

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19906 of 2014

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Raj Traders, through its Proprietor Pushpa Devi, wife of Sri Rameshwar Prasad, resident of K G Road, P.S. Ara Nawada, District Bhojpur, Bihar
..... Petitioner/s

Versus

1. The Bihar State Food and Civil Supplies Corporation Limited through its Managing Director, 5th Floor, Sone Bhawan, Patna 800001
2. The Officer on Special Duty (Transport and T.P.D.S.), Head Quarters, 5th Floor, Sone Bhawan, Patna
3. The District Manager, State Food Corporation, District Bhojpur, Bihar
..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate.
For the Respondent/s : Mr. Shailendra Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

5 04-02-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application bereft of all the niceties reads as follows:

*"1.(i) partial quashing of the order dated 15.10.2014 contained in Memo No. 10959 (Anexure 8) issued by respondent no. 1, whereby and whereunder the period of agreement has been unilaterally modified and has been reduced from three years to one year; and
(ii) quashing of the Letter No. 11224 dated 22.10.2014 (Annexure-10) whereby and whereunder a cancelled Tender process has been revived and work order has been issued to a person who has been already declared to be unfit and unqualified for being considered in the Tender process."*

3. Mr. Prabhat Ranjan, learned counsel for the petitioner, in support of the aforementioned prayer, has straightway proceeded to the main document in question being the agreement, which has given the petitioner time period of three years and to that extent he has submitted that Clause 14 of the agreement will leave nothing for speculation that the period granted to the petitioner in the agreement

dated 18.02.2013 and therefore, its determination on 15.10.2014, was wholly illegal and *de hors* the terms of the contract.

4. Noticing this very submission of Mr. Prakash, this Court, on the earlier occasion, had issued notice to the official of the Corporation, who had entered into the agreement, namely, Mr. Amanul Haque Sidiqqi, who was the then District Manager of the State Food Corporation, Bhojpur, at present working as Land Acquisition Officer, Patna. In the counter affidavit, which has been filed by the respondent no. 4, Mr. Sidiqqi, he has explained that neither he had the authority to execute an agreement for a period of three years in view of the letter of the Corporation; nor he had intended to execute an agreement for a period of three years and, in fact, whatever was stated in the agreement as with regard to tenure was account of its being in the prescribed proforma offered by the Corporation. In order to prove his bona fide, he has also referred to an immediate communication made by him on 18.02.2013 informing the petitioner that the tenure of such agreement is only for a period of one year.

5. In the considered opinion of this Court, there is a dispute, resolution of which would require leading of evidence. The petitioner, in any view of the matter, wants to enforce the terms and conditions of a non-statutory contract and, therefore, would bind by the principles settled by the Apex Court in the case of ***Radhakrishna Agrawal & Ors. vs. State of Bihar & Ors.***, reported in ***AIR 1977 SC 1496***.

6. That apart, this Court would *prima facie* find merit in the



contention of the respondent no. 4 because of two factors. Firstly, the letter of the Corporation dated 06.02.2013 very clearly lays down that such agreement was to be executed by the respondent no. 4 with the petitioner only for a period of one year. Secondly, the immediate communication made by the respondent no. 4 to the petitioner, upon execution of the agreement, laying down the very condition that clearly indicated that the agreement was for a period of one year. If, therefore, there was a difference in the two terms of the agreement and the communication, both dated 18.02.2013, it was imperative on the part of the petitioner to seek clarification immediately from the District Manager and probably if the District Manager could have stuck to the condition of three years in the agreement, the petitioner had a case of determination of the agreement prior to completion of period of three years.

7. In view of this unimpeachable evidence that the Corporation had never envisaged an agreement to be executed with the petitioner for a period of three years, this Court will have to accept the submission of the respondent no. 4 that it is not a case of premature termination of the agreement.

8. Nonetheless, as there is a dispute with regard to tenure of agreement, remedy for him is again provided in the same agreement, which lays down that the Managing Director shall be the sole arbitrator to resolve such disputes. Therefore, nothing said in this order however, shall come in the way of the petitioner in approaching the Managing

Director of the Corporation to get this dispute resolved by means of arbitration as laid down in the agreement.

9. The issue that such an order of determination of contract was made for accommodating a person by issuing a work order to him, could have been gone into by this Court, had the petitioner made that person a party to this writ application. In absence of such a person, this Court would find it difficult to adjudicate this issue but then again if the petitioner will assail the decision of cancellation of his contract before the Managing Director by seeking arbitration, he will have liberty to raise also this issue before the Managing Director.

10. With the aforesaid observation and direction, this writ application is disposed of.

11. The personal appearance of Amanul Haque Sidiqqi is hereby dispensed with.

(Mihir Kumar Jha, J)

Sujit/-

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