

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17953 of 2014

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1. Kumar Abhishek Son of Shukun Prasad resident of mohalla - Shivganj,
P.S. - Nawada, Arrah, District- Bhojpur at Arrah.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Urban Development and Housing Department.
3. The Municipal Corporation Ara, District- Bhojpur at Ara.
4. The Municipal Commissioner, Ara Municipal Corporation, Arrah,
District - Bhojpur at Arrah.
5. The Manager/Chief Councillor, Ara Municipal Corporation, Arrah,
District - Bhojpur at Arrah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nityanand Mishra, Advocate.
Mr. Santosh Kumar, Advocate.

For the Respondent/s : Mr. Ga11- Partha Sarthy
Mr. Bishwa Bibhuti

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

4 22-09-2015 By making this application, under Article 226 of the

Constitution of India, in the nature of Public Interest Litigation,

the petitioner has sought for issuance of a writ in the nature of
mandamus commanding the respondents to take necessary steps to

recover the huge public money, which was spent in purchasing the

Tricycle/Cycle Rickshaw by respondent No.4, namely,

Commissioner, Municipal Corporation, Ara, District-Bhojpur at

Ara, without publishing tender, especially, when the order, which

had been supplied by Tricycle /Cycle Rickshaw, has already been

cancelled by respondent No.4 on the ground that the supply had not been made on time and further, there was difference between the sample and the item supplied.

From perusal of the affidavit, which has been filed by respondent Nos.3, 4 and 5, namely, Municipal Corporation, Ara, Commissioner, Ara Municipal Corporation, Ara, and Chief Councillor, Ara Municipal Corporation, Ara, respectively, what transpires is thus:

In the meeting of the Ara Municipal Corporation held on 23.09.2013, it was decided that purchase of sanitary equipments, for collection and disposal of garbage, were needed in the emergent situation during festivals, but after issuance of work order, the Agency had not supplied the total number of Tricycle within 15 days and, hence, by order, dated 04.01.2014, the agreement, dated, 28.10.2013, was cancelled and the same was communicated to the Agency. On receiving the order of cancellation, the Agency represented before Ara Municipal Commissioner with regard to delay in making supply within a period of fifteen days and, thereafter, the Town Manager and the Chief Sanitary Inspector had submitted their joint report with regard to the verification of the quality of the Tricycle and, having considered the report as well as the show cause, decision for

making payment was made.

Coupled with the above, it has also been submitted that Senior Account Examination Officer, in his audit report, did not find anything wrong.

While considering the present Public Interest Litigation, it needs to be noted that ordinarily, respondent No.4, namely, Commissioner, Ara Municipal Corporation, Ara, ought to have been conducted an independent selection process for obtaining supply/purchase of Tricycle/Cycle Rickshaw .

Considering, however, the fact that Jamalpur Municipal Council is also a body of the government, which had purchased the Tricycle, after, admittedly, following due process, the purchase, which has been made by respondent No.4, on the same terms as was done by Jamalpur Municipal Corporation, one cannot say that the supply order placed by Commissioner, Ara Municipal Corporation, Ara, was arbitrary. This apart, we find that the cancellation of the agreement by respondent No.4, was without any notice to the supplier to show cause and, hence, on the presentation being made by the supplier, it was open to Ara Municipal Corporation, to review their own orders.

In the facts and circumstances indicated above, when the supplier had shows cause and respondent No.4 was satisfied

with the reply of the Agency and also after testing the quality of the supplied materials, payment has been made, no case for issuance of any writ, in the nature of *mandamus*, as sought for, can be issued, more particularly, when it is not the allegation of the petitioner that the quality of Tricycle/Cycle Rickshaw supplied is bad or that the purchase has been made at an unreasonable cost.

In the above view of the matter, this application stands closed.

(I.A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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