

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.62 of 2018
IN
Civil Writ Jurisdiction Case No. 679 of 2017**

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1. Gurpreet Singh, Son of Late Amarjeet Singh, Partner of M/S United Manufacturing Company, Plot No. 191-192, Udyog Bihar, Delhi, Rohtak Road, Sankhaul, Bahadurgarh, District-Jhajhar, State-Haryana.

2. Raj Kishore, Son of Late Ganesh Lal, Managing Director of M/S Shri Ganesh Fire Equipments Pvt. Ltd., D-4 E.P.I.P. Industrial Area Hajipur, District-Vaishali.

.... Appellant/s

Versus

1. The State of Bihar.

2. The Principal Secretary, Home (Police) Department, Government of Bihar, Patna.

3. The Director General of Police, Government of Bihar, Patna.

4. The Director General-Cum-Commandant General, Home Guard and Fire Services, Bihar, Chhajubagh, Patna-800001.

5. Dr. Paresh Saxena, I.G.-Cum-Additional Commandant General, Home Guard and Fire Services, Bihar, Chhajubagh, Patna 800001.

6. The D.I.G.-Cum-Deputy Commandant General, Home Guard and Fire Services, Bihar, Chhajubagh, Patna 800001.

7. State Officer-Cum-Director, Bihar Fire Services, Budhmarg, Patna-800001.

8. M/s Ambala Coach Builders a partnership firm Hissar Road, P.O. + P.S.- Ambala City (Sadar), Ambala City Haryana through it's Power Attorney holder namely Kamaldeep Singh, S/o Shri Ravinder Singh Bindra, R/o H.N. 1350/6, Talkies Road, Ambala City (Haryana).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bishnu Kant Dubey, Adv.

For the Respondent/s : Mr. P.K. VERMA -AAG3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 02-05-2018

The original writ-petitioners being unsuccessful in their pursuit to persuade the learned Single Judge to quash the order/letter bearing No.4340 dated 22.12.2016 issued under the signature of Deputy Inspector General-cum-Deputy Commandant General, Home Guard and Fire Services, cancelling the tender



published by the Department bearing Tender No.01/2016-17, has moved in this intra- Court appeal before us.

2. Challenge in this appeal is to the judgment dated 22.12.2017 passed by the learned Writ Court in C.W.J.C No.679 of 2017 by which upon consideration of all the submissions made on behalf of the parties, the learned writ Court rejected the contention of the writ petitioners that the contract, in question, was concluded and the decision of the Central Purchase Committee to cancel the tender and to go for a fresh tender was a result of mala fide exercise of power on the part of Dr. Paresh Saxena (respondent no.5).

3. As the facts reveal, the Department of Bihar State Fire Services Home (Police) floated a tender bearing No.1 of 2015-16 for fabrication of 240 vehicles. M/s United Manufacturing Company had participated in the said tender and was declared disqualified by Technical Evaluation Committee. An objection was lodged on behalf of M/s United Manufacturing Company, the same was considered and it was decided by the Department to withdraw the earlier tender and to go for a fresh tender. Accordingly, a fresh tender no.1 of 2016-17 was published vide Annexure-1 to the writ application. It is not in dispute that altogether seven contestants submitted their tender papers out of which six were declared successful in the technical bid stage but after demonstration which was a part of technical bid petitioner nos.1 and 2 were only declared successful. They had quoted the financial bid at a price of Rs.5,49,000/- and Rs.5,45,000/- respectively. They were declared successful at the technical bid stage (part 1) and thus were asked to furnish guarantee/warranty which they accordingly did vide their letters as contained in Annexure-5 series to the writ application. A communication showing that the petitioners were declared successful was made



vide letter dated 16.09.2016 (Annexure-6), the date for opening was 19.09.2016 and the petitioners were asked to furnish the reasons to offer the bid which the petitioners did vide their letter dated 19.09.2016 (Annexure-7). After the financial bid was opened and the rate quoted by the two petitioners were found at Rs.5,45,000/- and Rs.5,49,000/- respectively, the Department called upon them for negotiation and finally the petitioners agreed to carry out the work of fabrication at Rs.5,20,000/-. The negotiation and the rate agreed by the petitioners formed part of the proceeding dated 19.09.2016, as contained in Annexure-E to the counter affidavit. The Central Purchase Committee of the Department thereafter decided to allot the work between both the petitioners in the ratio of 50:50.

