

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2176 of 2004

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Ajit Kumar Singh, S/o Sri Mritunjay Narayan Singh, resident of village and P.O. Panchgachhia, P.S. Bihra, District Saharsa, at present posted as Civil engineer, Emp.No.65721, Maintenance (Civil) Department, Barauni Refinery, Begusarai

.... Petitioner/s

Versus

1. The Union of India through the Ministry of Petroleum and Natural Gas, Shastri Bhawan, New Delhi- 110 001
2. The Indian Oil Corporation through its Chairman, Indian Oil Corporation Limited, Scope Complex, Core 2, Lodhi Road, New Delhi
3. The Director-cum-Appellate Authority, Indian Oil Corporation Limited, Refineries Division, Core 2, Scope Complex, 7 Institutional Area, Lodhi Road, New Delhi
4. The Executive Director-cum-Disciplinary Authority, Refineries Division, Barauni Refinery, Begusarai
5. Mr H.K.Mihra, presently Senior Project Manager-cum-Inquiry Officer, Barauni Refinery, Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amrit Abhijat
Mr Manoj Kumar Gupta
Mr Upendra Yadav

For the Respondent/s : Mr K.N.Gupta
Mr S.K.Prasad

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 25-06-2015

Annexure- 12 is the order of punishment withholding of five annual increments with cumulative effect imposed against the petitioner. This Annexure is dated 7.8.2003. The decision of the appellate authority affirming the said punishment is Annexure- 14, which is dated 18.11.2003. The two orders, therefore, are under challenge as also the cause of action for filing the writ application by the petitioner.

2. Petitioner is working as a Civil Engineer under the



Indian Oil Corporation, Barauni Refinery Division in the district of Begusarai. The reason for proceeding against the petitioner along with other persons was tampering facilitated in the price bid in award of a contract for repair of surface drain and Tank pad of Tank No.235, 236 and 237 located inside the Refinery. The tender in this regard was issued on 30.6.2001. Only three persons finally filed the bid. The tender papers and the price bid was opened on 1.10.2001 in presence of one G.S.Mahto, Deputy Finance Manager and Sri Patel, the Contract Cell representative as well as the representative of one of the contractors, namely, M/s B.S.Jha. The details of the prices so offered or bid after opening was duly recorded in the register by one Mr B.K.Mishra, an Assistant in the Contract Cell. The successful bidder, who was the first lowest in terms of price was M/s Laxmi Singh.

3. The allegation is that thereafter tampering was done in the price bid and it was facilitated by all the accused persons including the present petitioner in one manner or the other which helped M/s B.S.Jha to become L1 and Laxmi Singh, who was L1, became L2. 1st of October was the date when the tender was opened. 2nd October being a National holiday, offices were closed. On 3rd of October while comparing the comparative statement Mr Patel is said to have noticed certain discrepancy in the bid form of M/s B.S.Jha

and what was initially quoted by him at the time of opening of the price bid on 1st of October, 2001. Mr Patel reported the matter to the Senior Engineer, Services Contract Cell after almost a fortnight which led to search, seizure and investigation by the internal Vigilance Cell.

4. The authorities came to a conclusion after the preliminary enquiry as well as suggestion of the Vigilance cell that the police may not be involved in the matter at this stage. A departmental enquiry was suggested and embarked upon. Departmental enquiry was held which included initiation of a proceeding even against the present petitioner.

5. It is evident from the materials on record that the present petitioner was the custodian of all the three price bids and second in command of the contract cell and had duplicate key of the drawer in which the price bids were kept under lock and key. In fact, this was the primary reason why the petitioner was also proceeded against in the matter because the interpolation in the price bid was not possible without suitable assistance or logistics having been provided by the petitioner

6. The enquiry report has been brought on record as Annexure- 8 and this Court is tempted to record its appreciation in the manner the departmental proceeding was conducted and the

report was presented with near perfection. The Court has not seen such quality of enquiry report for a long long time as it is a rarity now. A mere perusal of Annexure- 8 would justify the word of appreciation recorded in this order.

7. Petitioner was found guilty and it seems, since he was not involved in the actual tampering with the price bid, was awarded relatively a lesser punishment vis- a- vis such persons, who actively participated and carried out the act of interpolation. May be that is the reason why instead of imposition of severe punishment, the punishment of withholding of five increments with cumulative effect came to visit the petitioner.

8. Counsel representing the petitioner submits that no evidence was led against the petitioner with regard to his culpability. In fact, petitioner had no role in award or processing of the tender at all. Keeping in view the post and position he held he cannot be punished for the things which he had not done. Certain witnesses were not produced for cross-examination and some documents were not supplied to him to facilitate his defence. Inference cannot form the basis for punishment or take the place of proof.

9. He also drew the attention of the Court to a letter dated 22.10.2001 written by Sri G.S.Mahto to Deputy Finance Manager. This was exhibit P/20 to show that the real culprits also do not in any



manner point a finger towards the present petitioner. Since the said letter truthfully indicates as to how the price bids were tampered by the persons involved, the order of punishment imposed against the petitioner is totally unjustified and uncalled for. A few other technical questions were raised which was with regard to nature of punishment but is not much of significance on examination.

10. Mr Gupta representing the respondent Indian Oil Corporation rebuts the submissions made on behalf of the petitioner and is emphatic in submitting that there is evidence against the petitioner. He may not be a party to the actual interpolation and forgery committed by his colleagues. The interpolation would not have been possible without his active connivance or providing access to the drawer where the price bids were kept on 1st of October, 2001. Finding against the petitioner has come about possessing a duplicate key of the drawer. He was using control over the affairs of the office even though he was second in command and one other key being available with Mr Patel, which the petitioner tried to justify by showing that he was in possession of the duplicate key because Mr Patel was a forgettable person and would forget to get his bunch to office. The finding is otherwise. It is not that petitioner was trying to help his senior colleague by keeping a set of key. In fact, this was the key which facilitated as well as caused loss to the company by

allowing access to the tender bids and its manipulation, interpolation and replacement by the persons, who have also been dealt with suitably.

11. The question arises is whether petitioner can be given the benefit of doubt on the materials available on record and whether the stand of the petitioner that he has been prejudiced because he did not get opportunity to defend himself and he was not supplied certain document which he wanted, is worthy of consideration.

12. In the opinion of the Court, the enquiry report contained in Annexure- 8 by itself is a complete answer. The Court has not come across any delinquent not taking a plea of inadequacy of opportunity for cross-examination, production of evidence and non- supply of documents. These are a standard plea without support. The bona fide of such plea at least is not available from the records. The number of documents, the number of opportunities and number of plea to reach the conclusion is already one to many. It is not an inquiry commission but only a departmental enquiry which has to end some day into a finding and a conclusion.

13. There is enough evidence to show that the key in the possession of Mr Patel was not used for access to the drawer. There is only one other key in the hands of the petitioner. The drawer was opened, the tender papers were interpolated and changes effected. It

may not have been possible without active participation of the petitioner in this regard. When things came to his knowledge, which is also evident from the so-called confidential letter of Mr Mahto the least he could have done was sounded the superior authorities but the fact that he kept mum is also an indicator that he wanted things pass bye due to passage of time. His guilt is palpable.

The circumstances and the evidence being such petitioner does not deserve any indulgence by quashing the order of punishment. The writ application, therefore, is dismissed since it is devoid of merit.

(Ajay Kumar Tripathi, J)

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