

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

W.P.(C) No. 5996 of 2019

M/s Intelligence Security of India, New Delhi, through its Manager-cum-Authorized Signatory, Mukesh Kumar Singh ..... Petitioner

Versus

1. The State of Jharkhand, through the Secretary, Health, Medical Education & Family Welfare Department, Ranchi
2. The Deputy Secretary, Health, Medical Education & Family Welfare Department, Government of Jharkhand, Ranchi
3. Ranchi Institute of Neuro-Psychiatry & Allied Sciences (RINPAS), through its Director, Ranchi
4. M/s Frontline (NCR) Business Solution Pvt. Ltd., Ranchi
5. Security and Intelligence Services India Limited, Ranchi ..... Respondents

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**CORAM****HON'BLE MR. JUSTICE RAJESH SHANKAR**

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For the Petitioner:	Mr. Sumeet Gadodia
For Respondent Nos. 1 & 2:	Mr. Mohan Dubey, A.C to A.G
For Respondent No.3:	Dr. Ashok Kumar Singh
For Respondent No.5:	Mr. Kaushalendra Prasad

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13/13.04.2021            The present writ petition has been filed for quashing letter No. 2863 dated 25.10.2019 (Annexure-11 to the writ petition) whereby the work order issued to the petitioner vide letter No. 2750 dated 12.10.2019 pursuant to the Notice Inviting Tender (NIT) dated 01.12.2018 (published on website on 02.12.2018) for providing security services in Ranchi Institute of Neuro-Psychiatry & Allied Sciences (RINPAS), Kanke, Ranchi has been cancelled by the respondent No.3 on the basis of the direction issued by the respondent No.2. Further prayer has been made for quashing letter No. 1102(6) dated 23.10.2019 (Annexure-12 to the writ petition) issued by the respondent No.2 whereby a direction was issued to the respondent No.3 to cancel the said work order issued in favour of the petitioner and consequently to cancel the NIT issued vide Bidding Document No. DIR/09/11/2018-19 dated 01.12.2018 by the respondent No.3 for selection of agency to provide security services in RINPAS, Ranchi. Further prayer has been made for issuance of direction upon the respondent No.3 to allow the petitioner to act as an agency for providing security services in RINPAS, Ranchi especially in view of the fact that the petitioner was duly selected pursuant to a valid tender process and an agreement dated 10.10.2019 to that effect was already executed between the petitioner and the respondent No.3. The petitioner has also prayed for quashing the fresh NIT dated 01.11.2019 which has been issued by the respondent No.3 for selection of an agency to provide security services in RINPAS, Ranchi.

2. The factual background of the case, as stated in the writ petition, is that the respondent No.3 issued NIT dated 01.12.2018 (published on website on 02.12.2018) for selection of an agency to provide security services in RINPAS, Ranchi. The petitioner along with the other two bidders (the respondent Nos. 4 & 5) participated in the said tender process and all the three bidders were declared technically qualified. Thereafter, a decision was taken to open the price bids of the successful bidders. Subsequently, in the meeting of the Purchase Sub-Committee, RINPAS, Ranchi held on 28.02.2019, the petitioner was found to be the lowest bidder. However, the respondent No.5 raised objection with respect to declaration of the petitioner as L-1 bidder whereupon the Purchase Sub-Committee took a decision to seek clarifications from the respondent Nos. 4 & 5. Accordingly, two separate letters were issued by the respondent No.3 vide letter Nos. 725 & 726 (both dated 06.03.2019) to the respondent Nos. 4 & 5 respectively directing them to submit their justifications as to on what ground they were claiming that the petitioner was not the lowest bidder. In the said letters, the respondent No.3 also directed the respondent Nos. 4 & 5 to give breakup of the rates quoted by them including the contribution of employer share as well as employee share towards EPF and ESIC. Further, explanations were sought vide aforesaid letters from the respondent Nos. 4 & 5 as to why they had not filled the mandatory column of 'Other Charges' in the Price Bid. Pursuant to the said letters, the respondent No.5 submitted its reply admitting that it had not separately quoted the amounts pertaining to the contributions towards EPF and ESIC and claimed that the rate quoted by it was an inclusive rate adding the said EPF and ESIC contribution in Price Bid as total cost per head / per month. Thereafter, the Purchase Sub-Committee held a meeting on 25.07.2019 and unanimously declared the petitioner as L-1 bidder stating inter alia that the respondent Nos. 4 & 5 had not separately quoted the charges towards EPF and ESIC contributions in the Price Bid and had also not filled up the column of 'Other Charges'. The respondent No.5 made certain complains before the Secretary, Health, Education & Family Welfare Department, Government of Jharkhand, Ranchi-respondent No.1 alleging that the petitioner was not the lowest bidder and pursuant thereto, a clarification was sought from the