4. It appears that M/s Ambala Coach Builders (respondent no.8) was one of the participants in the tender but had not been declared successful at the technical bid stage. Respondent No.8 filed letter dated 10.10.2016 addressed to the Director General, Home Guards and Fire Services, Bihar, Patna, lodged a protest against the open price bid of mini water tender vehicle and requested for cancellation of tender. In its objection respondent no.8 stated that the demonstration of mini fire tender carried out by the nominated team was totally objectionable as it was one sided and moreover, not properly checked. It was submitted that the price bid was opened of only two candidates who have no good reputation which may be confirmed from all leading Fire Organizations of India. It was brought to the notice of the authority concerned that the prices quoted by both the firms are in very higher side in comparison to the other firms whose price bids were not opened by the committee and due to it there is a net loss of more than Rs.2 Crores to the State exchequer.



5. On receipt of the objection from respondent no.8, Dr. Paresh Saxena (respondent no.5) who was I.G-cum-Additional Commandant General, Home Guard and Fire Services, Bihar, Patna, was entrusted with a duty to give his report with regard to the work order having been given to the petitioners in 50:50. Dr. Saxena (respondent no.5) looked into the complaint and in order to test the veracity of the allegations he called for a copy of the agreement from Himachal Pradesh of the similar work wherein he found that M/s Ambala Coach Builders (respondent no.8) had made fabrication work of the vehicle for Rs.3,81,000/- each. Strengthened by the copy of the agreement received from Himachal Pradesh, Dr. Saxena (respondent no.5) in his office note addressed to the Central Purchase Committee reported that the tender process had vitiated the rate quoted by the petitioners were much more than the rate on which vehicle fabrication work is being done in Himachal Pradesh and it was also found that de-hors to the tender conditions the work has been allotted in the ratio of 50:50. He raised doubt on the two petitioners forming a cartel because their rates were also found nearer to each other and both of them agreed for the same rate in course of negotiation.

The report of Dr. Saxena (respondent no.5) was placed in the meeting held on 28.11.2016, on a detailed discussion and deliberation when the Central Purchase Committee found that M/s Ambala Coach Builders has done fabrication work in the State of Himachal Pradesh at Rs.3,81,000/-, the award of work at Rs.5,20,000/- to the present petitioners would cause unnecessary loss to the State to a total sum of Rs.2.68 crores, the Central Purchase Committee decided to withdraw its recommendation which was earlier given in favour of the petitioners and recommended for fresh advertisement. In the light of the decision taken by the Central Purchase Committee in its meeting held on 28.11.2016, the



D.I.G-cum- Deputy Commandant wrote a letter dated 07.12.2016 (Annexure-B) to the Principal Secretary, Home Department, mentioning therein that Hindustan Technology Ltd. and M/s Ambala Coach Builders have offered to execute the work below Rupees One Lakh of the price quoted by the petitioner, therefore, in that situation the Central Purchase Committee had decided to withdraw its recommendation and has recommended for fresh advertisement.

6. Before the learned writ Court the petitioners raised a lot of grounds against the report submitted by Dr. Saxena (respondent no.5). The petitioners submitted that respondent no.5 is the person responsible for creating the chaos and he had wrongly quoted in his office note that M/s Ambala Coach Builders in its complaint had mentioned that they had done fabrication work in Himachal Pradesh for Rs.3,81,000/-. It was alleged that respondent no.5 gave a wrong impression in his office notes. It was alleged that respondent no.5 had prepared a wrong note for consideration before the Central Purchase Committee in its meeting convened and held on 28.11.2016. It was also submitted that the nature of fabrication work in Himachal Pradesh was inferior in quality which can be verified by making a comparative study and the petitioners offered justification of quotation of Rs.5,20,000/- for the specification of work involved in the present tender.

