

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17505 of 2024

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M/s Science House Medicals Private Limited

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 1377 of 2025

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POCT Services,

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 17505 of 2024)

For the Petitioner/s : Mr. Abhinav Srivastava, Sr. Advocate

Mr. Nirbhay Prashant, Advocate

For the State : Mr. Vikash Kumar, SC-11

For Respondent No. 5 : Mr. Ravinder Singh, Advocate

Mr. Parth Gaurav, Advocate

For Respondent No. 8 : Mr. Govind Raj Shahi, Advocate

Mr. Sekhar Singh, Sr. Advocate

Mr. Kumar Shanu, Advocate

Mr. Kumar Abhishek, Advocate

Mr. Shubham, Advocate

For the Intervenor : Mr. Prasoon Shekhar, Advocate

Mr. Lalit Kishore, Sr. Advocate

For the SHSB : Mr. Rajeev Kumar Singh, Advocate

Mr. P.K. Shahi, Advocate General

Mr. K.K. Sinha, Advocate

(In Civil Writ Jurisdiction Case No. 1377 of 2025)

For the Petitioner/s : Mr. Mrigank Mauli, Sr. Advocate

Mrs. Madhubala Kumari, Advocate

Mr. Amit Anand, Advocate

For the State : Mr. Vikash Kumar, SC-11

For the Resp No. 4 : Mr. Ashish Giri, Sr. Advocate

Mr. Kumar Shanu, Advocate

Mr. Kumar Abhishek, Advocate

Mr. Shubham, Advocate

For the SHSB : Mr. P.K. Shahi, Advocate General

Mr. K.K. Sinha, Advocate

For Respondent No. 9 : Mr. Ravinder Singh, Advocate

Mr. Parth Gaurav, Advocate

Mr. Govind Raj Shahi, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
and  
HONOURABLE MR. JUSTICE SOURENDRA PANDEY  
ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

11 24-03-2025

**I.A. No. 01 of 2025**

The hearing in the writ petition(s) is still going on. Mr. Abhinav Srivastava, learned senior counsel for the petitioner in C.W.J.C. No. 17505 of 2024 has brought to the notice of this Court, the present application seeking amendment in the reliefs prayed by the petitioner. In paragraph no. 2 of the application, the following prayers have been made. We reproduce paragraph no. 2 of the application as under:-

*That the amendment sought through the present interlocutory application is as follows:*

*1. (ix) To issue an appropriate writ/order/direction in the nature of Certiorari quashing the Letter of Intent dated 05.11.2024, the Contract Agreement dated 19.11.2024, and the Letter dated 31.12.2024 which have been issued against the prescribed law of RFP as well as against the principle of Natural justice.*

*1. (x) and, an interim injunction be granted, and that the effect and operation of the Letter of Intent dated 05.11.2024, the Contract Agreement dated 19.11.2024, and the Letter dated 31.12.2024 be stayed pending the disposal of the present writ*



*petition.*

*1 (ix) Further, the Respondents may be restrained from taking any action or proceeding further with the said Letter of Intent dated 05.11.2024, the Contract Agreement dated 19.11.2024, and the Letter dated 31.12.2024.*

*2. (xi) Whether, in the facts and circumstances of the case, the Letter of Intent dated 05.11.2024, the Contract Agreement dated 19.11.2024, and the Letter dated 31.12.2024 is legal and valid in the eyes of law?*

2. Learned senior counsel submits that this writ petition was filed on 13.11.2024, after serving two copies of the writ petition on the office of the learned Advocate General on 12.11.2024. The writ petition was registered on 18.11.2024 after removal of stamp report defects. It is submitted that while the writ petition was going to be heard within a short period, the State Health Society executed an agreement with the consortium of Respondent Nos. 4 and 5 on 19.11.2024, against the terms and conditions of the Notice Inviting Tender (In short, 'NIT'). A copy of the agreement dated 19.11.2024, has been placed on record as Annexure-P/14 to this application.

