

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1166 of 2015

IN

Civil Writ Jurisdiction Case No. 25151 of 2013

- =====
1. The State of Bihar, through the Secretary, Department of Social Welfare, Government of Bihar, Patna.
 2. The Director, Integrated Child Development Services (ICDS) Department of Social Welfare, Second Floor, Indira Bhawan R.C. Singh Road, Patna.
 3. The Procurement Officer, Second Floor, Department of Social Welfare, Indira Bhawan, R.C. Singh Road, Patna.

.... Respondents/Appellant/s

Versus

1. Galaxy Press Pvt. Ltd., Amar Bhawan, House No. 539 K/152, Kassila Faizabad Road, Lakhnow-226016 through its Managing Director, Pankaj Gupta.
2. The Inspector General of Police, Economic Offences Unit, Government of Bihar, Patna.

... ... Petitioner/ Respondent.

.... Respondent- Respondent/s

With

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Letters Patent Appeal No. 1235 of 2015

IN

Civil Writ Jurisdiction Case No. 25151 of 2013

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Galaxy Press Pvt. Ltd., Amar Bhawan , House No. 539K/152. Kassila Faizabad Road , Lakhnow - 226016 through its Managing Director , Pankaj Gupta.

.... Petitioner- Appellant/s

Versus

1. The State of Bihar through Secretary, Department of Social Welfare, Government of Bihar, Patna.
2. The Director Integrated Child Development Services (ICDS) Department of Social Welfare, Second Floor, Indira Bhawan R.C.Singh Road, Patna.
3. The Procurement Officer, Second Floor, Department of Social Welfare Indira

Bhawan R.C. Singh Road, Patna

4. Inspector General of Police, Economic Offences Research Unit, Govt. of Bihar,
Patna.

.... Respondents-Respondent/s

Appearance :
(In LPA No. 1166 of 2015)

For the Appellant/s : Mr. Lalit Kishore, P.A.A.G.
Mr. Ranjeet Kumar, A.C. to P.A.A.G.

For the Respondent/s : Mr. Y. V. Giri, Senior Advocate
Mr. Rajesh Pd. Choudhary, Advocate

(In LPA No. 1235 of 2015)

For the Appellant/s : Mr. Y. V. Giri, Senior Advocate
Mr. Rajesh Prasad Choudhary, Advocate

For the Respondent/s : Mr. Lalit Kishore, P.A.A.G.
Mr. Ranjeet Kumar, A.C. to P.A.A.G.

For the Respondent no.4 : Mr. Akhileshwar Pd. Singh, Senior advocate
Mr. Rajiv Ranjan Prasad, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 24-07-2015

This is a typical case in which the writ petition as well as the respondent, in a CWJC are in appeal. Added to that, we came across several developments, which do not take place in the ordinary course of things.

The State of Bihar issued a tender notice on 11.04.2013 inviting tenders for assignment of the work of printing of registers, to be used in Anganbari centres, throughout the State. The process

comprised of two stages, viz. technical and price bids. Six tenders were received, and two of them did not qualify at the technical bid stage. Tenderers were required to enclose samples of papers to be utilized in the printing. Out of four that were considered at the price bid stage, M/s Galaxy Press Private Limited emerged as L-I.

At the stage of award of the contract, it appears that the then Minister doubted the quality of samples of L-I. Accordingly, he sent the samples for test to the State Printing Press, Guljarbag, Patna. They, however, expressed their inability, since they did not have the expertise to certify the quality of paper. Thereafter, the samples were forwarded to the Central Pulp Paper Research Institute at Saharanpur in Uttar Pradesh.

Even while the report, on the samples, was awaited, the then Minister is said to have taken a decision to cancel the outcome of the tender notice, i.e. the place accorded to M/S Galaxy Press Private Limited and to black list the agency through order dated 07.11.2013. Accordingly, a show cause notice date 18.12.2013 was issued. Challenging the same and claiming other consequential reliefs, M/s Galaxy Press Pvt. Ltd. filed CWJC No.25151 of 2013.

When the writ petition was pending the Central Pulp Paper Research Institute at Saharanpur in Uttar Pradesh submitted a report dated 08.01.2014 certifying the quality of samples. However,

the then Minister passed an order on 15.01.2014 directing the Economic Offence Unit of the State to conduct an enquiry against the writ petitioner. Through their report dated 19.06.2014, the Economic Offence Unit took the view that since no contract was awarded, and no amount was paid, there does not exist any basis for them to conduct any enquiry.

