

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12822 of 2015

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1. Murari Manohar S/o Sri Bhagwan Das Resident of at Ramnagar, P.O. Nawada,
P.S. Nawada, District Nawadah.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Road Transport, Government of Bihar, Patna.
2. The Bihar State Road Transport Corporation through its Administrator, Transport Bhawan, Sultan Palace, Bihar, Patna.
3. The Chief of Administration-cum-Chief of Operations, Transport Bhawan, Sultan Palace, Bihar, Patna.
4. The Chief Medical Engineer, Bihar State Road Transport Corporation, Transport Bhawan, Sultan Palace, Bihar, Patna.
5. The Advisor to Chief Mechanical Engineer, Bihar State Road Transport Corporation, Transport Bhawan, Sultan Palace, Bihar, Patna.
6. Krishna kant Choubey, Chief of Administration-cum-Chief of Operations, Transport Bhawan, Sultan Palace, Bihar, Patna.
7. Rajesh Jha, Chief Mechanical Engineer-cum-P.P.P. Advisor, Bihar State Road Transport Corporation, Transport Bhawan, Sultan Palace, Bihar, Patna.
8. Suresh Prasad, Advisor to Chief Mechanical Engineer, Bihar State Road Transport Corporation, Transport Bhawan, Sultan Palace, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Singh, Sr. Adv. &
Mr. Mrigank Mauli, Adv.

For the Respondent/s : Mr. Prabhat Kumar Verma, AAG 5 &
Mr. Nand Kumar Singh, Adv.

For the State : Mr. S.S. Prasad, S.C. 10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-10-2015

Heard Mr. Jitendra Singh, learned Senior Counsel for the petitioner and Mr. Prabhat Kumar Verma, learned Senior counsel for the Corporation.

The petitioner is aggrieved by the order bearing Memo No. 3216 dated 7.8.2015 passed by the Chief Mechanical Engineer under the directions of the Administrator of the Bihar State Road Transport

Corporation (hereinafter referred to as the 'Corporation') whereby all the agreements entered with the petitioner and the 'Corporation' for plying of buses on the Patna to Nawada and other routes have been cancelled.

Facts of the case briefly stated is that the petitioner admittedly is a registered contractor with the respondent- Corporation in respect of operating buses on different routes within the State of Bihar on certain terms and conditions. A show cause notice was earlier issued on 25.3.2011, a copy of which is placed at Annexure-2 charging him certain violations and requiring him reply. According to the petitioner he filed his reply on 11.4.2011 placed at Annexure-3 to the writ petition although the receipt thereof is being denied by the Corporation on grounds that the copy of the reply is not found in the records. Mr. Singh learned Senior Counsel for the petitioner with reference to the copy placed in the writ proceedings submits that the receipt by the respondents on the reply is confirmed by its presence thereon. Fact remains that the show cause notice which was issued on 25.3.2011 was never acted upon rather several fresh agreements were entered in between the Corporation and the petitioner for plying the buses on different routes. Three agreements were executed on 26.12.2013 and copies of which are placed at Annexure-7 series whereunder the petitioner has been granted contract to ply his buses



between Patna and Nawada and an additional route was granted to the petitioner under an agreement dated 21.1.2015 placed at Annexure-9. It is the stand of the petitioner that on being disturbed by the private respondent Nos. 3 to 5 that he filed a complaint before the Administrator, a copy of which is placed at Annexure-12 seeking his intervention in the matter but was responded to by the impugned order passed on 7.8.2015 whereunder all his agreements have been cancelled relying upon Clause 34 of the agreements.

Mr. Singh learned Senior Counsel for the petitioner while contesting the impugned order on merits advanced his arguments by referring to Clauses 33 and 34 of the agreement and to submit that an action taken under Clause 34 of the Agreement is to be preceded by a notice. It is submitted that in absence of any notice in terms of the agreement which is binding inter parties, the respondents could not have proceeded with the cancellation.

