

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20418 of 2014

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1. Daya Sagar Yadav son of Dharikhsan Yadav, Resident of Village-
Maharaj Ke Tola, P.O.- Khawaspur, P.S.- Barahra, District- Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources
Development Department, Bihar, Patna
2. The Director, Mid Day Meal Project, Bihar, Patna
3. The District Magistrate, Bhojpur, Ara
4. The District Programme Officer, Mid Day Meal Project, Bhojpur, Ara
5. The District Education Officer, Bhojpur, Ara

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma, Adv.
Mr. Ram Kumar Singh, Adv.
For the Respondent-State: Mr. Gyan Shankar, A.C. to G.P.6
For the respondent No.2 : Mr. Grijesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 01-10-2015 Heard learned counsel for the parties.

The writ petition was filed questioning the communication of the District Magistrate, Bhojpur as the Chairman of the District Level Selection Committee under the Mid Day Meal Scheme whereby the agreement entered with the petitioner for supply of mid day meal for the period 2011-12 and 2012-13 was cancelled inter alia on grounds that the petitioner was an accused in a criminal case and by the same order the petitioner was black listed from participating in any future tenders. The decision of the Committee is dated 28.2.2013 and was circulated vide Memo No.288 dated 23.3.2013 impugned at Annexure-5. While the writ



petition is pending that the petitioner was given a post facto hearing and a fresh order was passed by the District Magistrate, Bhojpur confirming the earlier order, bearing Memo No. 957 dated 22.12.2014, a copy of which is placed at Annexure-A to the counter affidavit filed on behalf of the State and has also been placed on record vide Annexure-A to the interlocutory application bearing I.A.No.6076 of 2015 filed on behalf of the petitioner for amendment of the prayer in the light of the subsequent developments. A prayer has been made to question the same and considering that the order is consequential in nature, the petitioner is permitted to question the same in the present writ petition.

Mr. Naresh Chandra Verma, learned counsel for the petitioner while questioning the impugned orders submits that the orders are founded on vague allegations inasmuch as neither there is any details of the criminal case which is the foundation for the impugned order nor the source of power for cancellation has been discussed. With reference to the short term tender notice, a copy of which is placed at Annexure-B to the supplementary affidavit he submits that there are only two conditions in which the contractor can be debarred and i.e.

(a) Where the contractor has failed to complete the work within time scheduled and where the work of the contractor is

found unsatisfactory and in which circumstances the security would be forfeited and the contractor would be blacklisted; and

(b) Agreement is to be executed by 31.3.2012 and on failure of the Contractor to do so or for unsatisfactory work or for his delayed and negligent approach, the contract would be cancelled and penalty imposed.

Mr. Verma with reference to the conditions submits that neither of the two circumstances exists in the case of the petitioner and a mere circumstances that the petitioner has been made accused in a criminal case arising from Barhara P.S. Case No. 285 of 2012 in which the final form has been submitted in favour of the petitioner showing him innocent but despite the position, the order impugned has been passed.

Learned counsel for the State except for reiterating the position as reflected from the impugned order has nothing further to add.

I have heard learned counsel for the parties and I have perused the records.

It is simply on grounds that the petitioner has been made accused in a criminal case that the agreement has been cancelled and he has been blacklisted.

There is nothing in the tender notice which invites a

cancellation of a contract upon a tenderer being accused in a criminal case. In fact the only power is vested in the authorities to cancel the contract is, where the work has been found unsatisfactory and which is not circumstance existing herein. The vagueness of the order is apparent on bare perusal thereof where the District Level Committee has not even bothered to verify the case in which the petitioner has been found accused and what has been the consequence of the investigation.

Having heard learned counsel and in the circumstances that the tender conditions do not invite a cancellation on a mere accusation of a tenderer in a criminal case and considering that there is absolutely no charge on the petitioner as regarding discharge of his obligation under the contract or his unsatisfactory function, in my opinion the order(s) impugned in the writ petition placed at Annexure-5 which is the decision of the District Level Selection Committee under the Chairmanship of the District Magistrate, Bhojpur dated 28.2.2013 together with the order passed by the District Magistrate, Bhojpur on 22.12.2014 placed at Annexure-A to the interlocutory application cannot be upheld and are accordingly set aside. The writ petition is allowed.

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(Jyoti Saran, J)