respondent No.3 regarding the declaration of the petitioner as the lowest bidder whereupon the respondent No.3 vide letter No 2568 dated 13.09.2019, submitted a detailed reply to the respondent No.1 stating inter alia that the rate quoted by the petitioner was the lowest rate as it had separately shown the amounts towards EPF and ESIC contributions in the price bid column which was not shown deliberately by the other two bidders. The respondent No.3 further clarified in his letter that the tender documents of the NIT specifically mentioned that the rate to be quoted by the bidder should be inclusive of wages, statutory liabilities, applicable taxes as well as service charges and if the statutory liability towards EPF and ESIC contributions was added to the rate quoted by the other two bidders, their rates would go higher than the rate quoted by the petitioner and thus the petitioner was rightly declared as the lowest bidder. Having considered the said clarification, the respondent No.1 directed the respondent No.3 to immediately execute the agreement and to issue necessary work order to the lowest bidder. Thereafter, the respondent No.3 vide letter dated 04.10.2019, informed the petitioner that it was declared as the lowest bidder by the Purchase Sub-Committee and accordingly it was directed to execute the necessary agreement for the said tender with the respondent No.3 within a period of 10 days. Pursuant to the said direction issued by the respondent No.3, the petitioner took steps for execution of agreement to provide security services in RINPAS, Ranchi and accordingly on 10.10.2019, an agreement was duly executed between the petitioner and the respondent No.3 appointing the petitioner as an agency to provide security services in RINPAS, Ranchi. Subsequently, vide letter No. 2750 dated 12.10.2019, the petitioner was directed to deploy its security personnel- 220 in total as per the NIT at RINPAS, Ranchi w.e.f. 01.11.2019 morning. As per the terms of the NIT dated 01.12.2018 and the agreement dated 10.10.2019, the petitioner was further directed to deposit the Bank Guarantee amount as Performance Security and accordingly the petitioner vide its letter dated 19.10.2019, deposited the Bank Guarantee of Rs.23 Lakhs in favour of the respondent No.3. Pursuant to execution of the agreement and issuance of the work order in its favour, the petitioner mobilized its resources for deployment of 220 security personnel in RINPAS, Ranchi and necessary steps were taken by it to

ensure that its fleet of security personnel should be stationed at Ranchi so that they could be deployed w.e.f. 01.11.2019 in RINPAS, Ranchi. However, suddenly the petitioner was served with a copy of the impugned letter No. 2863 dated 25.10.2019 issued by the respondent No.3 informing that in view of the direction issued by the respondent No.2 vide the impugned letter No. 1102(6) dated 23.10.2019, a decision has been taken to cancel the work order dated 12.10.2019 issued in favour of the petitioner. Thereafter, a fresh NIT dated 01.11.2019 has been issued for the said work. Hence, the present writ petition.

3. Learned counsel for the petitioner submits that pursuant to NIT dated 01.12.2018, the petitioner along with the other two bidders participated in the said NIT process. Clauses 18, 32 & 35 of the NIT specifically provide that the rates quoted should be inclusive of wages, statutory liabilities, applicable taxes as well as service charges and that the agency providing security services shall fulfill all the statutory liabilities including the liability towards minimum wages as per the State Government Rules. As per Clause 35 of the NIT, the contributions towards EPF and ESIC, being the employees' share, are required to be deducted by the agency and to be deposited in the concerned fund with applicable matching contribution. Admittedly, there was a separate column in the Price Bid under the heading 'Other Charges' wherein the amounts towards EPF and ESIC contributions were required to be quoted by the bidders, but the respondent Nos. 4 & 5 did not fill the said column. It is further submitted that upon seeking clarification by the respondent No.3 from the respondent Nos. 4 & 5 regarding the price quoted by them including non-filling of the column of 'Other Charges', which was relating to deduction of the employees' share by the agency towards EPF and ESIC, both the bidders informed that the rates quoted were inclusive of EPF and ESIC contributions and as such a detailed analysis of the rate was done by the Purchase Sub-Committee and it was found that if EPF and ESIC contributions were treated to be deducted from the rates quoted by the respondent No.5 from security guard and Supervisor (skilled worker), the same would be lower than the minimum wages prescribed to be paid for such security personnel. So far as the respondent No.4 is concerned, even if EPF and ESIC contributions were included in the rate quoted by it, its rate was higher