7. It was also one of the submissions of the petitioners that the Central Purchase Committee having already recommended the allotment of work in favour of the petitioners cannot resile from its commitment as the parties had already agreed to the terms and conditions in the negotiation held for this purpose, the price was already finalized and a mere formality was to be done by way of signing of an agreement. Thus, the case of the petitioner was that the contract in



the present case is in the realm of a concluded contract. Reliance in this regard was placed on the judgments of the Hon'ble Apex Court in the cases of **Rasiklal Dalpatram Thakkar Vs. State of Gujarat & Ors.** reported in (2010) 1 SCC 1, (Para 49 and 60), **M/S Rickmers Verwaltung Gimb H Vs. Indian Oil Corporation Limited** reported in AIR 1999 SC 504 (para 12) and **M/s R.R.Company v. The State of Bihar**, reported in 2017 (1) PLJR 202.

8. The petitioners alleged that the entire action of the respondent is only illegal, actuated by malafide and with sole object to accommodate M/s Amabal Coach Builders (respondent no.8), therefore, the action of the State is not fare and it strikes at the root as it violates Article 14 of the Constitution of India. It was the contention of the petitioners that it is a fit case for judicial review in order to strike down an illegal act of the State. Reliance in this regard was placed on the judgments of the Hon'ble Apex Court in the cases of **Ramma Dyaram Shetty v. The International Airport Authority of India and others**, reported in AIR 1979 SC 1628 (para 11,12,21,22 and 34), **Tata Cellular v. Union of India**, reported in (1994) 6 SCC 651, **M/s R.R.Company v. The State of Bihar** reported in 2017 (1) PLJR 202, **Karnataka State Forest Industries Corporation v. Indian Rocks**, reported in (2009) 1 SCC 150 (para 38 and 39).

9. The submissions made on behalf of the writ petitioners were strongly contested on behalf of the State and the private respondents. On the direction of the learned writ Court the respondent State produced the original records wherein the notes were written by Dr.Saxena (respondent no.5) and the decisions were taken by the Central Purchase Committee. On the strength of what appeared from the records, the respondent State and the private respondents had a common plea that in the present case even though recommendation was made by



the Central Purchase Committee to allot the entire work in the ratio of 50:50 in favour of the two petitioners at the rate of Rs.5,20,000/- each vehicle but immediately, thereafter, on receipt of the complaint when it was found that the State exchequer was likely to incur a huge loss because of the high rates quoted by the petitioners and on being satisfied that the objection raised on behalf of the private respondent has got substance the Central Purchase Committee decided to recall its earlier recommendations and recommended for fresh tender. It was the submission of the respondents that the scope and interference in judicial review in the contract matter has to be understood in the light of the judgments of the Hon'ble Apex Court wherein it has been stated times and again that the Court does not seat as a Court of appeal while considering a case of judicial review in contract matters.

10. The learned writ Court examined the original records received from the office of the State Department, took note of the report prepared by Dr. Saxena (respondent no.5), quoted the same in the impugned judgment and upon consideration of the entire materials available on record found that the plea of malafide against Dr. Praesh Saxena is baseless and not substantiated from the records. The learned writ Court found that Dr. Praesh Saxena was neither a member of the Technical Evaluation Committee nor he was member of the Central Purchase Committee and, therefore, he had no role to play in the matter of decision making. It was found that Dr. Paresh Saxena had done only his official duty and the allegations against him are made only on wrong premises. The learned writ Court was satisfied that in the facts and circumstances pleaded before the Court there was no reason to interfere with the decision of the Central Purchase Committee. Since the parties had not entered into an agreement and the



work order was also not issued, the learned writ Court refused to accept the plea of the petitioners that it was a case of concluded contract.

11. In appeal before us, learned counsel representing the original petitioners has once again reiterated the submissions which were made before the learned Single Judge. It is the submissions of the appellants that the learned writ Court was required to exercise its power of judicial review in terms of the law laid down by the Hon'ble Apex Court and because in this case the decision of the respondents authorities is arbitrary, malafide and violative of Article 14 of the Constitution of India, the writ Court could have interfered with such decisions which are in the nature of doing injustice against the petitioners. It was also submitted that the respondent no.5 was interested in giving the work to his favorite person/firm and he had prevailed upon respondent, the D.I.G.-Cum-Deputy Commandant General, Home Guard and Fire Services, in successfully lingering the matter and also making the file with respect to the bidders. It is submitted that respondent no.5 had given his opinion for cancellation of tender without their being any cogent and reasonable ground for the same. It is submitted that the negotiated rate was accepted and the offer to work in the ratio of 50:50 was also accepted at the request of the respondent, Central Purchase Committee, considering the excessive work for maintaining the conditions of the purchase of chassis and, therefore, no fault may be found with the division of the work done between the two petitioners.

