IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.213 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 4132 of 2014

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Ajay Kumar Gupta Son of Late Bindeshwari Prasd Gupta, Resident of Village/ Mohalla - Purab Sarai (Near Fari), Police Station - Kotwali, District - Munger.

.... Appellant/s

Versus

1. The State of Bihar through the Secretary, Agriculture Department, Bihar, Patna.
2. The Agriculture Director, Bihar, Patna.
3. The Joint Agriculture Director, Bhagalpur Division, Bhagalpur.
4. The District Agriculture Officer, Munger.
5. Sri Kasho Singh Son of Sri Jago Singh, Resident of Village - Paras, Post - Launa, Block - Tarapur, District - Munger.

.... Respondent/s

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Appearance :

For the Appellant : Mr. Jitendra Kumar Pandey, Advocate
Mr. Dhaneshwar Prasad Gupta, Advocate

For the State : Mr. Amar Nath Deo, SC 26

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)
Date: 10-05-2016

Heard learned counsel for the parties.

The present intra-court appeal under Clause X of the Letters Patent of Patna High Court is directed against the order dated 20.08.2014 by which CWJC No. 4132 of 2014 filed by the appellant has been dismissed by the learned single Bench.

The appellant is the proprietor of M/S Krishi Kendra, Purabsarai, Munger and authorized dealer of Greaves Cotton Limited. The respondent no. 5 purchased a Power Tiller on 28.12.2011 from the appellant's firm with Government subsidy. On 18.08.2012, due to some problem, the Power Tiller was repaired and the respondent no. 5 gave a Satisfaction Certificate on 19.08.2012. Thereafter, the respondent no. 5 sent a legal notice to the appellant on 28.08.2012 which was replied to by the appellant through his counsel on 04.10.2012. The respondent no. 5 thereafter approached the '*Janta Darbar'* of the District Magistrate, Munger leading to issuance of show cause dated 18.09.2012 to the appellant by the District Agriculture Officer, Munger. The appellant submitted his reply on 20.10.2012 denying the allegation made by the respondent no. 5. On 24.07.2013, the appellant along with respondent no. 5 was called for an enquiry by the Joint Director, Agriculture, Bhagalpur. On the said day, in the presence of the parties as well as the villagers, the appellant was directed to supply the Power Tiller of 14.6 H.P. for which receipt was given to the respondent no. 5 and also pay compensation. The appellant gave a written undertaking that he would be able to provide the vehicle within 45 days in lieu of the earlier vehicle but would not be able to pay compensation. When the same did not materialize, the Joint Director, Agriculture, Bhagalpur, by order dated 21st November, 2013, narrating all the above facts, issued show cause to the appellant as to why he had not given the Power Tiller to the respondent no. 5 and after doing so, to inform the officer failing which it would be written to the District Agriculture Officer, Munger for lodging of FIR. The appellant replied to the same on 20.07.2013 denying the entire allegations made by the respondent no. 5 and also stated that in presence of the villagers, in order to uphold the dignity of the officer, he had given an undertaking to replace the Power Tiller to the respondent no. 5. In view of the developments, the District Agriculture Officer, Munger, by order dated 21.01.2014 banned the sale of Power Tiller and other agricultural equipments on Government subsidy. The said order was impugned in the writ application.

Learned counsel for the appellant submitted that the action of the authorities is a colourable exercise of power and further that he is not liable for any fault in the vehicle, being only a dealer. He has further submitted that even on facts the respondent no. 5 was never given a 14.6 H.P. machine but rather a 13.5 H.P. machine and only due to an error by his staff, on the receipt it was mentioned 14.6 H.P. It was submitted that even the price taken from the appellant was with regard to only 13.5 H.P. Power Tiller.

Learned counsel for the State submitted that through the appellant subsidy was given on Power Tiller meant for farmers and he being the Dealer was responsible for supply of quality Power Tillers and also for ensuring that there was adequate staff to take care of any malfunctioning of the machine at their doorstep. Thus, it is submitted that the decision of the authorities to direct the appellant not to sell any Government subsidized Power Tiller and other agricultural equipments cannot be faulted.

Having considered the rival contentions, we do not find any merit in the present appeal. The appellant, being a Dealer, is bound to ensure that the articles sold through him are also covered under the warranty by proper and prompt service to the concerned buyers. Further, the Government giving substantial subsidy for such purchase, the intervention of the State authorities also cannot be said to be unwarranted, as it is they who approve the dealer through whom such purchase can be made, and thus, are also responsible to ensure that such equipment functions properly. In the present case, the fact that the receipt issued to the respondent no. 5 for 14.6 H.P. Power Tiller but only 13.5 H.P. Power Tiller being given to him cannot be said to be proper. The defence of the appellant that by mistake on the receipt 14.6 H.P. was written in place of 13.5 H.P. is difficult to accept for the reason that no correction was made with regard to such mistake. It is also not the case of the appellant that all the defects in the Power Tiller supplied by him to respondent no. 5 had been rectified, which the appellant was obliged to do. There is also no explanation as to why, if the contention of the appellant is true that on 24.07.2013 he had agreed in writing to replace the machine only in view of the sentiments of the villagers and in honour of the Joint Director, Agriculture, Bhagalpur, no such fact was communicated to any authority and only when the letter was issued to him on 21st November, 2013, he came up with such defence for the first time. Though we may note here that the State authorities cannot stop the appellant from carrying out his business, but in the present case the State does have the authority not to permit sale, in which the State is providing subsidy, through any person or dealer who is unable to ensure proper after-sale service to the beneficiaries, since the equipments supplied on subsidy presupposes that it is meant for weaker sections to whom equipments are supplied by providing financial support by the State in the shape of subsidy. Thus, the decision of the authorities to direct the appellant not to sell any Power Tiller or agricultural equipments which are subsidized by the State, in our considered opinion, is not unreasonable or arbitrary. The issue with regard to blacklisting and lodging of FIR have only been indicated as a future recourse in the order dated 21.01.2014 but neither pleaded nor under challenge in the writ.

In view of the discussions made hereinabove and taking an overall view in the matter, we do not find any error either in the order passed by the authority or the view taken by the learned single Bench dismissing the writ petition.

Accordingly, the Letters Patent Appeal stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J *I agree.*

(Hemant Gupta, J)

Anjani/-
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