

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19610 of 2010

Sanjiwan Prasad Sharma son of Late Bengali Mandal, resident of village & P.O. Fatehpur, District Bhagalpur

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railway, New Delhi
2. The Chairman, Railway Board, Rail Bhawan, New Delhi
3. The Divisional Railway Manager, Malda Division, Malda, West Bengal
4. The Divisional Commercial Manager, DRM Officer, Malda Division, P.O. Jhalijhalia, Eastern Railway, Malda, West Bengal 732102

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 19623 of 2010

Newa Lal Yadav S/O Late Anirudh Prasad Yadav R/O Vill. & P.O. Sujal - Korma, Distt. Banka

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railway R/O New Delhi
2. The Chairman, Railway Board, R/O Rail Bhawan, New Delhi
3. The Divisional Railway Manager, Malda Division R/O Malda, West Bengal
4. The Divisional Commercial Manager, DRM Officer Malda Division, R/O P.O. Jhalijhalia, Eastern Railway, Malda, West Bengal - 732102

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 19627 of 2010

Shishir Chandra Choudhary S/O Late Madhab Chandra Choudhary, R/O Vill. & P.O. Kharahara, Distt. Bhagalpur

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railway R/O New Delhi
2. The Chairman, Railway Board R/O Rail Bhawan, New Delhi
3. The Divisional Railway Manager, Malda Division R/O Malda, West - Bengal
4. The Divisional Commercial Manager, Drm Officer Malda Division R/O P.O. Jhalijhalia, Eastern Railway, Malda - 732102

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 19645 of 2010

Bijay Kumar Yadav S/O Late Bhudeo Prasad Yadav R/O Vill. & P.O. Sujal - Korma, Distt. Banka

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railway R/O Delhi

2. The Chairman, Railway Board, Rail Bhawan R/O New - Delhi
3. The Divisional Railway Manager, Malda Division, Malda R/O West - Bengal
4. The Divisional Commercial Manager, DRM, Officer Malda Division
P.O. Jhalijhalia, Eastern Railway, Malda –West Bengal- 732102

.... Respondent/s

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Appearance :

(In CWJC No. 19610 of 2010)

For the Petitioner/s : Mr. Ranjan Kumar Jha, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate

Mr.Ankit Katriar, Advocate

(In CWJC No. 19623 of 2010)

For the Petitioner/s : Mr. Ranjan Kumar Jha, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate

Mr.Ankit Katriar, Advocate

(In CWJC No. 19627 of 2010)

For the Petitioner/s : Mr. Ranjan Kumar Jha, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate

Mr.Ankit Katriar, Advocate

(In CWJC No. 19645 of 2010)

For the Petitioner/s : Mr. Ranjan Kumar Jha, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate

Mr.Ankit Katriar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 12-05-2015

In all the above four writ petitions, the issues of facts and law are almost identical and common. Therefore, with the consent of the parties, all the four matters have been heard together and are being disposed of by this common judgment.

2. The petitioners of all these four writ petitions have filed their separate writ petitions assailing the validity and correctness of a common advertisement dated 28.10.2010 (Annexure-2 in all the writ petitions), published in the Hindi daily news paper “Hindustan” (Bhagalpur edition), issued under the signature of respondent Divisional Railway Manager, Eastern Railway, Malda, whereby the applications have been invited from eligible locals for their selection as Halt Contractors for 14 Halt Stations mentioned in the aforesaid

advertisement and applications were required to be submitted on or before 03.12. 2010.

3. The common grievance of the petitioners is that while their contracts for working as Halt Contractors/Local Contractors are still subsisting with respect to 4 Halt Stations namely, Tikani, Bela TP 23/12, Punsia and Murarpur on the basis of their respective agreements signed with the competent authority of the Railway, yet the respondent no. 3 has arbitrarily proceeded for making fresh appointment/selection of Halt Contractors even with respect to the aforesaid 4 Halt Stations, besides others, by issuing the impugned advertisement, which, according to the petitioners, cannot be permitted in law.

4. Learned counsel appearing on behalf of the petitioners submits that the petitioner Sanjiwan Prasad Sharma of CWJC No. 19610 of 2010 was appointed as Halt Contractor/Local Contractor for Murarpur Halt by an agreement dated 25.02.1994, petitioner Newa Lal Yadav of CWJC No. 19623 of 2010 was appointed as Halt Contractor/Local Contractor by an agreement dated 23.03.1990 for Bela TP 23/12 Halt, petitioner Shishir Chandra Choudhary of CWJC No. 19627 of 2010 was appointed as Halt Contractor/Local Contractor for Punsia Halt by an agreement dated 30.05.1973 and petitioner Bijay Kumar Yadav of CWJC No. 19645 of 2010 was similarly appointed as Halt Contractor/Local Contractor for Tikani Halt by an agreement dated 07.04.1989. All the agreements, referred to above, have been brought on record as Annexure-1 to the respective writ petitions. It is further submitted that from the respective dates of their appointment as Halt Contractors/Local Contractors for the aforesaid Halt Stations, the petitioners are discharging their duties to the best of their ability/capacity and to the satisfaction of all concerned including