than that of the petitioner and accordingly the petitioner was declared as the lowest bidder. It is further submitted that by way of an abundant precaution, a clarification was sought by the Purchase Sub-Committee of RINPAS, Ranchi from the Department of Labour, Employment & Training, Government of Jharkhand regarding applicability of the Minimum Wages Notification in the institution of the respondent-RINPAS. After receiving the clarifications from the Department of Labour, Employment & Training, Government of Jharkhand, the petitioner was again treated by the said Purchase Sub-Committee as the lowest bidder in its meeting held on 25.07.2019. The respondent No.3 also sent a detailed clarification to the respondent No.1 stating the manners in which the petitioner was declared as the lowest bidder and only after the direction of the respondent No.1 vide its letter No. 1058(6) dated 04.10.2019, an agreement was executed with the petitioner and the work order was issued in its favour. The petitioner also deposited the Performance Bank Guarantee and mobilized its resources including fleet of security personnel for deployment in the RINPAS, Ranchi. On perusal of the impugned letter dated 23.10.2019 issued by the respondent No.2, it would appear that the said letter was issued on the ground that the said work was allotted to the petitioner by the respondent-RINPAS despite the fact that it was not the lowest bidder, rather it was L-3 bidder. The said letter, on the face of it, clearly demonstrates complete non-application of mind on the part of the respondent-authority as the earlier communication made between the respondent-RINPAS and the State Government clearly declaring the petitioner as L-1 bidder was ignored. It is further submitted that the impugned letter dated 23.10.2019 issued by the respondent No. 2 is contrary to the letter and spirit of the judgment of the Hon'ble Apex Court rendered in the case of **Rakesh Chandra Narayan Vs. State of Bihar & Ors.** reported in **1994 Supp (3) SCC 47** wherein the respondent-RINPAS has been declared as an Autonomous Body and certain guidelines for administration, control and functioning of RINPAS, Ranchi have also been laid down. Further, on perusal of the Ranchi Mansik Arogyashala Rules, 1994 (hereinafter referred to as 'the Rules, 1994'), it would appear that the Purchase Sub-Committee, which has been constituted under the Rules, 1994, is entitled to take decision independently in the matter pertaining

to availing of one or the other services for carrying out the functioning of RINPAS, Ranchi. The Rules, 1994 do not empower the State Government to interfere with the functioning of the Respondent-RINPAS. As per Rule 10 of the Rules, 1994, the Chairman of the Managing Committee i.e. the Development Commissioner of the State of Jharkhand has been empowered to take any decision in emergent circumstances, if in his opinion, any decision taken by the Managing Committee and/or Sub-Committee is detrimental to the fulfillment of the objectives of the respondent-RINPAS. It further provides that the said emergent decision taken by the Development Commissioner, State of Jharkhand is required to be placed before the Managing Committee for its ratification in its subsequent meeting. Admittedly, no power under Rule 10 of the Rules, 1994 has been exercised by the Development Commissioner and the impugned letter dated 23.10.2019 has been issued by the respondent No.2 which is wholly without jurisdiction and contrary to the Rules, 1994 as well as the aforesaid judgment of the Hon'ble Apex Court, hence the same is liable to be quashed. The impugned letter dated 25.10.2019 issued by the respondent No.3 is also wholly illegal and arbitrary and the same is liable to be quashed. It is further submitted that the petitioner was selected as L-1 bidder pursuant to a valid tender process and even an agreement was executed between the petitioner and the respondent-RINPAS. However, without cancelling the said agreement and without providing any opportunity of hearing to the petitioner, the respondent No.3 cancelled the said tender merely on the direction of the respondent No.2 in a most arbitrary and illegal manner as well as in utter violation of the principles of natural justice.