12. On the other hand, learned counsel representing the respondents submits that during the pendency of the writ application a fresh tender was floated by the State respondent and these petitioners had also participated in the fresh tender without keeping their right reserved to challenge



the decision of the Central Purchase Committee recalling its recommendation for allotment of work in favour of the petitioners, therefore, the petitioners having participated in the fresh tender and upon being declared unsuccessful cannot be allowed to go back and challenge the decision of the Central Purchase Committee taken on 28.11.2016. The Court has been informed that in the fresh tender respondent no.8 has been declared successful and the learned writ Court has noticed this fact that respondent no.8 became the lowest tenderer in the fresh tender. It is submitted that the writ Court has rightly come to a conclusion that it is a case of unconcluded contract because no agreement was signed between the parties and the work order was not issued in favour of the petitioners. The plea of malafide, according to the respondents has rightly been rejected by the learned writ Court after a threadbare discussions of the materials available on record.

13. Having heard learned counsel for the appellants as well as learned counsel representing the respondents and upon perusal of the records we find that the petitioners had basically taken two arguments before the learned writ Court. The first argument of the petitioners-appellants was that the respondent no.5 had been acting with malafide intention to favour respondent no.8 and while preparing his note to be placed before the Central Purchase Committee, he had given misleading facts as about the agreed amount on which respondent no.8 had been doing the fabrication work in the State of Himachal Pradesh. It has been submitted that respondent no.5 was acting with colourable exercise of power to help respondent no.8. We find that the learned writ Court has gone into the entire records which were produced before it by the said respondents. The office note recorded by respondent no.5 has been quoted in the impugned judgment. The respondent no.5 does not seem to have anywhere misquoted or misled any aspect



of the matter in his note which was placed before the Central Purchase Committee. The fact that in Himachal Pradesh a similar nature of work was undertaken by respondent no.8 at the rate of Rs.3,81,000/- per vehicle and while participating in the present tender also respondent no.8 had quoted a rate of at least Rs.1 Lakhs less than the negotiated rate of Rs.5,20,000/- are not under challenge. If these facts are undisputed, the plea of malafide is definitely baseless and cannot be entertained. The learned writ Court has taken note of the fact that Dr. Saxena (respondent no.5) had no role to play in the decision making as it was the recommendation of the Central Purchase Committee and he was not a member of the Central Purchase Committee.

14. In our considered opinion, the principles of judicial review which have been discussed by the learned writ Court based on the pronouncements of the Hon'ble Apex Court are no longer res integra. In a dispute of the present nature where the Central Purchase Committee consisting of the expert members on the subject has found that a similar nature of work was undertaken in the State of Himachal Pradesh at the rate of Rs.3,81,000/- per vehicle and, therefore, allotment of work in this State at the rate of Rs.5,20,000/- per vehicle would be highly expensive and shall result in huge loss to the State exchequer, this Court does not find any reason to take any other view or to place its opinion over the decision of the Central Purchase Committee. Principles of judicial review clearly provides that only in cases where the government acts arbitrarily and unreasonably and its action is found to be in violation of Article 14 of the Constitution of India then only writ applications may be entertained to undo the arbitrary and unreasonable decisions. In the present case we find that the agreement in question was not signed between the parties and the work orders



were yet to be issued, in the meantime the complaint was received and thereafter on the basis of the report received from respondent no.5 the Central Purchase Committee discussed and deliberated the matter in its meeting held on 28.11.2016. Taking into consideration the entire materials a decision was taken to recall the earlier recommendations made by the Central Purchase Committee and to recommend for floating of a fresh tender, in our considered opinion there is no element of arbitrariness in the decision making process of the Central Purchase Committee, no fault may be found with the decision taken by the committee in such circumstance and, therefore, the writ Court has committed no error by refusing to interfere with the decision of the Central Purchase Committee.

15. We are not impressed with the submissions of the learned counsel representing the appellants for the reasons mentioned above.

16. The Letters Patent Appeal has no merit and is, accordingly, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	NAFR
CA V DATE	N/A
Uploading Date	17.05.2018
Transmission Date	N/A

