

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8702 of 2016

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1. Vijay Kumar S/o Munsii Lal Yadav R/o Rambagh College Road, Rambagh, District - Purnea.
 2. Kumar Sanjay S/o Shiv Shankar Prasad R/o Chopra Ramnagar, P.S. - Jankinagar, District - Purnea.
 3. Anil Kumar Singh S/o Naresh Pd. Mahto R/o Musahari Tola, Masuria, P.S. - Sarsi, District - Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Department, Government of Bihar, Patna.
3. The Director, Mid Day Meal Scheme, Patna, Bihar.
4. The District Magistrate, Purnea.
5. The District Programme Officer (Mid Day Meal) Purnea, District - Purnea.
6. The District Programme Officer (Establishment), Purnea.
7. The District Education Officer, Purnea.
8. The Sub Divisional Education Officer cum District Incharge Mid Day Meal Scheme, Purnea.
9. Akhilesh Kumar Verma, Bihar State Mid day Meal Yojna Samiti Purnea, District - Parishad Compound, Purnea, PIN - 854301.
10. Sri Ram Mohan Rai, Bihar State Mid day Meal Yojna Samiti Purnea, District Parishad Compound, Purnea, PIN - 854301.
11. Sri Sunni Saurav, Bihar State Mid day Meal Yojna Samiti Purnea, District Parishad Compound, Purnea, PIN - 854301.

.... Respondent/s

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Appearance :

For the Petitioner/s : Dr. Uma Shankar Prasad, Advocate
Mr. Sarveshwar Tiwary, Advocate
Mr. Mira Kumari, Advocate

For the State : Mr. Dhurjati Kr. Prasad- GP-14

For Midday Meal Sch. : Mr. Girijesh Kumar.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

7 28-10-2016

Heard learned counsel for the petitioners and

learned counsels for the State and for the Director, Midday
Meal Scheme. No one appears for the Respondent Nos. 9 to 11
despite service of notice.



In the writ application the petitioners seek quashing of the office order dated 11.4.2016 issued by the District Programme Officer, Purnea with respect to Sl. Nos. 1,3 and 6 by which the respondent Nos. 9,10 and 11 have been selected as Transporting Agent under the Midday Meal Scheme which letter has been issued on the basis of the proceedings of the decision of the Midday Meal Scheme Committee held on 24.2.2016 and for consequential reliefs.

An advertisement was published in local newspaper on 4.2.2016 for transporting the food grains from the godown of State Food Corporation to the schools under the Midday Meal Scheme in the 14 blocks of the District. The conditions of eligibility were stated in the advertisement. It was further stated therein that all qualifications being the same the contractors who had earlier performed satisfactory work would be given benefit and their contract would be extended for one year. Pursuant to the same the petitioners and others applied.

All the three petitioners were working in the district from before for a period of three years upon extension being granted on yearly basis and their work has been found to be satisfactory.

All the three petitioners applied against three



different blocks of the District against the said advertisement and the respondent nos. 9 to 11 also applied for those very same blocks separately. The proposals of the Contractors after scrutiny were placed before a Committee formed under the Chairmanship of the District Magistrate, Purnea on 29.3.2016 and the said Committee made evaluation on the basis of documents such as number of vehicles, number of trailer, Tax Token, Fitness Certificate, Insurance Certificate, Permit Certificate and Pollution Certificate. On the basis of the same the respondent Nos. 9 to 11, having obtained more marks than the petitioners have been appointed.

Learned counsel for the petitioners submits that the procedure adopted by the respondents is unknown and unheard of in any of the districts of the State and a unique procedure has been adopted just to oust the petitioners from the race. It is submitted that there is neither any such marking system mentioned in the advertisement nor it is being followed anywhere in the State. It is further submitted that all the petitioners were fully eligible under the terms and conditions of the advertisement as also the scheme of the Government and therefore, they could not have been ousted from the tender process on the ground that they had obtained less marks on the

basis of arbitrary procedure fixed by the District Committee.

