

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16598 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

Versus

1. The Food and Consumer Protection Department through Its Principal Secretary, Bihar at Patna.
2. The State of Bihar through District Magistrate-cum-Chairman-District Transport Committee, District Bhojpur (Ara).
3. The Bihar State Food and Civil Supplies Corporation Limited through its M.D. Bihar at Patna.
4. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Bhojpur (Ara) District Bhojpur (Ara).
5. The District Transport Committee Bhojpur (Ara), District Bhojpur (Ara).
6. The Deputy Chief Transport, Headquarter, Patna, Bihar State Food and Civil Supplies Corporation, Bihar at Patna.
7. The Chairman District Transport Officer, Bhojpur (Ara), District Bhojpur (Ara).
8. Champion Group of Companies represented through Amit Kumar Singh, Divyalok Complex, 23 Floor, East Boring Road, P.S.- S.K. Puri, District Patna,.
9. Dilip Kumar Singh Son of Baban Singh resident of Station Road, P.S Buxar Town, District Buxar.
10. Ranjeet Kumar, Son of late Arun Kumar Resident of Mohalla- Patel Nagar, P.S. - Biharsharif, District Nalanda.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 1298 of 2017

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Suman Kumar Son of Ramesh Singh Resident of Village- Lodhipur, Chipi Tola,
Hajipur, P.S.- Hajipur Nagar, District- Vaishali.

.... Petitioner

Versus

1. Food and Consumer Protection Department through the Principal Secretary, Bihar at Patna.
2. The State of Bihar through District Magistrate, District Bhojpur (Ara).
3. The Bihar State Food and Civil Supplies Corporation Limited through its M.D., Bihar at Patna.
4. The Deputy Chief of Transport, Bihar State Food and Civil Supplies Corporation, Head Quarter, Bihar at Patna.
5. District Manager, the Bihar State Food and Civil Supplies Corporation Limited, Bhojpur (Ara), District Bhojpur (Ara).
6. The Officer-in-Charge, Bihia, P.S. Bihia, District- Bhojpur at Ara.

.... Respondents

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Appearance :
(In CWJC No.16598 of 2016)



For the Petitioner : Mr. Sumeet Kumar Singh
Mr. Satyendra Pd. Singh,
Mr. Abhiprav Singh, Advocates
For the Respondents : Mr. Arvind Ujjwal-SC4
For respondent-BSFC : Mr. Shailendra Kumar Singh, Advocate
(In CWJC No.1298 of 2017)
For the Petitioner : Mr. Sumeet Kumar Singh
Mr. Satyendra Pd. Singh,
Mr. Abhiprav Singh, Advocates
For the Respondents : Smt. Namrata Mishra-GA6
Mr. Alok Ranjan, AC to GA 6
For respondent-BSFC : Mr. Shailendra Kumar Singh,
Mr. Manish Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 18-01-2018

CWJC No.16598 of 2016

At the very outset, learned counsel for the petitioner states that CWJC No. 16598 of 2016 challenging the letter no. 1566 dated 17.09.2016 whereby the work of the petitioner has been divided among four persons and for the connected reliefs, need not be pressed.

2. Accordingly, the writ petition, namely, CWJC No. 16598 of 2016, shall stand dismissed.

CWJC No.1298 of 2017

3. The present writ petition has been filed for the following reliefs –

“(i) That the present writ application is being filed for issuance of an appropriate writ order/direction(s) in the nature of Certiorari for quashing the order dated 19.01.2017 (Annexure-9) passed by the Managing Director, B.S.F.C., respondent no. 3 by which the Managing Director has been pleased to cancel the



agreement dated 12.04.2016 (Annexure-2), debar the petitioner from participating for next five years, the security deposit of Rs. 7 lacs and bank guarantee of Rs. 10 lacs is seized, the vehicle given by the petitioner in the agreement which are owned by him are barred to be used in the transportation of the B. S.F.C.

(ii) That the present writ application is being filed for issuance of an appropriate writ order/direction (s) in the nature of Certiorari for quashing the order dated 19.01.2017 (Annexure-9); on the ground that the show cause notice has been served by the Deputy Chief of Transport, Head Quarter but the final order has been passed by the Managing Director which is violation of the principle of natural justice, also on the ground that the terms and condition as stated in Annexure-9 are neither the part of the tender notice nor the same is part of the agreement, also on the ground that the order passed by the M.D., B.S.F.C. is without appreciating the reply of the petitioner etc;

(iii) That the present writ application is being filed for issuance of an appropriate writ order/direction (s) in the nature of Mandamus for a direction to the M.D., B.S.F.C., respondent no. 3 and the District Manager, B.S.F.C. Bhojpur at Ara, respondent no. 5 to continue the work/agreement for the period as the main transporter in the District of Bhojpur (Ara);

(iv) And pass any other order(s) as this Hon'ble Court may deem fit and proper."

4. Learned counsel for the petitioner raises two main grounds to assail the impugned order dated 19.01.2017 (Annexure-9),



namely, (i) that the show cause notice dated 20.10.2016 (Annexure-5) raised the allegation with regard to the black-marketing of rice against the petitioner whereas the impugned order traveled beyond the same and it appears that the concerned authority took the view that the petitioner failed to deliver the goods to the appropriate destination within time; and (ii) that the basis for passing the impugned order is the reliance upon Clauses 10 (vii) and 11 (xxxix) as narrated therein which are however non-existent as evident from the terms and conditions of the tender dated 05.02.2016 (Annexure-1).

5. Learned counsel for the respondent-State as well as the Corporation appear and have been heard. It is pointed out that as a matter of fact, the impugned order has no doubt mentioned the fact of non-delivery of the goods to the appropriate distinction within the appropriate time by the petitioner but however it has clearly been observed therein that the fact of non-delivery of the goods discloses and corroborates the allegation of black-marketing and hence, the action was being taken in terms of Clauses 10(vii) and 11(xxxix), as referred to in the impugned order. The challenge to the existence of the very terms and conditions of Clauses 10(vii) and 11(xxxix), however, has not been addressed in the counter affidavit.

6. In the above view of the matter, therefore, this Court is of the view that the very basis and foundation for passing the impugned order by placing reliance upon Clauses 10(vii) and 11(xxxix) of the



terms and conditions of the tender are of doubtful matter as the respondents have failed to bring the same on record despite being required to do so, and it is on the strength of these Clauses alone that the impugned order has been passed. The same accordingly cannot be sustained.

7. Accordingly, the impugned order dated 19.01.2017 (Annexure-9) is hereby quashed and the matter is remanded to the Managing Director, Bihar State Food & Civil Supplies Corporation Limited (respondent no. 3) to take a fresh decision in the matter in accordance with law after grant of appropriate opportunity of hearing to the petitioner.

8. Learned counsel for the respondent-Corporation expresses that all the attempts would be made to pass fresh orders, as required above, within a period of three weeks from the date of receipt/production of a copy of the judgment, subject to the cooperation by the petitioner.

9. The writ petition stands allowed as above. The interlocutory application (I.A. No. 4236 of 2017) also stands disposed of without however considering the merits of the prayer of the petitioner made therein, in view of the petitioner's submission that the issue may be permitted to be raised before the Managing Director of the respondent-Corporation to be considered at the time of taking a fresh decision in terms of the present judgment.



B.T/Chandran

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.01.2018
Transmission Date	N.A.

