

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3031 of 2015

Sanjay Singh Son of Sri Haridwar Singh Resident of Village - Baradhi Kala, P.S. Dinara, District - Rohtas at Sasaram

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna
3. The Director, Mid - Day - Meal Scheme, Bihar, Patna
4. The Collector - Cum - Chairman, Mid - Day - Meal Scheme, Rohtas at Sasaram
5. The District Incharge officer, Mid - Day - Meal Scheme, Rohtas at Sasaram
6. The District Education Officer, Member - Mid - Day - Meal Scheme, Rohtas at Sasaram
7. The District Programme Officer (Establishment) Cum Member, Mid - Day - Meal Scheme, Rohtas at Sasaram

.... Respondents

Appearance :

For the Petitioner : Mr. Jagannath Singh, Advocate
For the State : M/s Raju Giri, GP 30 and
Nikhil Kumar Agrawal, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 23-03-2015

Heard learned counsel for the petitioner and the State.

Petitioner challenges Annexure 2, i.e., advertisement for selection of contractor / transporting agent for lifting and distributing Mid-day meal in 17 Blocks except Rohtas and Nahatta for the financial year 2014-15 which was published in newspaper on 9.2.2015.

Short facts would be necessary for consideration of this case stand enumerated as under:



The petitioner was selected as transporting agent in the year 2011 for one year and, thereafter, extended for two more years. Fresh advertisement made after three years for selection of such transporting agent was challenged by the petitioner and others by filing C.W.J.C. No. 14180 of 2014 which was heard analogous to C.W.J.C. No. 14098 of 2014 and was disposed of by a Single Bench of this Court vide order dated 22.8.2014 a copy of which has been brought on record as Annexure B to the counter affidavit filed on behalf of respondent nos. 4 to 7.

From perusal of the aforesaid order it appears that in the letter dated 12.4.2013 issued by the Director, Mid-day meal Scheme, Bihar, addressed to all the District Incharge Officer stating in clear terms that work period of contractor, who had already completed three years, would not be extended further and new contractor should be appointed in accordance with law with the established procedure was noticed. In that view of the matter the learned Single Judge has recorded his opinion that there was no error in the impugned advertisement issued by the Collector, Rohtas for fresh selection of contractors / transporting agents. Learned Single Judge had disposed of the writ applications with following directions:

- (i) The appointment of the Transporting Agent for the Mid-day Meal Scheme in Rohtas District shall be made in accordance with the impugned

advertisement.

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- (ii) The petitioners, if they are eligible in terms and conditions of the aforementioned advertisement, will also be allowed to file application and participate in the tender and for this purpose the last date of filing of the application is extended till 31st August, 2014.
 - (iii) All the applications already received and those which would be received till 31st August, 2014 thereafter will be processed in accordance with the Government policy and a decision will be taken for appointment of the Transporting Agent within a maximum period of one month so that any person selected is at least given six months tenure for the financial year 2014-15 for which this tender notice has been issued.
 - (iv) The petitioners, who are continuing to work as Transporting Agent in the Mid-day Meal Scheme in view of the earlier order of extension granted to them, shall continue to work till 30th September, 2014 or till the appointment of the new Transporting Agent, whichever is earlier.”

From perusal of the aforesaid order it appears that the date of filing of the application pursuant to the concerned advertisement was extended till 31st August, 2014 and, thereafter, the competent authority was directed to process it in accordance with the Government policy and take a decision for appointment of transporting agent within a period of one month so that any person

selected would be given at least six months tenure for the financial year 2014-15.

It would be relevant to mention here that the Director, vide his earlier direction contained in the letter dated 25.4.2011 (Annexure 3) addressed to the concerned officer, has given guideline for publication of tender etc. and selection of the contractor for financial year 2011-12. He has stated that for that purpose advertisement should be published between 1st February to 5th February and should be finalized by entering into contract in between 15th March to 20th March. Perhaps that was in the mind of Single Judge while giving the aforesaid direction. The petitioner who was working even after completion of three years of tenure was allowed to work till 30th September, 2014 or till the appointment of new transporting agent, whichever would be earlier.

However, subsequently what has been done by the authority is staring at their own face which is apparent from their own averments made in the counter affidavit. It has been stated that after order dated 22.08.2014 directing them to appoint fresh contractors / transporting agent by the end of September, however, the Selection Committee took unanimous decision on 15.9.2014 to cancel the said advertisement itself due to certain defects as almost all the applicants were not proper and vide Annexure D dated



16.9.14 the Banks were directed to cancel the bank guarantee. Fresh advertisement was published. However that was also cancelled due to certain procedural errors. Though no date of such publication has been given, learned counsel for the State has submitted that it was done in some time in the month of October, 2014. Thereafter, again they did not take any step immediately but in the month of February, i.e. on 9.2.2015 again an advertisement was published for selection of such transporting agent, obviously for a maximum period of one month or one and half month only as financial year was going to end on 31st of March, 2015.

The aforesaid fact and circumstance goes to create an impression that procedural errors are being repeated by the authority concerned and the spirit of the order dated 22.8.2014 has got defeated as the same was passed with a view that at least six months tenure for the concerned financial year should be given to the person selected.

The apprehension of petitioner is that the fresh advertisement is only with a view that the contract period of the selected person for one month would be conveniently extended subsequently for further three years.

In my considered opinion, that was not the purpose for which a the learned Single Judge had given direction for selection of

transporting agent as it has clearly been recorded as direction no. (iii) that everything should be finalized till September, 2014 so that the selected person may get at least six months tenure of work period but nothing could be done till the month of February, 2015.

In my considered opinion, issuing fresh tender for one month would be meaningless as the petitioner who has been allowed to continue till February due to inaction of the authorities, could be allowed to work for remaining one month. The work period of three years of the petitioner had expired long back and, thereafter, he was given extension by the learned Single Judge also vide the order dated 22.08.2014 till finalization of the fresh tender.

Accordingly, in my view, the State authority has miserably failed to publish tender in accordance with the direction of this Court and the fresh NIT publication on 9.2.2015 for a period of a month or one and half months for the financial year which is going to end on 31st March, 2015 itself, is against the spirit of the aforesaid order passed by this Court.

In any view of the matter, there has not been any finalization of tender till date, therefore, now finalizing selection of new transporting agent for 8, 9 -10 days would be meaningless.

As a result, this application stands allowed. Advertisement contained in Annexure 2 so far it concerns to Block

Akorhigola stands quashed.

The respondents would be at liberty to issue fresh tender for new financial year in accordance with the law and in no case aforesaid situation should be repeated again.

(Dr. Ravi Ranjan, J)

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