

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13230 of 2018

=====

Prabhat Kumar Jaiswal @ Prabhat Kumar, son of Harishankar Prasad Jaiswal,
resident of Mohalla- Raniganj, Ward No. 7, Bara Chakia, P.S. Chakia, District- East
Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Managing Director, Bihar State Food & Civil Supplies Corporation,
Daroga Rai Path, R- Block, Road No. 2, Patna.
3. The Managing Director, Bihar State Road Transport Corporation, Birchand
Patel Path, Patna.
4. The Transport Committee headed by the District Magistrate, East Champaran,
Motihari.
5. The District Magistrate, East Champaran, Motihari.
6. The Deputy Chief, Bihar State Road Transport Corporation, Birchand Patel
Path, Patna.
7. The District Manager, Bihar State Food & Civil Supplies Corporation, East
Champaran, Motihari.

.... Respondent/s

with

=====

Civil Writ Jurisdiction Case No. 13237 of 2018

=====

Ajay Kumar, Son of Yogendra Sah, Resident of Village- Hussaini, P.S.- Kesaria,
District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Managing Director, Bihar State Food & Civil Supplies Corporation,
Daroga Rai Path, R-Block, Road No.2, Patna.
3. The Managing Director, Bihar State Road Transport Corporation, Birchand
Patel Path, Patna.
4. The Transport Committee headed by the District Magistrate, East Champaran,
Motihari.



5. The District Magistrate, East Champaran, Motihari.
6. The Deputy Chief, Bihar State Road Transport Corporation, Birchand Patel Path, Patna.
7. The District Manager, Bihar State Food & Civil Supplies Corporation, East Champaran, Motihari.

.... Respondent/s

Appearance :

(In CWJC No.13230 of 2018)

For the Petitioner/s : Mr. Lal Babu Singh, Adv.

For the Respondent/s : Mr. Arvind Ujjwal- SC4

(In CWJC No.13237 of 2018)

For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.

Mr. Lal Babu Singh, Adv.

For the BSFC : Mr. Shailendra Kumar Singh, Adv.

Mr. Nirmal Kumar, Adv.

For the BSRTC : Mr. P.K. Verma, Sr. Adv.

Mr. Anand Kumar, Adv.

For the State : Mr. Anisul Haque AC to AAG-5

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 27-08-2018

Heard Mr. P.K. Shahi, senior counsel assisted by Mr. Lal Babu Singh for the petitioners, Mr. Shailendra Kumar Singh, advocate assisted by Mr. Nirmal Kumar for the Bihar State Food & Civil Supplies Corporation, learned Senior Advocate Mr. P.K. Verma assisted by Mr. Anand Kumar, counsel for the Bihar State Road Transport Corporation and learned counsel appearing on behalf of the State. Since in both the writ applications similar reliefs has been prayed CWJC No. 13237 of 2018 is being taken up first and which will govern CWJC No. 13230 of 2018 as well.



2. Petitioner has filed an interlocutory application (I.A. No. 5663 of 2018) whereby he challenges the notice inviting tender dated 06.07.2018 published in daily newspaper 'Hindustan' calling for applications for Transport Handling-cum-Supply Agent under Door Step Delivery (DSD) in the Bihar State Food & Civil Supplies Corporation, East Champaran, Motihari.

3. Considering the nature of challenge and the relief prayed for in the writ application, I.A. No. 5663 of 2018 is allowed.

4. Petitioners in the writ applications seek appointment as Transport Handling-cum-Supply Contractor under DSD under the District of Motihari in pursuance to the notice inviting tender dated 22.05.2016 and its corrigendum dated 26.05.2016. In pursuance to the notice inviting tender of the year 2016 as contained in Annexure-1, the financial bid was opened before Selection Committee i.e. the District Transport Samiti on 29.11.2016 (wherein three persons were disqualified out of 18 tenderers in the technical bid and for the rest financial bid was opened on 29.11.2016). Only three persons qualified in the financial bid but in public interest some minor disqualifications were relaxed in the terms and conditions of the tender and all 15 were found qualified out of which 11 persons were placed in the merit list including the petitioners and four were kept in the waiting list and the decision of



the Selection Committee was communicated by the District Manager, Bihar State Food & Civil Supplies Corporation, Motihari, dated 03.12.2016 to the District Magistrate Motihari vide Annexure-3 of the writ application. Thereafter, again on 18.12.2016, after guidelines were sought by the Selection Committee from the Headquarters which postulated that clause-9 (iii) of the tender would not be applicable in case of new tenders and selection of contractors be made after verification of the papers regarding personal vehicle i.e. permit, owner book, tax token, pollution certificate, fitness certificate and insurance amongst other criteria in which 7 persons were held to be qualified and the rest 8 persons were held to be disqualified by the committee on 18.12.2016. The reason for disqualification of petitioner in CWJC No. 13237 of 2018 was that 5 vehicles did not have certification of the DTO/MVI as postulated in the tender notice. In the case of petitioner in CWJC No. 13230 of 2018 one vehicle out of 5 vehicles were not certified by the DTO/MVI which is Annexure-4 to the writ application. The District Manager, Bihar State Food & Civil Supplies Corporation, Motihari after having the verification of the vehicles as contained in Annexure-6 dated 09.09.2017 found that in the case of petitioner Prabhat Kumar Jaiswal @ Prabhat Kumar out of 6 vehicles, 5 were verified by the DTO/MVI. The petitioner Ajay