3. Learned senior counsel has taken this Court



through the terms and conditions of the ‘NIT’ as contained in Section-V. It is pointed out that Section-V provides the eligibility criteria. Clause-‘2’ lays down the eligibility criteria and documents, which are required to be submitted by the bidders. For the present, it is sufficient to take note of Sr. No. 2.1, which is being reproduced hereunder:-

S.No	Eligibility criteria for Bidders	Mandatory Documents
2.1	The Bidder (sole bidder or for consortium shall mean each of the partners including the lead partner) must be established entity under Companies Act, 1956/2013, or Limited Liability Partnership Act 2008; OR Societies Registration Act 1860, or Indian Trusts Act 1882	<b>For Company/ LLP Copy</b> - of the certificate of incorporation issued by the Registrar of Companies (ROC), <b>OR For Society/Trust-Certificate</b> issued under Societies Registration Act 1860/ Indian Trust Act 1882  In the case of consortium, apart from the above certificates to be provided by each of the partners, the consortium, shall have to submit, (a) Board resolutions for individual partner(s) including lead partner in the consortium, as per format " <b>Annexure-4</b> " (b) "Memorandum of Understanding (MoU) Consortium" in the format mentioned in " <b>Annexure-5</b> ".

4. Learned senior counsel has taken us through the



format of the 'MoU' as contained in Annexure-5 to the 'NIT'. Clause-'3' of the 'MoU' (Annexure-5) has been pointed out to us and a submission has been made that by virtue of this clause once a consortium is declared the selected bidder and awarded the project, it shall incorporate a separate entity a Special Purpose Vehicle (In short, 'SPV') under Companies Act within ninety days of issue of the Letter of Intent (LOI) and shall be required to sign a contract agreement with State Health Society Bihar (In short, 'SHSB') for performing all its obligations as per the terms and conditions of the 'NIT'.

5. Learned senior counsel submits that the said 'SPV' has yet not been formed, still the 'SHSB' has entered into an agreement in haste only on 19.11.2024, with a name showing "consortium of Sodani Hospitals and Diagnostics Private Limited".

6. It is pointed out to this Court that it is for this reason that both the partners of the consortium are now defending the writ application separately.

7. Learned senior counsel points out that the action taken in haste to execute an agreement only speaks of malafide and it has been purposely done to take a plea before this Court that now agreement has been executed and things have



proceeded.

8. At this stage, we have heard Mr. Ashish Giri, learned senior counsel representing Respondent No. 4 and Mr. Ravinder Singh, learned senior counsel in this application representing Respondent No. 5 who has entered appearance online/virtual mode. Both the learned counsel, who are representing Respondent Nos. 4 and 5 (consortium partners) have admitted at the Bar that till date no formal document of agreement has been executed forming a legal entity of consortium under the Companies Act. It is not denied that till date no 'SPV' under the Companies Act has been formed by the two partners of the consortium, namely, respondent no. 4 and 5.

9. Having regard to the disclosures made by Respondent Nos. 4 and 5, we *prima-facie* found that the 'SHSB' has not taken care of Clause-'3' of the 'MoU' (Annexure-5), which is in the format forming part of the 'NIT'.

10. We requested the learned Advocate General who represents 'SHSB' to take a stand on this particularly considering that no legal entity has yet come into existence and if it is so, then how the 'SHSB' could have entered into an agreement with a so-called consortium which was at the stage of 'MoU' only and the 'MoU' could have only allowed them to



participate in the bidding process and no more.

11. This Court having *prima-facie* noticed that the consortium, once having been declared a selected bidder was obliged to form a separate entity with whom the agreement was to be executed, wanted to know the stand of the learned Advocate General.

12. We record that a fair stand has been taken at the Bar by the learned Advocate General in no time, taking a stand that the purpose behind Clause-‘3’ of Annexure-5 of the ‘NIT’ document was to allow an agreement to be executed between a legal entity in form of an ‘SPV’ under the Companies Act and the ‘SHSB’ and it seems that the agreement should have been executed by ‘SHSB’ only after formation of the said legal entity.

13. In the kind of stand taken at the Bar by the learned Advocate General representing the ‘SHSB’, we need not detain ourselves in discussing the various other aspects of the matter which may be well discussed at the stage of final adjudication of the writ petitions.

14. I.A. No. 01 of 2025 is allowed. The amendment as prayed for shall be carried out and the parties, if so advised, may file their respective response within one week from today.



15. In view of what has been recorded hereinabove and discussed at length in the Court, the learned Advocate General has assured this Court that remedial measures shall be taken by ‘SHSB’ within this period of one week.

16. We are sure that keeping in view the stand hereinabove, we expect that ‘SHSB’ shall take remedial measures, cancel the agreement immediately and any action taken pursuant thereto shall be set at naught.

17. The issues raised in the writ application and the amendment application which survive for adjudication, shall remain open for consideration on the next date.

18. As jointly prayed, list these matters on 3<sup>rd</sup> of April 2025 under the same heading as first case subject to part heard.

**(Rajeev Ranjan Prasad, J)**

**(Sourendra Pandey, J)**

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