4. Learned counsel appearing on behalf of the respondent-State submits that the Tender Committee of RINPAS, Ranchi had sent the file of the said NIT to the respondent No.1 for its approval and after looking into the matter, it was found that there was already nine months' delay in finalization of the said tender process and as such vide letter No. 1058(6) dated 04.10.2019, a direction was issued to the respondent No.3 to allot the work to L-1 bidder. It is further submitted that as per the order of the Labour, Employment & Training Department, Government of Jharkhand issued vide memo No. 1905 dated 03.10.2018, in the light of the

Contract Labour (Regulation & Abolition) Rules, 1972, (which provides the service conditions and minimum wages for the contract labourers), the minimum wages for semi-skilled labourer is Rs.7808.73 and for skilled labourer is Rs.10,318.29. The Tender Sub-Committee, in the meeting held on 10.06.2019 under the Chairmanship of the respondent No.3, took decision to follow the order of the Labour & Employment Department issued vide notification No. 1832 dated 19.09.2018 as the minimum wages provided in the said notification was the lowest. It is further submitted that the Purchase Sub-Committee rejected the bid of the respondent No.5 on the ground that it was not eligible as per Clause 18 of the NIT dated 01.12.2018 and had also not filled the column 'Other Charges' in Annexure-II of the said NIT. Annexure-II of the said tender, however, mentioned "other charges, if applicable" and thus filling of the column 'Other Charges' in Annexure-II was not mandatory. Under the aforesaid circumstance, rejection of the bids of the respondent Nos. 4 & 5 showed malafide intention of the Purchase Sub-Committee. The work order issued to the petitioner was cancelled as it was subsequently found that though the petitioner was L-3 bidder, yet the said work was awarded to it.

5. Learned counsel appearing on behalf of the respondent-RINPAS submits that before 1994, RINPAS, Ranchi was known as "Ranchi Mansik Arogyashala" and was under the control of the State Government. However, in view of the judgment rendered by the Hon'ble Apex Court in the case of **Rakesh Chandra Narayan (Supra)**, RINPAS, Ranchi was made an Autonomous Body. In compliance of the aforesaid judgment of the Hon'ble Supreme Court, the Managing Committee of RINPAS, Ranchi in its 9<sup>th</sup> meeting, constituted the Purchase Sub-Committee. In its 25<sup>th</sup> meeting, the Managing Committee approved the bye-laws of RINPAS, Ranchi and also outlined the powers and functions of the Purchase Sub-Committee whereby the said Committee was empowered to take a decision in tender matters of RINPAS, Ranchi. It is further submitted that the technical bids of all the bidders were found responsive and thereafter their price bids were opened. Two tenderers claimed themselves as L-1 and as such the Tender Committee asked the respondent Nos. 4 & 5 to clarify the breakup regarding the payment towards EPF, ESI and other charges in the rates quoted by them and further to explain as to why they did not

fill the column 'Other Charges'. The respondent No.4 thereafter submitted detailed breakup for EPF, ESI and the other charges, but the respondent No.5 replied that payment for EPF and ESI was already added in its quoted rate in price bid i.e. total cost per head/per month. Thereafter, the Tender Committee decided to clarify the rate of minimum wages from the Labour & Employment Department, Government of Jharkhand which was applicable for security services provided by an agency at RINPAS, Ranchi whereupon the said department responded that no notification had been issued for the security guards working on outsource basis in government offices and keeping in view the present situation, RINPAS, Ranchi itself was competent to take a decision in this regard. Thereafter, the Purchase Sub-Committee held a meeting on 10.06.2019 and discussed the letter of the Labour & Employment Department as well as the bill raised by M/s SIS i.e. the present agency already working at RINPAS, Ranchi as per notification No. 1832 dated 19.09.2018 issued by the Labour & Employment Department and took a decision that the said notification was applicable for RINPAS, Ranchi also. A legal opinion was sought from the panel lawyer of the RINPAS, Ranchi and it was resolved in the meeting held on 25.07.2019 that the bids of the respondent Nos. 4 & 5 were non-responsive as they did not fill the column "Other Charges" and thus their bids were rejected and the petitioner was declared as L-1, subject to approval of the respondent No.1 which vide letter No. 1058(6) dated 04.10.2019, instructed RINPAS, Ranchi to issue the work order to L-1 agency within a week. It is further submitted that the respondent No.1 did not object to the decision taken by the Purchase Sub-Committee in its meeting held on 25.07.2019 declaring the petitioner as L-1 bidder and as such an agreement for the said work was executed with the petitioner and the work order was issued to it.

