

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1077 of 2015

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Geeta Kumari W/o- Triloki Prasad Singh Resident of Village- Bhikhanpura,
Ramdayalu Nagar, P.O.- Ramna, P.S.- Muzaffarpur Sadar, District- Muzaffarpur.
..... Petitioner

Versus

1. The Food Corporation of India through its Chairman-Cum-Managing Director(FCI) 16-20, Barakhamba Lane, New Delhi.
2. The Executive Director, East, Food Corporation of India, 10A, Middleton Road, Kolkata-11.
3. The General Manager, Vigilance, East, Food Corporation of India, 10A, Middleton Road, Kolkata-11.
4. The General Manager, Food Corporation of India, Exhibition Road, Arunchal Bhawan, Patna.
5. The Area Manager, Food Corporation of India, Muzaffarpur.

..... Respondents

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Appearance :

For the Petitioner : M/s Ram Shankar Pradhan, Sr. Advocate and
Jainandan Kumar, Advocate

For the Respondents : Mr. Prabhakar Tekriwal, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 18-05-2015

Heard learned counsel for the petitioner and the
Respondents.

I.A. No. 769 of 2015 has been filed and, thereafter I.A.
No. 3698 of 2015 has been filed for amendment in the relief portion
of the writ application.

I.A. No. 769 of 2015

I.A. No. 769 of 2015 has been filed by the petitioner for
addition of relief as stated in paragraph 1 of the of the interlocutory
application as the petitioner wants to challenge Annexure 13 also
which is letter no. Genl-4(1)/2010-2011/2368 dated 20.1.2015 by

which the agreement dated 4.8.2014 between the petitioner and the respondent no. 5 has been cancelled.

In view of the fact that this development has taken place during the pendency of the writ application, the prayer is allowed.

Let the relief mentioned in paragraph no. 1 as well as the averments made in the interlocutory application form part of the writ application.

I.A. No. 3698 of 2015

I.A. No. 3698 of 2015 has been filed by the petitioner for amendment in the relief portion as the petitioner wants to challenge the notice published in the daily newspaper dated 29.4.2015 by the Regional Manager, Food Corporation of India inviting fresh tenders for hiring accommodation for office purpose at Muzaffarpur, which is appended as Annexure 15. It is submitted on behalf of the petitioner that, after cancelling the agreement, for the same purpose a fresh tender has been issued though the required area has been reduced from 6000 square feet to 4000 square feet.

In view of the fact, that this development has taken place during the pendency of the writ application, the interlocutory application is allowed. The relief mentioned in paragraph 1 and averments made in interlocutory application in support of the

contention of the petitioner with respect to such relief would form part of the writ application.

C.W.J.C. No. 1077/2015

Heard learned counsel for the petitioner and the respondents.

This writ application has been filed by the petitioner for following reliefs:

- I. For issuance of appropriate writ/writs order/orders direction/directions commanding the respondents to make payment of rent of portion of the building taken on rent as per agreement entered into between the petitioner and the respondent no. :- 5 with a further direction to shift the Office with immediate effect in the building taken on rent under valid agreement.
- II. For issuance of further appropriate writ/writs order/orders direction/directions restraining the respondents from taking any further step with regard to issuance of fresh tender notice as the petitioner after huge expenditure and obtaining loan of about Rs. 30,00,000/- (Thirty Lacs) from the Bank has constructed the aforesaid building in question and due to non payment of rent since the date of agreement, has been put to recurring financial loss as the installment of loan granted by the Bank are to be paid as determined.
- III. For issuance of any other writ/writs order/orders direction/directions for which the petitioner may be found legally entitled to under the facts and circumstances stated herein below.

However, during the pendency of the writ application, as has been recorded above, the agreement has already been cancelled and a fresh notice inviting tender has been published.

A short question has been raised on behalf of the



petitioner at the time of hearing that the decision of cancellation of contract has been taken unilaterally in gross violation of principle of natural justice as no show cause notice was ever served before cancellation of the agreement. It is also submitted that the notice inviting tender is also bad in view of the fact that such cancellation was itself bad.

A counter affidavit has been filed on behalf of the respondent FCI justifying the action taken by them. However, it is nowhere stated that before cancelling the agreement the petitioner was given a show cause notice and his reply was considered.

It is well settled that if any action of authority is likely to visit civil consequence upon a person or a party then, before taking such action, a show cause notice should be issued upon the concerned person or party and if the reply thereof is filed then a reasoned order should be passed considering the grounds raised by him so that if such decision is challenged before a competent forum then it would be in a position to appreciate the grounds upon which the decision was taken. If the order itself is silent about the reasons of cancellation then any ground taken subsequently in a counter affidavit would not be sufficient to justify the action as every subsequent action has to be considered as an afterthought. In contractual matters also, once the agreement is signed, one of the

party unilaterally cannot cancel it without serving a show cause notice upon the other party.

Having regards to the aforesaid facts and circumstances, this Court is of the view that the order of cancellation of agreement / contract as contained in Annexure 13 dated 20.1.2015 cannot be sustained in its present form and accordingly the same is quashed and set aside. However, the authority concerned would be at liberty to issue show cause notice and take a decision on its own merit and in accordance with law after granting reasonable opportunity to the petitioner. In view of the fact that the basis of publication of subsequent notice inviting tender Annexure 15 was the cancellation of the earlier contract, the authority concerned would also not proceed for finalization of contract under it till a final decision taken by the authority concerned in aforesaid manner.

Accordingly, this writ application stands allowed to the extent indicated as above.

(Dr. Ravi Ranjan, J)

Spd/-

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