

## IN THE HIGH COURT OF JHARKHAND AT RANCHI

**W.P. (C) No. 2599 of 2025**

M/s Sonar Bangla Caterer, a partnership firm incorporated under the Indian Partnership Act, 1932, having its registered office at- 35. Chandra Nath Chatterjee Street, P.O.- Bhawnipore, P.S.- Bhawanipore, District-Kolkata, Pincode 700025, West Bengal, through its Partner Sri Raja Ghosh, aged about 43 years, S/o- Late Tapash Ghosh, residing at- 25A, Shyama Prasad Mukherjee Road, J.K. Chandra Jewellers Building, PO & PS- Bhawanipore, DIST: Kolkata, Pin Code-700025

... Petitioner

Versus

1. The State of Jharkhand.
2. The Principal-cum-Dean, Mahatma Gandhi Memorial (MGM) Medical College Hospital, Jamshedpur, Mango, Dimna Road, P.O. & P.S.-Dimna, District- Jamshedpur, Pin Code-831020
3. The Superintendent, Mahatma Gandhi Memorial (MGM) Medical College Hospital, Jamshedpur, Mango, Dimna Road, P.O. & P.S.- Dimna, District- Jamshedpur, Pin Code-831020

... Respondents

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**CORAM: HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE RAJESH SHANKAR**  
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For the Petitioner: Mr. Sankalp Goswami, Advocate

For the Respondents: Mr. Sachin Kumar, A.A.G.-II

Reserved on: 13.06.2025**Pronounced on: 16/06/2025****Per M.S. Ramachandra Rao, C.J.**

1. This Writ petition has been filed by the petitioner questioning the condition imposed in the Very Short Notice Inviting Tender (NIT) vide Document No.2138/2025 dt. 07.05.2025 issued by the 3<sup>rd</sup> respondent providing additional weightage of 10 marks to the bidders having experience in the State of Jharkhand in Government Hospitals with more than 500 beds for providing food/diet to the patients of MGM Hospital, Jamshedpur, and contending that it is arbitrary, unreasonable and has no nexus with the object sought to be achieved by the tender. It is also contended that it is tailored to benefit particular class of bidders who have experience in the State of

Jharkhand and in particular the existing contractor M/s The Jana Enterprises.

**Contentions of petitioner**

2. Petitioner contends that prior to the tender dt. 07.05.2025 being issued, the 3<sup>rd</sup> respondent had issued another Very Short Notice Inviting Tender on 05.05.2025 for the same purpose; that the date of publishing of bid document on the website was fixed for 07.05.2025 and that, pre-bid meeting was also scheduled to be held on 10.05.2025; that the tender was to be opened on 24.05.2025; but abruptly on 07.05.2025, the said Notice Inviting Tender dt. 05.05.2025 was cancelled vide Annexure-3; and the impugned tender notice was issued on 07.05.2025 specifically removing the essential clause pertaining to pre-bid meeting from the schedule and drastically shortening the entire timeframe for finalizing the tender to 16.5.2025.

3. It is also pointed out by the counsel for the petitioner that in both the tenders, the duration for which the contract is to be executed is deliberately omitted and it is only stated that '*it will be in force until further orders*'. According to the counsel for petitioner, the lack of the prescription of period for which the tender is being invited itself indicates the arbitrariness on the part of the 3<sup>rd</sup> respondent and it is also violative of Art.14 of the Constitution of India.

4. In addition, it is the contention of the counsel for the petitioner that the prescription of extra marks of "10" to be given for work experience of the bidders in any 500 bedded Government hospital in the State of Jharkhand is also discriminatory and violative of Art.14 of the Constitution of India, because the work experience in the State of Jharkhand has no intelligible differentia and also connection/nexus

with the object sought to be achieved, i.e., providing best nutritious dietary requirement to the patients in the MGM Hospital, Jamshedpur.

5. Petitioner contends that though it has the requisite experience and credentials to supply cooked diet food to the patients in various States in India, due to arbitrary insertion of the clause providing for additional marks for people having work experience in the State of Jharkhand, the petitioner has been put in a disadvantageous position.

**Events after filing of the Writ Petition**

6. The instant Writ petition was filed on 12.05.2025 and was listed before a Vacation Bench of this Court on 13.05.2025. The Vacation Bench permitted the petitioner also to submit its bid to the 3<sup>rd</sup> respondent.