In the counter affidavit filed in the writ petition, the State pleaded that in case, the writ petitioner is willing to withdraw the writ petition and giving their consent to execute the work at the rates quoted in the tender, they would consider the feasibility of awarding contract. In view of this pleading, the writ petitioner filed I.A. No.7932 of 2014 seeking permission of the Court to withdraw the writ petition.

Learned Single Judge, who heard the writ petition, did not accord permission to withdraw the writ petition and dismissed the interlocutory application. Thereafter, the matter was heard on merits, the record was examined in detail. Through an elaborate judgment dated 19.05.2015 the learned Judge (a) dismissed the writ petition; and (b) directed an investigation by CBI into the entire episode against the present Minister holding the charge as well as the officials of the Department.

While the State preferred L.P.A. No.1166 of 2015,

feeling aggrieved by the direction to cause enquiry by the C.B.I. against the Minister and the officials, the writ petitioner filed L.P.A. No.1235 of 2015, feeling aggrieved by the dismissal of I.A. No.7932 of 2014 and consequential dismissal of the writ petition.

Learned Principal Additional Advocate General submits that hardly there was any occasion or necessity for ordering enquiry into the matter, since no contract was awarded and the learned Single Judge has made several observations against the political and the official executives of the State. He contends that there was no complaint from any quarter whatever, alleging any irregularity in the matter of tender, and the learned Single Judge proceeded as though it is a public interest litigation wherein serious irregularities are alleged and proved.

Sri Y. V. Giri, learned senior counsel for the respondent/writ petitioner submits that the matter got complicated only on account of the whims and fancies of the then Minister, who flouted all stipulated norms and passed irrational and highhandedness order. He submits that taking into account, the plea of the State in their counter affidavit, the writ petitioner wanted to withdraw the writ petition, and the learned Single Judge, however, rejected the interlocutory application. He further submits that when the writ petition is dismissed, the question of making several

observations touching on the integrity and character of officials, non-officials and the tenderer does not arise.

The brief facts pertaining to the entire case have been furnished in the preceding paragraphs. Tenders were invited in the year 2013 and the writ petitioner emerged as L-I. In case, the writ petitioner did not qualify for being awarded the contract, the State has every right to deny the same. However, even while certain reports were on the way, the then Minister proceeded, not only to cancel the tender proceedings, but also wanted the writ petitioner to be black listed. The matter was pending adjudication at that stage before this Court. On receipt of a positive report from the Central Pulp Research Institute, Saharanpur about the quality of the samples, and after examining the matter, that too, in response to a query made by the Court, the State came forward with a plea that, in case, the writ petitioner withdraws the petition and expresses its willingness to execute the work at the stipulated rates, they would consider the feasibility of awarding the contract. Taking clue from this, the petitioner filed I.A., with a prayer to permit them to withdraw the writ petition.

Normally, the plaintiff in a suit, and the petitioner in a writ petition, happens to be the master of the proceedings. They have every right to terminate the proceedings by withdrawing them. It is



only when the other side in the proceeding suffers any detriment on account of institution of the proceeding, that the Court can refuse withdrawal, unless the opposite party is compensated. This is evident from Order XXIII C.P.C., the application of which is not prohibited in the writ proceedings. In *Shaik Husain and sons Vs. M. G. Kannaiha*¹, the Hon'ble Supreme Court held that if a writ petitioner intends to withdraw the writ petition, the Court cannot refuse permission.

Even where the permission for withdrawal is denied in a writ petition, or for that matter in a suit, the only adjudication, that can be made is, about the detriment that can be said to have been suffered by the other side. Beyond that, a Court cannot enter into the merits.

In the instant case, not only the merits were dealt with extensively, but also discussion was in a direction, which neither the writ petitioner, nor the respondents intended or prayed for. For all practical purposes, the writ petition assumed the character of public interest litigation, where serious allegations of impropriety, corruption or irregularity have been pleaded and proved. We are of the view that the writ petition and the developments that have taken place therein, did not permit such a course of action. Added to that,

¹ (1981) 3 SCC 71

serious comments were made against the senior officials of the State and a Minister, though they were not parties in the proceedings.

Viewed from any angle, we do not find that the judgment under appeals accords with law. We, therefore, allow the appeals and set the order passed in the writ petition.

I.A. No.7939 of 2014 is allowed, and the writ petition, being CWJC No.25151 of 2013, is dismissed as withdrawn.

There shall be no order, as to costs.

(L. Narasimha Reddy, CJ)

(Anjana Mishra, J)

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