

(2025) 12 SHI CK 0007

Himachal Pradesh HC

Case No: Civil Writ Petition No 3478 Of 2021

Yadupati Thakur

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision: Dec. 3, 2025

Acts Referred:

- Constitution Of India, 1950-Article 12, 21, 32, 226
- Code Of Civil Procedure, 1908- Order 23 Rule 1

Hon'ble Judges: G.S. Sandhawalia, CJ; Jiya Lal Bhardwaj, J

Bench: Division Bench

Advocate: Shrawan Dogra, Kush Sharma, Pranay Pratap Singh, Adarsh K. Vashisth, Shivom Vashisth

Final Decision: Dismissed

Judgement

Jiya Lal Bhardwaj, J

1. The challenge in the present writ petition is against the allotment of tender in favour of respondent No. 4, for running the Hospital kitchen at IGMC Shimla and also the decision dated 03.02.2021 taken by the Finance Department of the State Government of H.P. to outsource the Patient Kitchen Services in IGMC Shimla.

2. The petitioner has averred in the petition that he is public spirited person and doing social works. Since the authorities of the respondents-State have decided to outsource the Patient kitchen service in IGMC Shimla, which was being run by the Rogi Kalayan Samiti, IGMC & H, Shimla, by loating tender notice dated 20.07.2020 without the necessary approval of the Government before finalization of the tender; and further the State Government is to provide grant/aid to meet the excess expenditure without assessment of the n mber of workers to be engaged, the allotment of the tender in fav ur f respondent No. 4 is with malafide intention and thus may be quashed.

3. The petitioner has averred that respondent No. 1 had informed respondent No. 2 that the Finance Department has no objection to the outsourcing proposal of Patient Kitchen Services and budgetary provision would be properly done for the services for 2021-2022 by the Finance Department.

4. The main grievance of the petitioner is that the decision taken to outsource the kitchen services was due to deficiency of funds, but the respondents-State has allotted the tender in favour of respondent No. 4 and huge budget has been provided with a motive to give benefit to respondent No. 4. It is further the case of the petitioner that when the tenders were invited by respondent No.3, a specific condition was made for eligibility in the experience column, that the bidder should have five years experience in the field of providing cooked diet services to the in-door patients in minimum 500 bedded hospital/medical college and this condition was inserted in the tender notice to give benefit to respondent No. 4 since only respondent No. 4-firm was eligible to participate in the tender process.

5. The petitioner has further averred in the petition that neither respondent No.3 nor the Finance Department of the State Government were bothered about the State exchequer because on the one hand, respondent No 3 has allotted the said tender to respondent No. 4 without prior approval of the State Government to outsource the said kitchen and on the other hand has allotted the required budget. The respondents-State have granted opportunity to respondent No.4 to meet out the shortcomings pointed out and thereafter the Hospital Kitchen Services have been outsourced by the respondents-State, just to give undue benefit to respondent No. 4.

6. This Court vide order dated 03.08.2021 had stayed further proceedings pursuant to the tender notification dated 20.07.2020, holding that the tender is not called for any specified volume of business and further it should always be called for a specific purpose or a specific quantity and secondly, the approval of the Government has been taken after finalization of the tender.

7. The respondents-State filed reply to the writ petition and took preliminary objections regarding the maintainability of the writ petition on the ground that the petitioner has no locus standi to file the writ petition and further challenge the award of contract awarded by the respondents -State. Further, the petitioner had earlier filed the writ petition, which was withdrawn unconditionally and hence, the present petition is hit by the principle of res-judicata. It has further been averred that in the Himachal Pradesh High Court Public Interest Litigation, Rules, 2010, the Public Interest Petition as been defined as "the Public Interest Petition shall be meant for those who are living in poverty, destitution, are barely eking out a miserable existence with their sweat and toil, who are helpless victims in the society and do not have easy access to justice". It is also averred in the reply that the petitioner is a Youth Congress Leader, but in the petition, he has disclosed himself to be a social worker. It has further been averred that a person, who is stranger in commercial matters, cannot file a Public Interest Litigation.

8. On merits, it has been averred that the respondents- State had issued a notice inviting tender, which was published on 20.07.2020, by way of e-tendering and advertisement of the same was done in various newspapers on 24.07.2020. Four participants had participated in the tender

process and tender evaluation committee had evaluated the tenders and out of four tenders, three were found to be eligible as per the terms and conditions of the notice inviting tender. It has also been submitted that technical bids were placed before the committee and tender was awarded to respondent No.4 being the lowest bidder (L-1). Further negotiation of rates was held with him by the committee on 02.12.2020 as evident from the proceedings of meeting (Annexure R-2).