7. The matter was then adjourned to 22.05.2025 and on that date, it was directed to the official respondents to file a counter affidavit and the matter was directed to be listed on 13.06.2025.

**The stand of the respondent no.3**

8. In the counter affidavit filed on behalf of the 3<sup>rd</sup> respondent, it is stated that on 03.05.2025, a part of the old building from which the MGM College, Jamshedpur was operating had collapsed, that three individuals had died and there are oral directions given by the Health Department and the District Administration of East Singhbhum to shift from the old Hospital building situated at Sakchi to the MGM College, Jamshedpur situated at Dimna without any delay.

9. Therefore the Very Short Notice Inviting Tender dt. 07.05.2025 in question was floated to supply food to the patients at the new location of the said hospital.

10. It is stated that because of this emergency, pre-bid meeting could not be held and everything had to be done on an emergency basis. Moreover, Health Department of the State of Jharkhand did not make available any Model Tender Document for the subject of food related tenders and so the 3<sup>rd</sup> the respondent prepared conditions of the tender keeping in mind the terms issued by the RIMS, Ranchi in its Tender Documents.

11. Coming to the impugned condition of granting additional marks of 10% to the prospective bidders if they have work experience in the State of Jharkhand in any Government hospital having more than 500 beds, it is stated that this was put to 'justify' the authenticity of the work done by the bidder in the past which can be easily checked if he had worked in hospital of Jharkhand. It is stated that it has got the right to impose such a condition and that the condition is not a bias in favour of any prospective bidder.

12. It is also stated that the petitioner participated in the tender process, the tender process was completed and an L-1 bidder was selected. There is no mention in the counter affidavit filed on 09.06.2025 that the work was already awarded to the said tenderer.

**Reply affidavit filed by petitioner**

13. Reply affidavit was filed by the petitioner contending that though the 3<sup>rd</sup> respondent claims they have followed the procedure followed by RIMS, Ranchi, this is incorrect because in an e-Tender notice issued by the RIMS on 09.10.2024, condition of the nature imposed by 3<sup>rd</sup> respondent in the impugned tender i.e having experience in the State of Jharkhand, was not there. The said e-Tender

issued by the RIMS is filed as Annexure 7 and 7/1 to the reply affidavit.

14. It is specifically contended that the condition was specifically included in the tender dt. 07.05.2025 to benefit the existing contractor M/s Jana Enterprises, who is already supplying diet food to the patients in MGM Hospital, Jamshedpur at Sakchi.

15. It is further contended that only two bidders had submitted their bid in furtherance of the tender, one of which was the petitioner and the other was the existing contractor M/s. The Jana Enterprises and the whole effort on the part of the 3<sup>rd</sup> respondent was to somehow benefit the existing contractor. It is also pointed out that the only difference in marks between the petitioner and the existing contractor is the 10 additional marks awarded to the existing contractor.

#### **Consideration by the Court**

16. We have noted the contentions of the parties.

17. In *M/s. Michigan Rubber (I) Ltd v. State of Karnataka & Others*<sup>1</sup>, the Supreme Court held that normally, in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities, unless the action of the tendering authorities is found to be malicious and a misuse of its statutory powers. Only in the latter situation, interference by the courts is so warranted. The Supreme Court also directed that before interfering in tender or contractual matters in exercise of power of judicial review, it should pose a question as to (i) whether the process adopted or decision made by the authority is *mala fide* or intended to favour someone; (ii) whether the process adopted

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<sup>1</sup> (2012) 8 SCC 216

or decision made is so arbitrary and irrational as to be unreasonable; (iii) as to whether public interest is affected. It held that if the answers to the above questions are in the negative, then there should be no interference under Art.226.

18. We shall, therefore, consider the defence of the 3<sup>rd</sup> respondent for imposing the said condition of having work experience in the State of Jharkhand for award of extra 10 marks during technical evaluation of the bids.

19. According to the 3<sup>rd</sup> respondent, there was an incident on 3<sup>rd</sup> May 2025 in the old campus of the MGM Hospital, Jamshedpur and a part of the old hospital building collapsed in which three people died; an oral direction was given by the Health Department and the District Administration of East Singhbhum to shift from the old hospital situated at Sakchi to the new building at Dimna without any delay. This is alleged to be an emergent situation warranting the imposition of the impugned condition.

