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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12481 of 2016

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Suman Kumar, son of Ramesh Singh, resident of village-Lodhipur, Chipi Tola, Hajipur, P.S. Hajipur Nagar, District-Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate-cum- Chairman, District Transport Committee, District Vaishali (Hajipur)
2. The Bihar State Food and Civil Supplies Corporation Limited through its M.D., Bihar at Patna.
3. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Vaishali, District-Vaishali (Hajipur)
4. The District Transport Committee, Vaishali, District- Vaishali
5. The Deputy Chief Transporter, Headquarter, Patna, Bihar State Food and Civil Supplies Corporation, Bihar at Patna
6. The Additional Development Commissioner, Vaishali, District-Vaishali
7. The Additional Collector, Vaishali, District- Vaishali
8. The District Transport Officer, Vaishali, District-Vaishali
9. Raghunath Rai, son of Late Rajeshwar Rai, resient of village- Rajapur, P.O. + P.s. Nayagaon, District- Saran (Chapra).
10. Vivek Transport Agency represented through Kumar Vivek son of Anil Kumar resident of Mohalla- Deep Bazar, P.O.+P.S-Soh Sarai, District-Nalanda.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. P.K. Shahi, Senior Advocate
Mr. Sumeet Kumar Singh
For B.S.F.C : Mr. Aditya Prakash Sahay
For the Respondent/s : Mrs. Namrata Mishra, G.A.6

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

4 22-08-2016 Heard learned Senior Counsel for the petitioner and learned counsel for the Corporation as also learned counsel for the State.

The writ application has been filed for quashing the report dated 13.07.2016 of the District Transport Committee, by which the petitioner has not been selected in the final list of

Transporter and Handling Agent.

The short facts of the case are that the petitioner had earlier applied in a tender for Door Step Delivery Transporter and he was placed in a panel for which security money deposited was also kept by the respondent-Bihar State Food and Civil Supplies Corporation but admittedly, no work was given to the petitioner for the same. Thereafter inviting tender for appointment of Transporter-cum-Handling Agent (Main) was issued by the respondent Corporation in which the last date for filing the tender application was 13.06.2016. Clause 11 (i) provides that the selected or working Handling and Transporting-cum-Delivery Contractor under Door Step Delivery of food grains shall not participate in the tender of Handling-cum-Transporting Contractor for transportation of food grains from FCI Depot to SFC Godown in the concerned district and vice versa. The petitioner being aware of the said fact by his application dated 02.06.2016 prayed for withdrawal of his security deposit and removal of his name from the panel of Door Step Delivery Transporters. Thereafter, the petitioner filed his tender for the Transporting and Handling Agent (Main). The petitioner was allowed to participate in the fresh tender and qualified in technical bid and thereafter the financial bid was opened in which the petitioner was among five persons.

However, it is alleged by the petitioner that at the instance of one Subodh Kumar, Member of Vidhan Parishad, the matter was referred to the headquarters and the petitioner was ultimately disqualified on account of clause 11 (i) of the tender, without taking any action on the application dated 02.06.2016 of the petitioner. By letter dated 11.07.2016 of the Deputy Chief Transport, Headquarters, Patna of the Corporation in response to the letter dated 28.06.2016 of the District Manager, State Food Corporation, Vaishali it was stated that the present tenderer in the panel cannot participate in the tender unless he is removed from the panel or his resignation is accepted and on the said proposal, the Managing Director's approval is obtained.

Aggrieved by the same, the petitioner has come to this Court.

Learned counsel for the petitioner submits that the petitioner having acted well in advance in the matter and sought return of his security deposit and removal of the petitioner from the panel of Door Step Delivery Transporter, the respondents could not have disqualified the petitioner on account of their own laches in not taking action immediately on the representation filed by the petitioner.

Learned counsel for the petitioner further submits that

this Court vide order dated 11.08.2016 directed that until further orders, no third party right shall be created against the petitioner but violating the said interim order, the respondents have already appointed one of the bidders as the Transporter-cum-Handling Agent (Main).

In this regard, learned counsel refers to the office order dated 12.08.2016 issued by the District Magistrate, by which he has appointed the respondent No.10 as Transporter-cum-Handling Agent.

Learned counsel for the respondent-Corporation, on the other hand, submits that the respondents were bound by clause 11 (i) of the Tender and on the date of consideration of the case of the petitioner by the District Transport Committee, the petitioner was not qualified as he continued to be the panel of the Door Step Delivery Transporter.

So far as the office order dated 12.08.2016 is concerned, learned counsel for the Corporation submits that the same has been issued inadvertently and there was no intention of the Corporation to violate the order dated 11.08.2016 of this Court, and the same was withdrawn forthwith.

So far as the office order dated 12.08.2016 is concerned, the same in any way, as rightly pointed out by learned Senior

Counsel, is non est in the eye of law having been passed contrary to the order passed by this Court.

However, in view of the submissions made by learned counsel for the Corporation, this Court treats the matter as closed and no proceedings of contempt for violation of the interim order of this Court are being initiated, subject to the order being withdrawn.

So far as the action of the respondents is concerned, it is evident that they cannot enforce a liability upon the petitioner on account of their own inaction in the matter. The petitioner had in clear terms by his letter dated 02.06.2016 stated that he did not wish to continue in the panel and further that he wished to participate in the tender for appointment of Transporting-cum-Handling Agent (Main) in the district of Vaishali and accordingly he claimed for return of his security amount.

In the said circumstances, it was not open to the respondents to have kept the matter pending unnecessarily for 11 days, which was sufficient time for the disposal of the same, and thereafter they could not have disqualified the petitioner on the ground that the petitioner was in the panel of Door Step Delivery Transporter. The letter dated 11.07.2016 of the Deputy Chief Transport Headquarters, Patna does not appear to have clearly

dealt with the matter on the facts of the petitioner's case but can only be accepted as correct so far as the general principles laid down therein are concerned.

In the aforesaid circumstances, the writ application is allowed. The impugned order dated 13.07.2016 of the District Transport Committee as also the letter dated 11.07.2016of the respondent No.5, Deputy Chief Transporter, Headquarters, Patna in so far as it concerns the petitioner are quashed and the respondents are directed to proceed afresh in the matter in accordance with law treating the petitioner as qualified for participating in the aforesaid tender.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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