6. This Court, vide order dated 07.12.2020, directed the respondent No.5 to file counter affidavit before the next date, failing which its right to file counter affidavit would be forfeited and the case would be disposed of on the basis of the materials available on record. Despite the order dated 07.12.2020, the respondent No.5 did not choose to file counter affidavit to controvert the averments of the petitioner made in the present writ petition.

7. Heard learned counsel for the parties and perused the relevant materials available on record. The petitioner is aggrieved with the order dated 23.10.2019 passed by the respondent No.2 whereby the respondent No.3 was directed to cancel the tender dated 01.12.2018. The petitioner is also aggrieved by the consequential order dated 25.10.2019 passed by the respondent No.3 whereby the work in question awarded to it has been cancelled and a fresh NIT dated 01.11.2019 has been issued.

8. Before entering into the merit of the case, it would be appropriate to go through the judgments of the Hon'ble Supreme Court relied upon by learned counsel for the petitioner which deal with the scope of a Writ Court in interfering with contractual disputes.

9. In the case of **Common Cause Vs. Union of India & Ors.** reported in **(1999) 6 SCC 667**, the Hon'ble Supreme Court has held as under:

**"40. Essentially, under public law, it is the dispute between the citizen or a group of citizens on the one hand and the State or other public bodies on the other, which is resolved. This is done to maintain the rule of law and to prevent the State or the public bodies from acting in an arbitrary manner or in violation of that rule. The exercise of constitutional powers by the High Court and the Supreme Court under Articles 226 and 32 has been categorised as power of "judicial review". Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of fundamental rights guaranteed by the Constitution. With the expanding horizon of Article 14 read with other articles dealing with fundamental rights, every executive action of the Government or other public bodies, including instrumentalities of the Government, or those which can be legally treated as "Authority" within the meaning of Article 12, if arbitrary, unreasonable or contrary to law, is now amenable to the writ jurisdiction of this Court under Article 32 or the High Courts under Article 226 and can be validly scrutinised on the touchstone of the constitutional mandates.**

**41. In a broad sense, therefore, it may be said that those branches of law which deal with the rights/duties and privileges of the public authorities and their relationship with the individual citizens of the State pertain to "public law", such as constitutional and administrative law, in contradistinction to "private law" fields which are those branches of law which deal with the rights and liabilities of private individuals in relation to one another.**

42. The distinction between private law and public law was noticed by this Court in *LIC of India v. Escorts Ltd.* [(1986) 1 SCC 264] in which the Court observed as under: (SCC p. 344, para 102)

“Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances.”

43. Public law field, since its emergence, is ever expanding in operational dimension. Its expanse covers even contractual matters. (See: *Union of India v. A.L. Rallia Ram* [AIR 1963 SC 1685] ; *Mulamchand v. State of M.P.* [AIR 1968 SC 1218] wherein the principles of restitution and unjust enrichment were applied.) [See also: *State of W.B. v. B.K. Mondal & Sons* [AIR 1962 SC 779] and *New Marine Coal Co. (Bengal) (P) Ltd. v. Union of India* [AIR 1964 SC 152] .]

44. Government decisions regarding award of contracts are also open to judicial review and if the decision-making process is shown to be vitiated by arbitrariness, unfairness, illegality and irrationality, then the Court can strike down the decision-making process as also the award of contract based on such decision. This was so laid down by this Court in *Tata Cellular v. Union of India* [(1994) 6 SCC 651]. Initially the Supreme Court was of the opinion that while the decision-making process for award of a contract would be amenable to judicial review under Articles 226 or 32 of the Constitution, a breach of a contractual obligation arising out of a contract already executed would not be so enforceable under such jurisdiction and the remedy in such cases would lie by way of a civil suit for damages. (See: *Radhakrishna Agarwal v. State of Bihar* [(1977) 3 SCC 457]. But the Court changed its opinion in subsequent decisions and held that even arbitrary and unreasonable decisions of the government authorities while acting in pursuance of a contract would also be amenable to writ jurisdiction. This principle was laid down in *Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd.* [(1983) 3 SCC 379] This Court even went to the extent of saying that the terms of contract cannot be altered in the garb of the duty to act fairly. (See: *Asstt. Excise Commr. v. Issac Peter* [(1994) 4 SCC 104] .) Duty to act fairly in respect of contracts was also the core question in *Mahabir Auto Stores v. Indian Oil Corpn.* [(1990) 3 SCC 752] in which this Court relied upon its earlier decisions in *E.P. Royappa v. State of T.N.* [(1974) 4 SCC 3] ; *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] ; *Ajay Hasia v. Khalid Mujib Sehravardi* [(1981) 1 SCC 722] ; *Ramana Dayaram Shetty v. International Airport Authority of*

