

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16726 of 2017

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1. Narendra Kumar Singh, S/o. Late Baijnath Singh, resident of Mohalla- Gauraxani, P.O. & P.S.- Sasaram, District- Rohtas.
2. Sandeep Kumar Singh, S/o. Vijay Bahadur Singh, resident of Village- Basini, P.O.- Nauhata, P.S.- Karamchat, District- Kaimur.
3. Dharmendra Kumar Singh, S/o. Kamta Rai, resident of Village & P.O.- Muradabad, P.S.- Sasaram, District- Rohtas.

.... Petitioners

Versus

1. The Bihar State Food & Civil Supplies Corporation Ltd. through its Managing Director, Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, District- Patna- 800001.
2. The Managing Director, Bihar State Food & Civil Supplies Corporation Ltd., Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, District- Patna- 800001.
3. The Chief of Administration, Bihar State Food & Civil Supplies Corporation Ltd., Khadya Bhawan, Daroga Rai Path, R. Block, Road no.- 2, District- Patna- 800001.
4. The Chief of Transportation, Bihar State Food & Civil Supplies Corporation Ltd., Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, District- Patna- 800001.
5. The District Manager, Bihar State Food & Civil Supplies Corporation Ltd., Rohtas at Sasaram, P.O. & P.S.- Sasaram, District- Rohtas.
6. The District Magistrate-Cum-Chairman of District Transport Committee, Rohtas at Sasaram, P.O. & P.S. Sasaram, District- Rohtas.

.... Respondents

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Appearance:

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| For the Petitioners | : | Mr. Vinod Kanth, Senior Advocate
Mr. R.S. Pradhan, Advocate |
| For the Resp. No. 1 & 6 | : | Mr. S.Raza Ahmad –AAG 5
Mr. Alok Ranjan, AC to AAG 5 |
| For the Resp. No. 2 to 5 | : | Mr. Harish Kumar, Advocate |

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-01-2018

The present writ petition has been taken up out of turn on the request of the petitioners, stating that the impugned fresh tender is scheduled to be opened at 4.00 p.m. today which would render the



writ petition infructuous.

I.A.No.8271 of 2017

2. This Interlocutory Application has been filed for adding certain reliefs in the writ petition as follows :

- i) For issuance of further appropriate writ/writs, order/orders, direction/directions to quash the letter dated 11.11.2017 contained in Annexure P-15 by which fresh tender notice has been issued directing publication in two Newspapers, insofar as appointment of Main Transporting-cum-Handling Agent mentioned at item "Ka" of the said tender notice.
- ii) For issuance of appropriate writ/writs, order/orders, direction/directions restraining the respondents from taking steps on the basis of the tender notice dated 11.11.2017 contained in Annexure P-15 as the petitioners have already challenged Annexure P-5 the order of respondent no. 6 in the main writ petition.

3. Having regard to the nature of prayer, I.A. No. 8271 of 2017 is allowed and treated as forming part of the writ petition.

CWJC No. 16726 of 2017

4. The present writ petition has been filed for allowing



extension of the period of contract/transporting and handling work for a period of two years from the date of expiry of its original period as provided in terms and conditions of the agreement particularly in Clause 14 of the agreement entered into by the petitioners with the Bihar State Food & Civil Supplies Corporation Ltd., Patna (hereinafter called as “the Corporation”) through its District Manager, Bihar State Food & Civil Supplies Corporation Ltd., Rohtas; for a direction to the respondents to consider the satisfactory performance of transporting and handling work of the petitioners for all the three years for the contract period which entitles them for getting extension for further two years on the same terms and conditions; for restraining the respondents particularly respondent no. 6 from inviting fresh tenders and further to quash the said direction for issuance of advertisement vide order dated 30.08.2017 for the same work which the petitioners have been doing since 2014; to abide by the resolution of the District Transport Committee held on 19.08.2017 wherein it was originally decided to extend the period of contract of these petitioners for a further period of two years, but unfortunately, the period of two years have been cut and in place of that it has been written that till appointment of new transporting and handling agent; and for connected reliefs.

5. Mr. Vinod Kanth, learned Senior Counsel appearing on behalf of the petitioners submits that the respondents have acted



arbitrarily in not extending the agreements dated 12.09.2014 entered into between the parties for transporting and handling works by the petitioners, though the petitioners were entitled for extension of two years in terms of Clause 14 of the agreements. It is pointed out that the District Transport Committee in the minutes of its meeting dated 19.08.2017 found the work of the petitioners to have been satisfactory and accordingly recommended for extension of the period of contract. However, the period of extension of two years, was struck off in the minutes and in its place, the extension was recommended until the appointment of a new handling and transporting agent was made. It is therefore, submitted that even though the petitioners were entitled for extension of two years of the contract, such extension has been restricted only upto the time when a new transporting and handling agent was appointed, in terms of the impugned order dated 30.08.2017 which provided for issuance of a fresh N.I.T. for the purpose (Annexure P-5).