20. The respondents have not disputed that they had issued on 05.05.2025 a Very Short Notice Inviting Tender after the said incident with a longer timeline and also provided therein for a pre-bid meeting, which they then abruptly cancelled on 07.05.2025 and issued the new Very Short Notice Inviting Tender dt. 07.05.2025. This they seek to justify on the ground of emergency.

**A. Arbitrariness in imposing the condition for granting 10 additional marks for bidders having experience in the State of Jharkhand**

21. Supply of food to the patients in a hospital has actually nothing to do with the place where the contractor had experience in doing such work. There is no nexus between the condition of doing work in the

State of Jharkhand and the object sought to be achieved by imposing such a condition i.e, providing food to in-patients in the MGM, Hospital, Jamshedpur.

**22.** We may point out that there is nothing *special or unique* about supplying food to inpatients in hospitals in 500 bedded Government hospitals *in the State of Jharkhand*. There is no value addition to the quality of work by the mere fact that a tenderer is doing it *in the State of Jharkhand*. Every person doing such activity of supplying foods to inpatients in hospitals in 500 bedded Government hospitals *anywhere in India* has the same experience.

**23.** Art.14 of the Constitution prohibits the State from denying to any person equality before the law or the equal protection of the laws within the territory of India. Art.15 (1) prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them. Art.19(1) (d) of the Constitution of India confers a fundamental right to move freely throughout the territory of India; Art.19(1)(e) confers a fundamental right to reside and settle in any part of the territory of India; and Art.19(1) (g) confers a fundamental right to carry on any occupation, trade or business.

**24.** These constitutional guarantees to all the citizens of the country cannot be nullified by allowing the State to adopt a parochial attitude towards local persons or businesses unless permitted by a valid law.

**25.** Therefore this condition is arbitrary and violates Art.14 of the Constitution of India.

**26.** It cannot also be denied that people of Jharkhand including businessmen are residing in other parts of the country as well, and are

also doing trade, occupation and businesses in other parts of the country.

27. Persons or businesses from other parts of the Country cannot therefore be discriminated against by the respondents by giving preferences (additional 10% marks) to persons doing business in Jharkhand.

28. There is required to be a level playing field for all eligible bidders. Otherwise, this would violate the Constitutional guarantees mentioned above.

29. In the prevailing era of fast electronic communications, any experience certificate produced by bidder from even outside the State can be easily and quickly verified by contacting the Health Department of that particular State by email or whatsapp or fax.

30. So the reason given by respondents that it would be easy to check the experience of the tenderer if such a condition requiring the work experience only in the State of Jharkhand is imposed, cannot be accepted.

31. Thus the imposition of the condition that if a bidder has experience in the State of Jharkhand, he would get additional marks is discriminatory and violates Art.14 of the Constitution of India.

**B. Issuance of a tender for doing work ‘till further orders’ by respondents is unreasonable**

32. The absence of prescription of a ‘period of work’ in the Very Short Notice Inviting Tender dt. 07.05.2025 for which the diet is to be provided to the patients in the MGM Hospital, Jamshedpur and stating that the work is to be done ‘till further orders’ is itself suspicious, and

is arbitrary and unreasonable violating Art.14 of the Constitution of India.

**33.** Admittedly, patients in MGM Hospital, in whichever place the building housing them is located, either at Sakchi or Dimna, have to be fed.

**34.** It is not as if feeding the patients in such a Government Hospital would only be for a very short time (which reason is implied by respondent no.3 for justifying the issuance Very Short Tender Notice dt. 07.5.2025 saying 'till further orders' work has to be done), because patients keep coming to the Hospital for treatment to their ailments all through the year as long as the Hospital is functioning. Thus, any work order has to be for a reasonable period of time and cannot be 'till further orders'.

**35.** If there was truly an emergency need to shift the patients in MGM Hospital from one building in one locality to another building in another locality in Jamshedpur, nothing prevented the 3<sup>rd</sup> respondent from continuing the existing contractor for a short while, issuing a tender without any such condition and mentioning a duration of work *for a reasonable period*, so that there would be enough competition in the tendering process; and the best tenderer out of the competing tenderers could be selected for providing food to in-patients in the MGM Hospital, which would be in the public interest.

