for supply are intended for the girl's schools. The petitioner-Firm admitted that a proceeding under section 51 of the Food Safety and Standards Act, 2006 is pending against it. This being the factual position, the respondent no.7 being operated by the respondent no.8 or one of the partners of the respondent no.8 is a fact completely inconsequential. The decision of the District Purchase Committee prima facie does not look arbitrary, whimsical or perverse.

9. While so, we do not see any merit in this writ petition which is, accordingly, dismissed.

10. I.A No. 1696 of 2024 stands disposed of.

(Shree Chandrashekhar, A.C.J.) (Navneet Kumar, J.) Amit