

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19551 of 2015

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Jageshwar Yadav son of Late Jitu Yadav, resident of Village - Patauna, P.S. - Bihar Sharif, District - Nalanda.

.... Petitioner

Versus

1. The Managing Director, Bihar State Warehousing Corporation, Maurya Lok Complex, Dakbungalow Road, Patna.
2. The General Manager, Food Corporation of India, Regional Office, Arunachal Building, Exhibition Road, Patna.
3. The Area Manager, Food Corporation of India, District Office, Digha, Patna.
4. The Superintendent, Bihar State Warehousing Corporation, Bazar Samiti, Ramchandrapur, Bihar Sharif.

.... Respondents

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Appearance :

For the Petitioner : Mr. Bindhyachal Singh
Mr. Ram Binod Singh, Advocates
For the F.C.I. : Mr. Prabhakar Tekriwal, Advocate.
For the BSWC : Mr. Mithilesh Kumar Rai, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 05-11-2018

Heard learned counsel for the petitioner, learned counsel for the Food Corporation of India and Bihar State Warehousing Corporation.

2. The present writ petition has been filed for a direction to the respondents for making payment of outstanding admitted due amount of Rs. 1,18,43,211/- on account of execution of handling and transporting work at FCI godown at Bihar Sharif.

3. The short facts of the case according to the petitioner are that the petitioner entered into an agreement with the respondent-



Bihar State Warehousing Corporation (hereinafter referred to as “the BSWC”) dated 08.01.2008 (Annexure-1) for handling and transportation at Food Corporation of India (hereinafter referred to as “the FCI”) at Bihar Sharif. The said agreement was renewed and extended vide memo no. 59 dated 12.01.2012 up to final determination of the bid process. The petitioner executed the work and submitted the bills for the months of January, 2012 to August, 2012. The respondent-BSWC by letter dated 07.06.2013 (Annexure-3) requested the FCI for releasing the outstanding dues of Rs. 1,18,43,211/- for the said period January, 2012 to August, 2012. Despite legal notices and representations, the amount remained outstanding for payment.

4. Learned counsel for the petitioner submits that the respondent-BSWC has duly requested for funds from the FCI for making payment of Rs. 1,18,43,211/- to the petitioner which clearly shows that the bills in this regard are duly admitted. The respondent-FCI has been creating obstruction in payment of the same on the specious plea that there was some irregularity committed at the godown at Bihar Sharif in connivance with the Depot In-charge, FCI and the petitioner of recycling the stocks.

5. Learned counsel for the FCI submits that a Six Man Committee of FCI Officials investigated the matter and, *inter alia*, found discrepancy in the stock ledger of the godown compared with the



records of FCI as noted in paragraph-4 of the report dated 06.08.2012 (Annexure-A of the counter affidavit). It is further stated in paragraph 10(viii) of the counter affidavit of the respondent-FCI that for the months of January 2012 to March, 2012 the relevant amount of the bills were duly scrutinized and after deduction towards demurrage, supervision charges and Income Tax, an amount of Rs. 19,99,238/- was paid to the BSWC vide Cheque No. 127146 dated 23.07.2012 which was cleared on 24.07.2012. It is further stated that after getting the waiver of a part of demurrage from the Railways, the waived amount of Rs. 6,26,160/- was also paid to the BSWC vide Cheque No. 206083 dated 24.12.2012 cleared on 24.12.2012. It has been specifically stated that the entire claim of the BSWC for the months of January to March, 2012 stands settled by the FCI.

6. As regards the bills for the months of April to August, 2012, certain objections were pointed out as enumerated in paragraph 10 (xi) of the counter affidavit such as delayed submissions of bills, submission without forwarding letter, etc, which created serious doubt and suspicion.

7. Learned counsel for the BSWC has also filed a counter affidavit. It is stated in paragraph-9 thereof that BSWC sent a letter dated 07.06.2013 for payment but no heed was paid and as such BSWC would make payment upon receiving the amount from FCI.



8. Having heard the parties and on consideration of the materials on record, this Court finds substance in the writ petition. It may be noted that primarily the privity of contract for handling and transporting was between the petitioner and BSWC. The claim of the petitioner for payment of the outstanding amount of Rs. 1,18,43,211/- for the months of January, 2012 to August, 2012 stands admitted by the BSWC which has written to the FCI for making funds available, for want of which the payment has not been made to the petitioner. A specific stand of the FCI that payment for the months of January to March, 2012 has duly been made to the BSWC as noticed above, has not been disputed by the BSWC in its counter affidavit filed on 01.11.2018 much after being served with a copy of the counter affidavit of FCI on 12.08.2016. However, reference has been invited to BSWC's letter dated 07.06.2013 (Annexure-3) requesting for funds to be released by the FCI, to submit that no such payment had been made by FCI and hence the claim of FCI to have made payment in 2012 itself appears incorrect.

9. Be that as it may, considering that FCI has given specific details of the payment made to BSWC by cheques duly cleared, which have not been controverted by BSWC in its counter affidavit, this Court is of the view that BSWC may be directed to make payment of the bills for the months of January to March, 2012 to the petitioner within



a period of four weeks from the date of receipt/production of a copy of this judgment. It is however made clear that in case the stand of the FCI that the amount of Rs. 19,99,238/- together with the waived amount of demurrage Rs. 6,26,160/- said to have been paid through cheques dated 23.07.2012 and 24.12.2012 respectively and duly cleared, is found to be incorrect, the BSWC shall be at liberty to approach this Court for modification of the judgment in that regard.

10. This Court further takes note that disciplinary proceedings against the Depot In-charge and other officials were initiated for alleged corrupt practices and irregularities at Biharsharif godown. The Enquiry Officer submitted his report dated 06.01.2014 and the disciplinary proceedings were concluded by order dated 07.03.2014 passed by the General Manager (R) of the FCI (Annexure-11) exonerating the Depot In-charge, as the charges against him were not proved. Similarly, other officials were also exonerated only with penalty of censure for certain lapses.

11. In this view of the matter, there is no basis for denying payment to the petitioner for the handling and transporting work executed by him.

12. Accordingly, the respondent-FCI is directed to release to BSWC the amount required for payment to the petitioner against bills for the months of April, 2012 to August, 2012 within a period of



four weeks from the date of receipt/production of a copy of this judgment. Considering that the Depot Incharge was finally exonerated in the disciplinary proceeding by order dated 07.03.2014 passed by the General Manager (R) of the FCI, no valid reason has been offered on behalf of the FCI for withholding payment to the petitioner thereafter. As such, the FCI is directed to release the aforesaid payment against the bills for the months of April, 2012 to August, 2012 together with simple interest calculated @ 6% per annum calculated from 07.03.2014 when the disciplinary proceedings were concluded by the General Manager (R) of the FCI (Annexure-11) up to the date of actual payment. The BSWC shall make payment of such amount received from the FCI within a further period of four weeks thereafter.

13. The writ petition stands allowed with the aforesaid observations and directions.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.11.2018
Transmission Date	N.A.