**India [(1979) 3 SCC 489] as also Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293]."**

10. In the case of **Air India Statutory Corporation & Ors. Vs. United Labour Union & Ors.** reported in **(1997) 9 SCC 377**, the Hon'ble Supreme Court has held as under:

**"60. The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose". The distinction between public law and private law remedy by judicial adjudication gradually marginalised and became obliterated. In LIC v. Escorts Ltd. [(1986) 1 SCC 264] this Court (in SCC para 102, p. 344) had pointed out that the difficulty will lie in demarcating the frontiers between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact-situation that this Court held that there was no need to state reasons when the management of the shareholders by resolution reached the decision. This Court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private Corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately proposes to regulate exclusively on its industrial policy. It would also be subject to the same limitations as held in M.C. Mehta v. Union of India [(1987) 1 SCC 395] .**

**61. The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority needs to fall in the realm of public law — be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question requires to be determined in each case. However, it may not be possible to generalise the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions. As held by this Court in Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. [AIR 1962 SC 1044] (AIR para 5) that if the legal right of a manager of a company is denuded on the basis of recommendation by the Board of Management of the company, it would give him right to enforce his right by filing a writ petition under Article 226 of the Constitution.**

In **Mulamchand v. State of M.P.** [AIR 1968 SC 1218] this Court had held that even though the contract was void due to non-compliance of Article 229, still direction could be given for payment of the amount on the doctrine of restitution under Section 70 of the Act, since the State had derived benefit under the void contract. The same view was reiterated in **State of W.B. v. B.K. Mondal & Sons** [AIR 1962 SC 779] (AIR at p. 789) and in **New Marine Coal Co. (Bengal) (P) Ltd. v. Union of India** [(1964) 2 SCR 859]. In **Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd.** [(1983) 3 SCC 379] a direction was issued to release loan to the respondent to comply with the contractual obligation by applying the doctrine of promissory estoppel. In **Mahabir Auto Stores v. Indian Oil Corpn.** [(1990) 3 SCC 752] contractual obligations were enforced under public law remedy of Article 226 against the instrumentality of the State. In **Shrilekha Vidyarthi v. State of U.P.** [(1991) 1 SCC 212] contractual obligations were enforced when public law element was involved. Same judicial approach is adopted in other jurisdictions, namely, the House of Lords in **Gillick v. West Norfolk and Wisbech Area Health Authority** [1986 AC 112] wherein the House of Lords held that though the claim of the plaintiff was negated but on the anvil of power of judicial review, it was held that the public law content of the claim was so great as to make her case an exception to the general rule. Similarly in **Roy (Dr) v. Kensington and Chelsea and Westminster Family Practitioner Committee** [(1992) 1 AC 624] the House of Lords reiterated that though a matter of private law is enforceable by ordinary actions, a court also is free from the constraints of judicial review and that public law remedy is available when the remuneration of Dr Roy was sought to be curtailed. In **LIC v. Consumer Education and Research Centre** [(1995) 5 SCC 482] this Court held that each case may be examined on its facts and circumstances to find out the nature and scope of the controversy. The distinction between public law and private law remedy has now become thin and practically obliterated."

11. In the case of **ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India Limited & Ors.** reported in (2004) 3 SCC 553, the Hon'ble Supreme Court has held as under:

"27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable."

12. In the case of **Noble Resources Ltd. Vs. State of Orissa & Anr.** reported in **(2006) 10 SCC 236**, the Hon'ble Supreme Court has held thus:

**"15. It is trite that if an action on the part of the State is violative of the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny would be more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution. While exercising contractual powers also, the government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on their part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter."**

13. The ratio laid down by the Hon'ble Supreme Court in the aforesaid judgments may be summarized as under:

(i) A writ petition is maintainable in the Supreme Court under Article 32 or in the High Courts under Article 226 of the Constitution if the executive action of the government or other public bodies, including instrumentalities of the government, or those which can be legally treated as "Authority" within the meaning of Article 12, is found to be arbitrary, unreasonable or contrary to law.