Kumar although the verification was not there but after inquiry, the tax token, insurance, permit, fitness certificate, pollution certificate were found to be correct thereby vide letter dated 09.09.2017 as contained in Annexure-6 the matter was sent to the Headquarters for recommendation of the petitioners along with one other so that the District Transport Samiti could take a decision. In reply to the letter dated 09.09.2017, the Deputy Chief Transport of the Bihar State Food & Civil Supplies Corporation, Patna under orders of the Managing Director, directed the District Manager, Bihar State Food & Civil Supplies Corporation, Motihari asking the District Manager as to how if the tenderers had not qualified in terms of the tender and there was certain defects why the tenders were opened and on 18.12.2016 even when there were defects in the tender why all 15 were qualified and seven were appointed as DSD agents. The District Manager was also asked as to why the matter was kept pending for last eight months and also observed that the District Transport Samiti was the competent authority to appoint the DSD contractors and was asked to commence a fresh process for appointment.

5. Learned counsel for the petitioner contends that the matter was not placed before the Selection Committee and now a new advertisement has been issued on 17.07.2018 for appointment



of four DSD agents in the District of East Champaran showing vacancy position as four. He submits that although the terms and conditions of tender was relaxed by the District Transport Samiti on 03.12.2016 and the petitioners were selected but for verification of the vehicle papers the matter was sent for recommendation to the headquarters Patna after the vehicle documents were found correct.

6. Learned counsel appearing on behalf of the Bihar State Food & Civil Supplies Corporation, however, submits that in spite of the financial bid of the petitioner having been opened on 29.11.2016, only three tenderers qualified, relaxation was given to 15 others and in the Selection Committee i.e. District Transport Samiti meeting on 18.12.2016 clarification were called for from the Headquarters and taking into account the clarification, seven persons had been appointed as DSD agents and the petitioners along with others were disqualified as there were certain defects as pointed out in the meeting of the Selection Committee. He submits that as per the terms of the tender, the District Manager, Bihar State Food & Civil Supplies Corporation, Motihari ought not to have sent for recommendation the names of the petitioners after lapse of eight months of the date of appointment of the DSD agents. He submits that the petitioners have challenged the notice inviting tender of the year 2016 after appointment of DSD agents and after issuance of



new tender which is dated 17.07.2018. He, thus, submits that since the petitioners do not qualify as there were defects in the personal vehicle submitted by them, hence, the decision was taken by the Selection Committee dated 18.12.2016 disqualifying the petitioners as DSD agents, cannot be faulted.

7. Considering the facts and circumstances and after hearing the rival submissions of the parties, the Selection Committee had taken a decision on 29.11.2016 after opening the financial bid and having found that only three out of 15 persons qualified as DSD contractors a decision was taken to relax the terms and conditions as all tenders had minor defects. Thus, 15 persons including the petitioners in which 11 persons including the petitioners were kept in the select list and 4 other persons were kept in reserved wait list. The Selection Committee itself had relaxed the terms and conditions and found the petitioners as successful candidates. Thereafter, although on 18.12.2016, in the case of the petitioner Ajay Kumar, it was found that five vehicles have not been certified by the DTO/MVI but on verification from the office of the DTO/MVI the same were found in order. In case of petitioner Prabhat Kumar Jaiswal @ Prabhat Kumar, it was found that one vehicle out of six was not certified and only certification of five personal vehicles had to be provided. Hence, the District Manager,



Bihar State Food & Civil Supplies Corporation, Motihari vide letter dated 09.09.2017 sent for recommendation for appointment of the petitioners as DSD agents. The rules having been relaxed at the stage of opening of financial bid wherein only three tenderers were found successful. The said enquiry about the genuineness of the documents submitted for personal vehicle was after verification found in order which was only a technical mistake as one has to keep in mind that the terms and conditions were relaxed at the time of opening of financial bid in case of fifteen bidders out of which seven had been declared qualified by the District Transport Samiti on 18.12.2016. In the case of petitioner in CWJC No. 13230 of 2018 petitioner had represented before the authorities which is Annexure-5 in the said writ application dated 26.12.2016 and stated that he had submitted six vehicles and that five personal vehicles had been certified by the DTO/MVI. He had already five vehicles certified by the MVI/DTO which was not considered by the Selection Committee. Hence, the District Manager-BSFC, Motihari respondent no.7 sent for recommendation of his appointment as DSD agent.

8. Hence, ordered that case of the petitioners would be sent to the District Transport Samiti, Motihari, for necessary decision in matter. The notice inviting tender dated 17.07.2018 would proceed but two



vacancies would be kept reserved for the petitioners until final decision is taken by the District Transport Samiti of the Bihar State Food & Civil Supplies Corporation, Motihari. It is expected that the District Transport Committee will take a decision within a period of four weeks from the date of receipt/production of the copy of the order.

9. These writ applications are disposed off as above.

(Nilu Agrawal, J)

Devendra/Priyanka

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2018
Transmission Date	NA