It is also submitted that the petitioners were equally eligible as the respondent Nos. 9 to 11 in terms of the admitted criteria and in the said circumstances in terms of the advertisement primacy should have been given to the petitioners because they had been working from before and their work has been found to be satisfactory.

Learned counsel for the State, on the other hand, submits that under Clause (ix) of the circular letter dated 25.4.2011 issued by the Director, Midday Meal Scheme, Bihar it is provided that if in the current financial year the work of the contractor is found to be satisfactory then such contractors on the basis of the decision of the Committee and after getting approval of the District Magistrate have their period extended by one year. It is however, submitted that by a further circular letter dated 12.4.2013 issued by the Director, Midday Meal Scheme, the said provision has been clarified that extension can only be granted for one year at a time for a maximum period of three years and if a contractor has completed three years of work then the new contractors should be selected after following the procedure prescribed for the same. On the strength of the said circular, learned counsel for the State



submits that the petitioners were not entitled to any further benefit on the basis of their past work and they could only be treated at par with the other persons who had applied and in view of the marking system adopted, the petitioners had rightly not been given the contract for the current financial year although they may have been otherwise eligible as the respondent Nos. 9 to 11 were found to have obtained higher marks than the petitioners.

In view of the aforesaid dispute between the parties, this Court directed the Director, Midday Meal Scheme, to file an affidavit personally sworn by him as to whether any such practice as has been adopted in the Purnea District this time is being followed uniformly in all the districts of the State or not. In the affidavit filed by the Director, Midday Meal Scheme, it is stated that the procedure for the selection of contractors has been laid down by the circular letter dated 25.4.2011 followed by another circular letter dated 12.4.2013 and it has been clearly provided that if the contractors who had worked for three years under the scheme then further extension should not be given and process for selection for appointment of new contractors should be initiated. It is further stated by the Director, Midday Meal Scheme, that the marking system



adopted for the selection of the contractors under the Midday Mal Scheme is inconsistent with any instructions given by the Director from time to time and the District Committee, Purnea has followed its own procedure for selection of the contractor and for the use of such marking system no instruction has been given by the respondent No.3, the Director.

In view of the aforesaid Government Circulars and the clear stand of the Director, Midday Meal Scheme, it is evident that so far as the marking system adopted in Purnea district for the selection of Contractors is concerned, the same is not in accord with the practice and procedure as directed by the Director, Midday Meal Scheme and the same therefore will have to be held to be arbitrary and discriminatory. The relevant circulars dated 25.4.2011 and 12.4.2013 lay down the criteria in the matter and following the same even the condition put in the advertisement that all parameters being the same the previous contractor would be given primacy is contrary to the clear direction issued by the Circular letter dated 12.4.2013 that under no condition the contractor can be continued for more than three years on the basis of extension. Such contractor would thereafter stand on the same footing as any other person applies for the same.



Thus, no benefit can be taken by the petitioners with regard to the fact that they had been working from before satisfactorily nor any reliance can be placed upon the condition wrongly put in the advertisement contrary to the policy laid down by the Director, Midday Meal Scheme with regard to primacy or priority to be granted to previously working contractors.

It is however, evident that the selection of Respondent Nos. 9, 10 and 11 under the system of marking adopted is contrary to the State level policy and the same is accordingly quashed. Since the petitioners and the said respondents were all found eligible in terms of the conditions laid down, the proper step for the respondents should have been to decide the person to be selected by draw of lots for each of the block concerned.

The writ application is, accordingly, partly allowed and the impugned office order dated 11.4.2016 in so far as it relates to the selection of respondent Nos. 9, 10 and 11 as contractors for the blocks in question is quashed and it is directed that the petitioners and the said respondent Nos. 9, 10 and 11 shall be selected for the blocks in question through the process of draw of lots.

The Respondent Nos. 9, 10 and 11 however, may continue to do the work until the fresh appointments are made which must be made within a period of two weeks from today for which the respondents shall not wait for the certified copy of the order but shall be informed about the same by learned Government Pleader No.14.

(Ramesh Kumar Datta, J)

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