**36.** It cannot be disputed that the purpose of adopting a tendering process by the State is to ensure that there are adequate number of tenderers from whom the best can be chosen.

**37.** If the eligibility conditions are prescribed in such a way that there is a condition favoring people who have local experience within

the State of Jharkhand, the pool of the tenderers, as in the instant case would be too small - there were in all only 2 bidders - the petitioner and the existing contractor. It is unlikely then to have the desired result of the best person getting selected.

**38.** So issuing a tender 'until further orders' is unreasonable and violates Art.14 of the Constitution of India.

**39.** It might be a ruse to continue the existing contractor, who had hardly anybody to compete with and is now made L-1 by the respondents, for a prolonged period.

**C. Conduct of the respondent no.3**

**40.** The record reveals that though the Writ was directed by the Vacation Bench of the High Court to be listed on 13.06.2025 (after the Court reopens on 09.06.2025), the technical bid evaluation was fixed on 05.06.2025 vide Annexure-8, during the High Court vacation. The petitioner, in its email Annexure-9 had informed about the date of listing of the Writ Petition on 13.06.2025, and requested the respondents not to do the technical evaluation. This was ignored by the respondents. The petitioner did not attend the meeting on 05.06.2025.

**41.** Taking advantage of the absence of the petitioner, and on the pretext that the petitioner was 'absent' and had not submitted the PPT work plan, the respondents vide Annexure 10 (filed by petitioner) have selected the existing contractor M/s The Jana Enterprises as L-1 by awarding him the extra 10 marks for his experience *in the State of Jharkhand* and also 6 marks for his PPT work plan.

**42.** There is no such imminent urgency to hold the technical evaluation on 05.06.2025, when the Writ was to be listed on

13.06.2025, as the existing contractor M/s The Jana Enterprises was anyway giving food to the inpatients in the Hospital.

43. The anxiety of the respondents appears to be to present a *fait accompli* to this Court when it hears the matter on 13.06.2025.

44. Though the 3<sup>rd</sup> respondent claims they have followed the procedure followed by RIMS, Ranchi, this is incorrect because in an e-Tender notice issued by the RIMS on 09.10.2024, condition of the nature imposed by 3<sup>rd</sup> respondent in the impugned tender i.e having experience in the State of Jharkhand, was not there. The said e-Tender issued by the RIMS is filed as Annexure 7 and 7/1 to the reply affidavit.

45. The counter affidavit filed by respondent no.3 does not even disclose that the tenderer declared as L-1 *is the existing contractor*.

46. The deliberate omission in the counter affidavit filed on 09.06.2025 of the 3<sup>rd</sup> respondent of the technical evaluation and the marks given on 05.06.2025 to the two bidders, and non-filing of Annexure -10 by the respondent no.3, also shows that he is acting in a *malafide* manner to favor the existing contractor M/s The Jana Enterprises.

### **Conclusion**

47. For all the aforesaid reasons, we hold that all the tests prescribed in the judgment in *M/s Michigan Rubber Ltd* ( 1 supra) are answered in favor of the petitioner and against the respondents.

48. Accordingly, the Writ Petition is allowed and the declaration dt. 05.06.2025 of respondents of existing contractor, M/s. The Jana Enterprises, as L-1 for the subject tender by the respondents, is set aside.

49. The respondents are directed to initiate a fresh tendering process for the purpose of supplying diet food to the patients in the MGM Hospital, Jamshedpur at Dimna without imposing such a condition in future.

50. This exercise shall be commenced immediately and concluded within two months from today.

51. In the interregnum period i.e., till the new tenderer takes up the work after completion of the tendering process pursuant to the fresh tender to be issued, the existing contractor M/s The Jana Enterprises shall be permitted to continue, so that there is no inconvenience caused to the inpatients in the MGM Hospital, Jamshedpur. No costs.

52. Pending Interlocutory Application (I.A. No.7024 of 2025) also stands disposed of.

**(M.S. Ramachandra Rao, C.J.)**

**(Rajesh Shankar, J.)**

N.A.F.R.

Manoj/-