9. Respondent No.4 filed separate reply and took preliminary objections regarding maintainability of the petition. It has been averred in the reply that the petitioner is a Youth Congress President in the State of Himachal Pradesh and the petition has been instituted for purely political purpose and to settle personal scores. On merits, it has been averred that the petitioner concealed the date of issuance of award letter in favour of respondent No.4.

10. We have heard Mr. Shrawan Dogra, learned Senior Counsel, duly assisted by Mr. Kush Sharma, learned counsel for the petitioner, Mr. Pranay Pratap Singh, learned Additional Advocate General for respondents No. 1 & 2 and Mr. Adarsh K. Vashistha and Mr. Shivom Vashistha, learned counsel for respondent No. 4.

11. As far as the first contention, as raised by the petitioner that he is public spirited person is concerned, the same even if accepted does not entitle him to challenge the award of tender in favour of respondent No. 4, in view of the fact that the earlier petition preferred by him was withdrawn unconditionally and no liberty was sought by him to file a petition afresh, on the same cause of action.

12. The earlier writ petition filed by the petitioner being CWP No. 2160 of 2021, titled, Yadupati Thakur vs. State of Himachal Pradesh and others, was withdrawn on 31.03.2021, as evident from Annexure P-9, without any leave of the Court to institute a fresh one on the same cause of action. The said order reads as under:-

“After arguing for a while, learned counsel representing the petitioner seeks permission to withdraw the present petition. Permission granted. The petition is accordingly dismissed as withdrawn. All pending applications are also closed.”

13. The Hon'ble Supreme Court has held in *Sarguja Transport Service vs. State Transport Appellate Tribunal*, (1987) 1 SCC 5 that if the petition is withdrawn without permission to institute a fresh petition, second petition will not be maintainable. The relevant para of the judgment is reproduced herein below:-

*“9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in *Daryao* case is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event, there is no justifiable reason in such a case to permit a*

petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.”

14. The Hon'ble Supreme Court has also reiterated the same view in *Avinash Nagra vs. Navodaya Vidyalaya Samiti and others*, (1997) 2 SCC 534. The relevant para of the judgment is reproduced hereinbelow:

“13. The High Court also was right in its conclusion that the second writ petition is not maintainable as the principle of constructive res judicata would apply. He filed the writ petition in first instance but withdrew the same without permission of the Court with liberty to file the second writ petition which was dismissed. Therefore, the second writ petition is not maintainable as held by the High Court in applying the correct principle of law. Thus considered we find no merit in the appeal for interference.”

15 From the above pronouncements, it is clear that the present writ petition is not maintainable since the petitioner had withdrawn the earlier writ petition, without seeking permission to file a fresh one on the same cause of action.

16. So far the contention as raised by the petitioner that the respondents-State has not provided the budgetary provision before issuing the tender process is concerned, it is for the authorities to see whether the provision is made out or not. In the case at hand, the respondent-authorities had published the notice inviting tender on 20.07.2020, which was duly published in various newspapers on 24.07.2020 and in response thereto, our participants had participated in the tender process and out of them, three participants were found to be eligible as per the terms and conditions of the notice. The petitioner's averment in the petition that only one participant was technically qualified is wrong, since the respondents have specifically mentioned in their reply that three participants were found eligible as per the terms and conditions of the notice inviting tender. None of the three eligible participants, who were found unsuccessful, have laid challenge to the award of tender in favour of respondent No. 4, who was found L-1 and thus, the writ petition at the instance of the petitioner cannot be entertained.

17. It is settled law that in the award of contracts, this Court should restrain itself to exercise the powers of judicial review and has to leave it to the expert bodies to decide the matters with respect to the award of contracts. Since none of the unsuccessful tenderer have laid challenge to the award of contract in favour of respondent No. 4, who is the lowest tenderer (L-1), this Court will not venture to go into the tender process, which has been questioned by the petitioner.

18. Mr. Shrawan Dogra, learned Senior Counsel, representing the petitioner has cited the following judgments to advance his arguments:

1. *Ramana Dayaram Shetty vs. International Airport Authority of India*, 1979 (3) SCC 489.
2. *Kasturi Lal Lakshmi Reddy vs. State of J & K*, 1980 (4) SCC 1.
3. *Rural Litigation and Entitlement Kendra vs. State of U.P.*, 1989 Supp.1 SCC 504
4. *Kumari Shrilekha Vidyarthi vs. State of UP*, 1991 (1) SCC 212
5. *Mic igan Rubber (India) Ltd. vs. State of Karnataka*, 2012 (8) SCC 216
6. *Kedar Nath Yadav vs. State of West Bengal*, 2017 (11) SCC 601
7. *State of West Bengal vs. Dipak Mishra*, 2022, (13) SCC 250
8. *Shaikh Ansar Ahmad Md. Husain vs. State of Maharashtra and others*, 2021 SCC OnLine SC 867.
9. *Vinishma Technologies Pvt. Ltd. Vs. State of Chhattisgarh*, 2025 SCC OnLine Sc 2119

and

10. *Shrishti Infrastructure Development Corporation Limited vs. The State of Madhya Pradesh and others*, Writ Petition No. 10786 of 2021, decided on 30.06.2021.