6. Learned counsel for the respondents on the other hand opposes the writ petition, submitting that the recommendation for a period of two years was struck off by way of correction and the period of extension was provided until appointment of a new transporting and handling agent, which was done in the ordinary course while recording the minute of the meeting of the District Transport Committee dated 19.08.2017. This has accordingly been



given effect to in terms of the order dated 30.08.2017(Annexure P-5) by which a new tender has been directed to be advertised and subsequently duly issued under memo no. 1187 dated 11.11.2017 (Annexure P-15).

7. Having heard the parties and on a consideration of the materials on record, this Court does not find merit in the writ petition.

8. For proper appreciation of the claim of the petitioners, Clause 14 of the agreement may be reproduced hereunder –

“14. The agreement shall remain in operation for the period of three years from the date of execution of the agreement or allotment of work. This may be extended by mutual consent for a further period of two years or may be terminated earlier than the period mentioned above on behalf of the First Party in case of non-lifting of grain, sugar, edible oil etc. During the specified period if there is any breach of any of the terms of the agreement by the second party the agreement may be terminated and blacklisted as well as debarred for future transportation work, security deposits will be forfeited and Bank guarantee of 10 lacs (ten lacs only) will be utilized and encashed at once by the First party. The responsibility of the second party shall to cease with the termination of the agreement unless he has redelivered the grains, sugar, edible oils etc., entrusted to him and rendered complete accounts thereof to the satisfaction of the First Party.

The terms of agreement and contract for transporting and handling work can be extended for another period of



two years on the recommendation of District Transport Committee, if the work of the Second Party is found satisfactory and the recommendation of the District Transport Committee reaches Corporation Headquarters two months before expiry of the agreement and as per guidelines issued by the Corporation from time to time in that regard.”

9. A perusal of the aforesaid Clause 14 of the agreement, it would transpire that the extension of the contract period by two years is not automatic, rather the same is contemplated upon mutual consent of the parties, subject to recommendation of the District Transport Committee upon the work of the petitioners being found satisfactory and such recommendation reaching the Corporate Headquarters two months before the expiry of the agreement. A perusal of the minutes of the meeting however shows that ‘the recommendation for a period of two years’ had been struck off and substituted with the period ‘until appointment of a new transporting and handling agent’. Such correction has duly been initialled, apart from the fact that there are other corrections made in the minutes of the proceedings. It is not the case of either party that such corrections have been manipulated or made unauthorizedly. None of the five members constituting the District Transport Committee appears to have raised any objection in this regard rather the minutes have been given effect to in the impugned order dated 30.08.2017 (Annexure P-5), copies whereof have also



been circulated to almost all the members of the District Transport Committee. The authenticity of the words struck off/inserted in the minutes therefore, prima facie, does not appear to be doubtful. As a result therefore, it cannot be said that the District Transport Committee had made any recommendation for extension of the agreement for a period of two years and hence the pre-condition of Clause 14 of the agreements do not stand fulfilled. Even otherwise, the recommendation of the District Transport Committee was merely a pre-condition for consideration of extension of the contract for two years. However, such recommendation cannot be treated as a binding on the District Manager, BSFC, Rohtas as in that event the question of mutual consent would not arise as contemplated under Clause 14 of the agreements. In other words, even assuming there were recommendation for two years extension it is still be open to the District Manager of the respondent-Corporation to not accept such recommendation for valid reasons.

10. In the above circumstances, this Court is not inclined to interfere in the matter. The writ petition stands dismissed.

11. At this stage, learned Senior Counsel for the petitioners makes an oral prayer that the petitioners may be permitted to participate in the tender, in case the petitioners have purchased the tender papers within the stipulated time under the fresh tender notice (Annexure P-15).



12. This Court is not inclined to accede to such prayer either. Apart from the fact that it has not been stated with any certainty whether or not the petitioners have at all purchased the tender papers and assuming that they have done so, nothing prevented them from participating in the tender, more so when time for submission of the tender papers is still available till 3.00 p.m. today. Merely approaching this Court by filing a writ petition cannot come to the rescue of the petitioners who have chosen to take a calculated risk and have finally failed to obtain any relief from this Court on merits.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	N.A
Uploading Date	03.01.2018
Transmission Date	N.A.