(ii) Those branches of law which deal with the rights/duties and privileges of the public authorities and their relationship with the individual citizens of the State pertain to "public law", such as constitutional and administrative law, in contradistinction to "private law" fields which are those branches of law which deal with the rights and liabilities of private individuals in relation to one another.

(iii) For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority needs to fall in the realm of public law — be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element.

(iv) Mere fact that if some disputed question of facts are involved, cannot by itself be a ground to reject a writ petition. In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable. A writ petition involving a

consequential relief of monetary claim is also maintainable.

(v) A writ petition is maintainable if an action on the part of the State is violative of the equality clause contained in Article 14 of the Constitution of India even in the contractual field.

14. In the present case, the petitioner as well as the respondent Nos. 4 & 5 participated in the said NIT and their technical bids were found responsive. Thereafter, their financial bids were opened and it was found that the respondent Nos. 4 & 5 had not quoted the amounts towards ESIC and EPF contributions which was @ 4.75% & 13% respectively i.e. total 17.75% of the minimum wages and as such the Purchase Sub-Committee in its meeting dated 28.02.2019, prepared a comparative statement of the rates quoted by the bidders and it was found that the rate of the respondent No.5 was below the minimum wages. The said chart prepared by the Purchase Sub-Committee is reproduced herein below:

**Comparative Statement of Security Service**

Sl. No.	Description	M/s Security and Intelligences India Limited	Supervisor Services	M/s Frontline (NCR) Business Solution Pvt. Ltd.	Supervisor	M/s Intelligence Security of India	Supervisor
1.	Cost per head/per month (26 working days) (A)	Security Guard Rs.7797.00	Supervisor Rs.10278.00	Security Guard Rs.9845.25	Supervisor Rs.13088.73	Security Guard Rs.7102.99	Supervisor Rs.9174.69
2.	Service Charge (B)	Rs.390.00	Rs.514.00	Rs.196.90	RS.261.77	Rs.261.78	Rs.338.13
3.	Total (A+B)	Rs.8187.00	Rs.10792.00	Rs.10042.15	Rs.13350.5	Rs.7364.77	Rs.9512.82
4.	G.S.T (18%)	Rs.1474.00	Rs.1943.00	Rs.1818.95	Rs.2418.20	Rs.1552.59	Rs.2005.82
5.	Total	Rs.9661.00	Rs.12735.00	Rs.11861.10	Rs.15768.70	Rs.8917.36	Rs.11518.25
6.	Other Charges	-	-	-	-	Rs.1260.78	Rs.1628.50
7.	As per minimum wages	Including		Including		As per minimum wages	
8.	As per portal	L-2		L-3		L-1	
9.	Regarding fulfillment of the columns	X		X		√	
10.	As per govt. rule	Below minimum wages		Exe. Minimum wages		As per minimum wages	
11.	Considerable or not	Not		Not		Yes	
12.	Monthly Payment	To pay minimum wages to the workers the institute would require to pay additional amount to the bidder (eg. Rs.9661.00 + X; Rs.12735.00 + X)		The bidder will have to be paid the wages of 36 persons in addition to 220 persons which violates the NIT conditions		As per govt. rule	

15. The respondent No.5, on seeking clarification regarding its rate, informed the respondent No.3 that the rate quoted in its price bid was inclusive of ESIC and

EPF contributions. Thereafter, the meeting of the Purchase Sub-Committee was again held on 07.03.2019 and from the minutes of the said meeting (annexed as Annexure-17 to the rejoinder affidavit to the counter affidavit dated 14.01.2020), it would be evident that on the basis of the clarification made by the respondent No.5, the Purchase Sub-Committee unanimously held that the rate quoted by the said agency was below the minimum wages and hence it could not be considered in terms with the Clauses of the NIT dated 01.12.2018. It was further resolved that the petitioner was L-1 and thus it should be awarded the said work.

16. In view of the aforesaid facts, the argument made on behalf of the respondent-State that filling of 'Other Charges' column was not mandatory, does not make any difference as the bid of the respondent No.5 was rejected on the ground that the rate quoted by it was inclusive of ESIC and EPF contributions and thus the same was below the minimum wages. Moreover, the respondent No.5 has failed to file counter affidavit explaining as to how it claims to be L-1 bidder.