the officials of the respondent Railway. It is also pointed out that as per Clause 18 of the aforesaid agreements, the agreement signed between the parties can be terminated after giving one month's notice in writing on either side if there is any breach of condition of the agreement by the local contractor or on occurring of certain conditions indicated in that clause. It is the case of the petitioners and not controverted by the learned counsel for the respondents that till date aforesaid agreements signed between the parties are still surviving and the respondents have not terminated the agreements by invoking clause 18 of the said agreements. It is highlighted on behalf of the petitioners that by virtue of the aforesaid agreements they are being paid certain fixed amount by the Railway and they get 15% of the total sale proceeds of the Railway tickets at their respective Halt Stations as their remuneration. According to the petitioners, this is the only source of their livelihood, which is sought to be taken away by the respondents without any valid justification.

5. The matter has been contested by the respondents by filing their separate counter affidavits on behalf of the respondent nos. 3 and 4 in each of the writ petitions wherein, the claims raised on behalf of the petitioners that they were validly appointed as Local Contractors/Halt Contractors on the basis of valid agreement have not been disputed. The respondents have also not disputed that till date the contracts entered into between the petitioners and the respondents are still subsisting. The only plea taken on behalf of the respondents is that now under the new Commercial Circular No. 26 of 2005 dated 24.06.2005 of the Ministry of Railways, Government of India, the impugned advertisement has been issued for making fresh appointment as Halt Contractors for the different Halts Stations mentioned in the advertisement. According to the respondents, now



Halt Contractors are required to be appointed only for five years and the contract may be extended for another five years. It is pointed out that since the petitioners are working as Halt Contractors/Local Contractors for quite a long time, therefore, the impugned advertisement has been issued for fresh selection of the Halt Contractor as per new guidelines.

6. Before proceeding further, it would be relevant to mention here that by order dated 02.12.2010 passed by a Bench of the Court (Coram: S.N.Hussain,J. since deceased) in this batch of writ petitions, operation of the impugned advertisement dated 28.10.2010 was stayed with respect to the Halt Stations on which the petitioners are working as Halt Contractors/Local Contractors on the basis of their agreements. It is common case of the parties that in view of the aforesaid order of stay, selection process for appointment of Halt Contractors for the Halt Stations in question could not proceed further and these petitioners are still working as Halt Contractors.

7. After having heard the parties and on consideration of the materials available on the records, this Court is of the opinion that till the contract/agreements between the petitioners at one side and the respondents on the other side are subsisting, and till they are holding the posts of Halt Contractor/Local Contractor at the concerned Halt Stations, the action of the respondents for making fresh appointment cannot be allowed to continue. Admittedly, there is only one post of Halt Contractor for each of the Halt Stations in question. If the respondents are allowed to proceed further with the impugned selection process, then that would mean that the respondents have proceeded to terminate the existing agreements of the petitioners without terminating the same by following the procedure prescribed there in the agreements. Admittedly, agreements of the petitioners



have not been terminated by invoking clause 18 of the agreements. If the respondents are/were at all interested in getting the new circular implemented, then the respondents were/are free to terminate the existing agreements of the petitioners by invoking Clause 18 and thereafter they can proceed for fresh appointments on the post of Halt Contractors/Local Contractors. The submissions of the learned counsel appearing on behalf of the respondents that if the agreements of the petitioners are terminated before making fresh appointment, then after such termination nobody shall be there to sell the railway tickets to the passengers at the Halt Stations in question cannot be countenanced simply on the ground that the Railway is a large establishment and even if the agreements of these petitioners are terminated by invoking Clause 18, then by way of stop gap arrangement, the Railway can deploy some regular employee till the fresh selection is made by issuance of fresh advertisement for these Halt Stations also and once selection process is completed and the new Halt Contractors are appointed, those regular railway employees can be withdrawn and new Halt Contractors/Local Contractors can be permitted to discharge their duties. Otherwise also, from the examination of new Commercial circular no.26 of 2005 dated 24.06.2005, a copy of which was produced by the learned counsel for the respondents, this Court finds that in para XIII (a) it has been provided that the existing Halt Contractors will continue to be governed by the old policy guidelines till expiry of their current contracts. Admittedly, the contracts of these petitioners have not expired, rather still subsisting.

8. For the reasons recorded above, particularly, in the background that the stay order dated 02.12.2010 passed by a Bench of this Court is still operating, this Court is inclined to set aside the

impugned advertisement dated 28.10.2010 (Annexure-2) so far as it relates to Halt Stations, where the petitioners are still working as Halt Contractors. However, the respondents shall be at liberty to take steps in terms of Clause 18 of the agreements signed with the petitioners, as contained in Annexure-1 to each of writ petitions. Once the agreements of the petitioners are terminated in accordance with law, then certainly the respondents can proceed further by issuing afresh advertisement for making fresh appointment of Halt Contractors for the Halt Stations in question.

9. In the result, all the writ petitions stand allowed to the extent indicated above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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