The arguments of Mr. Singh has been vehemently contested by Mr. Verma learned Senior Counsel representing the Corporation who also produces the records relatable to the petitioner to submit that the conduct of this petitioner is not above board and that right since 2011 he has been in the centre of some dispute or the other. It is the argument of Mr. Verma that several F.I.Rs. have been instituted on the conduct of the petitioner and thus it is upon a review of his actions



that the extreme measure has been taken by the Corporation which is in tune with the clause of the agreement. It is with reference to the earlier show cause present at Annexure-2 that he submits that the petitioner never responded to the show cause, at least it is not available in the records and thus the conduct of the petitioner and the complaint instituted against him were sufficient to invite a cancellation. Mr. Verma questioning the maintainability of the writ petition submits that any grievance raised on the anvil of the violation of the terms of the agreement cannot be a subject matter of a writ petition. In support he relies upon judgment of the Supreme Court reported in **(2008) 8 SCC 172 (Pimpri Chinchwad Municipal Corporation and Ors. Vs. Gayatri Construction Company and Anr.)** and the Division Bench judgment of this Court arising from **L.P.A. No.359 of 2009 (Ashok Kumar Bhattacharya Vs. Surya Nath Mishra)**. It is thus submitted by Mr. Verma that neither on merits nor on maintainability does the writ petition require indulgence and is fit to be dismissed.

Mr. Singh responding to the issue of maintainability has referred to the judgment of the Supreme Court reported in **(2008)12 SCC 500 (Kisan Sahkari Chini Mills Limited Vs. Vardan Linkers and Ors.)** and a recent judgment of the Supreme Court reported in **2015 (8) SCALE 737 (State of Kerala Vs. M.K. Juse)** to submit that



it is not in all circumstances that a writ remedy can be denied to an aggrieved rather each case has to be tested on its own merits. With reference to the order impugned he submits that since admittedly for the charges which are the foundation for the impugned order, no notice has been issued hence in view of the stipulations present in Clauses 33 and 34 of the Agreements, the petitioner was entitled to a notice before any such extreme action was taken having civil consequences.

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

In so far as the issue of maintainability of the writ petition is concerned, I would go with the argument of Mr. Singh and there is no strait jacket formula to reject a writ petition arising out of the contractual breach. Each matter has to be tested on its own merits and adjudicated upon.

There is no contest that where the contest lies purely on interpretation of a contract then perhaps a writ remedy may normally not be a proper course but where there is no need for interpretations and the position is self eloquent then merely because the right emanates from contractual conditions, it cannot be denied on this score.

It is thus to be seen how the employer concerned has addressed



himself to the issue which would be the guiding factor for the scope of intervention and not a mere case of breach or denial of opportunity. In so far as the present case is concerned, the impugned order reflects no less than seven charges against the petitioner which according to the Administrator are very serious and which were arrived upon the review of the case of the petitioner. Surprisingly even when the Administrator has found the charges to be extremely serious, he takes no steps to afford opportunity to the petitioner to explain the charges rather he relies upon a show cause issued on 25.3.2011 i.e. more than 4 years back to deny an opportunity to the petitioner to present his case. It is not in dispute that the charges which were the basis for the show cause notice on 25.3.2011 and those mentioned in the impugned order are at a variance. There may be some charges which are overlapping but they are not the same, as is manifest from Annexure-2 in comparison to the impugned order at Annexure-13. The infirmity does not stop here. The power of cancellation has been exercised by the Administrator under Clause 34 of the Agreement which inter alia provides that in case the contractor concerned does not respond to a notice issued under Clause 28 of the Agreement the Corporation may proceed to cancel the agreement. Now there is no contest that no notice on the charges mentioned in the impugned order has preceded the cancellation order at Annexure-13. In fact the

Administrator could not have resorted to action under Clause 34 without exhausting the procedure provided under Clause 33 which inter alia provides that in case the second party is not found fulfilling its obligation under the agreement then the Corporation would give a written notice to him to rectify the same within a period of 15 days from the date of issue show cause.

The agreement thus puts two pre-conditions and which are sine quo non to an order of cancellation and i.e.(a) a show cause notice under Clause 33 to rectify an error followed by (b) a show cause notice against cancellation. Neither of the two obligations have been discharged by the Corporation in so far as the present case is concerned. In these uncontested circumstances, the objections raised by Mr. Verma on maintainability, becomes unsustainable and I would not be detaining myself any further to hold that the order of cancellation impugned at Annexure-13 is per se illegal and cannot be upheld and is accordingly set aside. The matter is remitted back to the Administrator, Bihar State Road Transport Corporation if so advised, to proceed against the petitioner afresh but in accordance with the stipulations so noted above. The writ petition is allowed.

Let the records so produced be returned to Mr. Prabhat Kumar Verma, learned Senior Counsel for the Corporation be returned.

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(Jyoti Saran, J)