

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6891 of 2013

1. M/S Rajhansh Transport, Purani Katchery Road, Saharsa through Its Proprietor Vidyapati Singh, son of Late Ganpat Singh, resident of 802, Dharonda Complex, Jagdev Path More, P.S.-Khajpura, Bailey Road, Patna-800014
2. Vidyapati Singh, S/O Late Ganpat Singh, R/O 802, Gharonda Complex, Jagdev Path More, P.S.-Khajpura, Bailey Road, Patna-800014 Proprietor Of M/S Rajhansh Transport, Purani Katchery Road, Saharsa

... .. Petitioners

Versus

1. The Bihar State Warehousing Corporation, B-2, 1st Floor, Maurya Lok Complex, Patna, Bihar Through Its Managing Director, Bihar, Patna
2. The Managing Director, Bihar State Warehousing Corporation, B-2, 1st Floor, Maurya Lok Complex, Patna, Bihar
3. The Food Corporation Of India Through Its Managing Director-Cum-Chairman 16/20, Barakhamba Lane, New Delhi - 110001
4. The General Manager (Regional) Food Corporation Of India, 9th Floor, Mahavir Tower, Ranchi, Jharkhand
5. The Area Manager, Food Corporation Of India, Usha Kunj, 1st Floor, Chiragora, Dhanbad, Jharkhand

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Senior Advocate Mr. Ashish Giri, Advocate
For the B.S.W.C.	:	Mr. Mithilesh Roy, Advocate Mr. Bindhyachal Rai, Advocate
For the F.C.I.	:	Mr. Prabhakar Tekriwal, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 02-07-2018

Heard learned counsel appearing for the respective parties.



2. In this case, the petitioner has made a prayer that this Court should issue a writ of *mandamus*, directing the respondent-Bihar State Warehousing Corporation, Patna, to make payment of admitted dues of the petitioner for the month of May, 2011 to January, 2013 to the tune of Rs..3,28,92,701/- pursuant to the agreement and award of contract dated 10.12.2010 and 09.10.2010 for handling and transportation of food-grains, fertilizers and allied materials confining to the Bihar State Warehousing Corporation at Dumka and Chatra, Jharkhand, respectively.

3. In the present case, relief has been sought exclusively from the Bihar State Warehousing Corporation and there is no such relief or reliefs have been sought from the Food Corporation of India. In such view of the matter, now it will be confined to the consideration with respect to the entitlement of the petitioner against the Bihar State Warehousing Corporation and cannot be extended the relief against the Food Corporation of India in view of absence of the prayer made in the writ petition.

4. From the pleadings, it appears that on the basis of the advertisement the petitioner was inducted as transportation



and handling agent on the basis of tender issued in April, 2010 for Giridih Depot for two years. There is an stipulation in the terms of the condition. Clause-33 prescribes as follows:-

“33. The Contractor shall be bound to perform additional work as per the order of Managing Director, Bihar State Warehousing Corporation, if needed although the work is not included in his/their agreement. The contractor shall also be bound to perform the Transport and Handling work of some other centres of Bihar State Warehousing Corporation as per the order of Managing Director, Bihar State Warehousing Corporation.

The contract price/remuneration of additional work or the work of other centres so allotted by Managing Director, Bihar State Warehousing Corporation shall be mutually decide but, the decision of Managing Director, Bihar State Warehousing Corporation shall be final.”

5. After the selection as an agent of transportation and handling, the Bihar State Warehousing Corporation and the petitioner have entered into the agreement fixed the rate of transportation and the handling charges for Giridih Depot. As the period for transportation of food-grains and fertilizers at Chatra and Dumka Depots by efflux of time had expired and it was required for appointment of new agent for handling and



transportation, the Managing Director, Bihar State Warehousing Corporation had, till the appointment of new agent, assigned the work of transportation and handling to the petitioner for the Chatra and Dumka as per the same rate, which was applicable to the Giridih Depot.

6. In pursuance thereof, the Bihar State Warehousing Corporation has entered into the agreement with the petitioner, mentioning therein that the rate of Chatra and Dumka will be as that of the Giridih and in pursuance thereof, the petitioner carried out its work under the impression of payment at the Giridih rate. When the petitioner placed his bill, the Warehousing Corporation paid the amount at the rate of Giridih Depot up to May, 2011. Whereafter, the payment was made at the old rate, which was applicable for the handling and transportation of Dumka and Chatra and that led to non-payment of difference of amount to the petitioner, which compelled the petitioner to approach this Court in the present writ petition.

7. The Bihar State Warehousing Corporation has filed its counter affidavit and supported the case of the petitioner. It will be relevant to consider in the present case that vide earlier order dated 13.01.2010, this Court had directed that the Bihar



State Warehousing Corporation as well as the Food Corporation of India to sit together and resolve the dispute of the rate, but they failed to arrive to the agreement, as both the sides have taken divergent stand, which is lucidly clear from the proceeding dated 07.03.2018, where stand of both the sides have been recorded, which has been brought as Annexure-A to the counter affidavit filed by the Food Corporation of India.

8. The Food Corporation of India has submitted that whatever the Warehousing Corporation is entitled has already been reimbursed to them it was made clear to them that the rate which is prevalent for the Giridih will be applicable for certain period and in the meantime, they must appoint the new agent by following proper procedure, which has been explained in the counter affidavit as well as in the supplementary counter affidavit.

9. In the supplementary counter affidavit, the letter dated 08.04.2011 issued by the General Manager, Bihar State Warehousing Corporation has been attached, wherein it has been mentioned that for appointment of new agent it will take at least one month's time and the letter dated 26.04.2011, issued by the Food Corporation of India, addressed to the Managing Director, Bihar State Warehousing Corporation, had given its liberty to



take the work at the Giridih rate for Dumka and Chatra centres but after 07.05.2011 the payment would be made at the old rate.

10. From the relief that has been sought in the present writ petition is not against the Food Corporation of India, so any submission or claim against the Food Corporation of India cannot be allowed in the present writ petition. Admittedly, the Bihar State Warehousing Corporation has entered into the agreement with the petitioner, in which it has specifically been mentioned that the rate which is prevalent for handling and transportation for Giridih Depot will be applicable for the transportation and handling for Chatra and Dumka Depots and the Bihar State Warehousing Corporation has not denied or disputed the amount that has been claimed by the petitioner.

11. In such view of the matter, this Court directs the Bihar State Warehousing Corporation to make payment of amount to the petitioner as per the claim made in the writ petition in view of their stand taken in the counter affidavit on account of non-denial or non-disputing the claim of the petitioner. The payment should be made within a period of six months from the date of receipt/production of a copy of this order.



12. With the aforesaid observations and directions, this writ petition is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	07.07.2018
Transmission Date	N/A.