19. It has been contended by Mr. Shrawan Dogra, learned Senior Counsel that since there is arbitrariness on the part of the respondent-State in awarding the Government contracts, the Court may like to step in. He has vehemently argued that the respondent-State has not adhered to the procedure, and this Court while entertaining the petition, had observed that the tender has not been called for any specified volume of business and the approval of the Government has been taken after finalization of the tender. Thus, the writ petition filed by the petitioner deserves to be allowed and this Court should not hesitate to exercise its power of judicial review.

20. This Court has carefully gone through the judgments referred by the learned Senior Counsel vis-a-vis the stand taken by the respondents in the reply. We do not find any act of the respondents-State, which can be said to be arbitrary and unreasonable. At this juncture, it is relevant to refer to the proceedings of the Executive Committee of Rogi Kalayan Samiti held on 10.06.2020, as evident from Annexure R-3, where the matter has been discussed in detail and

the competent authority has found that the IGMCI should consider that the kitchen services be outsourced rather than buying ration etc. It has also been discussed in the meeting that there is no provision of separate diet for diabetic patients or for patients requiring high protein diets in IGMCI, whereas in the peripheral health institutions, there is such a provision. In order to provide cooked diet to the patients, as per their need, the IGMCI may resort to open tender for selection of vendor with appropriate checks and balances, subject to approval of governing body. Thereafter, the advertisement for inviting tender notice was issued as per Annexure P-1 and after opening the technical bids on 10.09.2020, three tenderers were qualified technically as per Annexure R-1. Thereafter, financial bids were opened on 21.09.2020 and the matter was placed before the governing body in its meeting held on 12.10.2020. The governing body approved to outsource the kitchen services. It was noticed that the prices quoted by L-1 were quite high. After negotiation, the rates were approved as evident from the proceedings of meeting held on 02.12.2020 (Annexure R-2). The contract was awarded after the approval granted by the Secretary (Health) to the Govt. of H.P. vide letter dated 03.02.2021. It is worth noticing here that a proper procedure as required under law was adhered to and this Court will not exercise the judicial powers to interfere with the award of contract in favour of respondent No.4, when the unsuccessful tenderers have not laid challenge to the award of tender.

21. The learned Additional Advocate General and learned counsel representing respondent No.4, have referred to the judgments passed by the Hon'ble Apex Court in *Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed and others* (1976) 1 SCC 671, *Jagdish Mandal vs. State of Orissa and others* (2007) 14 SCC 517, *Caretel Infotech Limited vs. Hindustan Petroleum Corporation Limited and others*, (2019) 14 SCC 81 and *Tata Motors Limited vs. Bihani Mumbai Electric Supply and Transport undertaking (best) and others*, (2023) 19 SCC 1 and contended that the Hon'ble Supreme Court has time and again held that this Court while exercising the powers of judicial review has to restrain itself while interfering in the contractual matters and this Court cannot use magnifying glass while scanning the tender conditions. The Hon'ble Supreme Court has held in the aforementioned decisions that the Courts must give "fair play in joints" to the Government and public sector undertaking in matters of contract and the Courts must not easily interfere in such matters. Paragraph 50 of the judgment rendered in *Tata Motors Case* (supra), which is a judgment delivered by a three-Judge Bench, is reproduced herein below.

"50. 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 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 realize 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. 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."

22. From the above discussion, it is crystal clear that since the proper procedure has been adopted by the respondents-State while awarding the contract, this Court does not want to interfere in the tender process, more particularly when none of the unsuccessful bidders have challenged the tender process.

23. This Hon'ble Court when it granted the stay on 3. 08.2021 had no version of the State and the private respondent. This Court has perused the record and the proceedings of the respondent-State wherefrom, it is clear that there is no arbitrariness, unreasonableness on the part of the respondent-State and the decision making process does not call for any interference. None of the unsuccessful tenderers have laid challenge to the tender process and thus, no interference is called for.

24. It is settled law that under the guise of public interest litigation, the Court can only step in when some injustice has been caused or the action of the authorities is arbitrary, unreasonable and actuated with malice. In the present case, none of the above conditions are fulfilled which calls for interference in the award of tender in favour of respondent No. 4.

25. We are thus of the considered view that Writ petition instituted by the petitioner is not maintainable and further since the respondents-State have followed the due process while awarding the tender in favour of respondent No. 4, the same is dismissed. However, no orders as to cost. The interim order dated 03.08.2021 stands vacated.

Pending applications, if any, also stand disposed of.