17. One of the claims of the respondent-State is that in view of the order passed vide memo No. 1905 dated 03.10.2018 by the Department of Labour, Employment & Training, Government of Jharkhand, the minimum wages of semi-skilled labourer is Rs.7808.73 and minimum wages of skilled labourer is Rs.10,318.29. However, on the query of the Purchase Sub-Committee made from the said Department of the Government of Jharkhand regarding the applicable rates for security services to be provided by an agency at RINPAS, Ranchi, the said department vide letter No. 657 dated 12.04.2019, responded that no notification was issued for the security guards working on outsource basis in the government offices. Thereafter, the Purchase Sub-Committee in its subsequent meeting held on 10.06.2019, took a decision to apply the prescribed minimum wages mentioned in Notification No. 1832 dated 19.09.2018 issued by the Department of Labour, Employment & Training, Government of Jharkhand on which the earlier agency was already working. The decision of the Tender Committee was also sent to the respondent No.1 for its approval whereupon the said respondent instructed RINPAS, Ranchi to issue the work order to L-1 agency within a week. Subsequently, the work order was issued to the petitioner and an agreement was also executed with it. It is settled

proposition of law that the Constitutional Courts should show judicial restraint in interfering with the administrative action and ordinarily the soundness of the decision taken by the employer should not to be questioned, however, the decision-making process can certainly be subject to judicial review. The Purchase Sub-Committee had consulted the Department of Labour, Employment & Training, Government of Jharkhand before awarding the said work to the petitioner and only on the basis of its reply and precedence followed by RINPAS, Ranchi, it applied the prescribed minimum wages mentioned in notification no. 1832 dated 19.09.2018 to determine L-1 for the said tender. Hence, I do not find any illegality, arbitrariness, unreasonableness, malafide or favoritism in the decision-making process of the Purchase Sub-Committee.

18. It appears that the dispute arose only when the respondent No.5 made complain claiming that it was the lowest bidder and on the said complain, the respondent No.2 directed the respondent No.3 to cancel the tender and issue a fresh NIT which gives rise to passing of the impugned order of cancellation of the NIT dated 01.12.2018 and issuance of a fresh NIT dated 01.11.2019. An attempt of unsuccessful tenderers with imaginary grievances or some technical/procedural shortcoming or complaining some prejudice to self, and to persuade the Courts to interfere by exercising power of judicial review, should be resisted.

19. I have perused the judgment of the Hon'ble Supreme Court rendered in the case of **Rakesh Chandra Narayan (Supra)** wherein it has been held that RINPAS, Ranchi is an autonomous body. Moreover, the administrative as well as financial power of RINPAS have been entrusted to the Managing Committee in view of the said judgment. Their Lordships accepted the report known as "Dayal Report" and directed the State to promulgate rules at Annexure-1 to the "Dayal Report". Pursuant to the said direction, the Rules, 1994 was notified and the Purchase Sub-Committee was constituted pertaining to availing of one or the other services for carrying out the functioning of RINPAS, Ranchi. Since the decision to award the said work to the petitioner was taken by the duly constituted Purchase Sub-Committee and no infirmity in the decision-making process of the said Committee is reflected, I find that the respondent No.2, merely on application of the respondent No.5,

wrongly directed the respondent No.3 to cancel the NIT dated 01.12.2018 and to issue a fresh NIT. It also appears that the respondent No.2 wrongly observed that the petitioner was L-3 and the respondent No.5 was L-1. It is true that a successful bidder cannot claim interference by the Writ Court against the decision of the authority to cancel the tender on the ground of concluded contract and at best it may file a civil suit for damages under the contracts, however, if the decision of the authority is found palpably arbitrary and unreasonable, the same may be interfered with under the writ jurisdiction.

20. In view of the aforesaid legal and factual position, the impugned letter No. 1102(6) dated 23.10.2019 (Annexure-12 to the writ petition) issued by the respondent No.2 cannot be sustained in law and the same is hereby quashed and set aside. Thus, all consequential action taken by the respondent No.3 vide the impugned letter No. 2863 dated 25.10.2019 (Annexure-11 to the writ petition) to cancel the work order of the petitioner and to issue fresh NIT dated 01.11.2019 are also quashed and set aside. The respondent No.3 is directed to allow the petitioner to proceed with the awarded work.

21. The present writ petition is, accordingly, allowed.