

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.388 of 2018

In

Civil Writ Jurisdiction Case No.15989 of 2017

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1. Suman Kumar Mishra, Son of Chandra Kumar Mishra, Resident of Village-Bih Nagar, P.S.-Pandaul, District-Madhubani.
 2. Shivam Kumar Choudhary Son of Subodh Choudhary, Resident of Village-Pali P.S.-Beni Patti, District-Madhubani.

... .. Appellant/s

Versus

1. The Food and Consumer Protection Department Through The Principal Secretary, Government of Bihar, Patna.
2. The State of Bihar through District Magistrate, District- Madhubani.
3. The Bihar State Food and Civil Supplies Corporation Limited through its M.D., Bihar at Patna.
4. The Chairman-Cum-Collector, District Transport Committee, Madhubani, District- Madhubani.
5. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Madhubani, District- Madhubani.
6. The Chief of Finance, Bihar State Food and Civil Supplies Corporation Limited, Bihar at Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sumeet Kumar Singh, Advocate
For the State	:	Mr. S. Raza Ahmad, AAG-5 Mr. Alok Ranjan, Advocate
For the BSFC	:	Mr. Niraj Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA



ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-12-2018

All defects ignored.

2. Heard Shri Sumeet Kumar Singh, learned counsel for the appellants, Mr. Alok Ranjan, A.C. to AAG-5 for the State of Bihar and Mr. Niraj Kumar for the Bihar State Food and Civil Supplies Corporation Limited.

3. The dispute lies in a very short compass. Learned counsel has invited the attention of the Court to the fact that both the appellants Suman Kumar Mishra and Shivam Kumar Choudhary had made an offer for carrying out the handling work of the respondents relating to transportation of food supplies. The said offer was made in accordance with the terms and conditions of tender for Door Step Delivery of Food Grains for which sealed tenders were invited and the duration of the work was one year subject to its renewal by mutual consent for a further period of one year on the recommendations of the District Transport Committee. According to the learned counsel for the appellants even though the tenure of engagement has expired, the Corporation still continues to take work from those who had been selected without allowing the appellants to participate in the work in spite of the fact that they fulfill the



eligibility conditions.

4. It appears that the District Magistrate, who happens to be the *ex officio* Chairman of the District Transportation Committee, issued an intimation on 17th May, 2016 informing the Managing Director of the Corporation about the selection of the transporters. The said document is Annexure-2 to the writ petition. According to the said document, the appellants were not found to be eligible for the reasons given therein. The objection against the appellant Suman Kumar Mishra was that his father was a licence-holder of a Fair Price Shop Dealership and, therefore, according to Clause 9.6 of the Tender Conditions the said appellant stood ineligible for participating in the tender bids. The Appellant No. 2 Shivam Kumar Choudhary was found to be deficient with regard to the Assessment Certificate furnished by him. Consequently, the appellants appear to have represented the matter before the District Transport Committee and after evaluating the grievances of the appellants the District Transport Committee under the resolution dated 29th May, 2017 accepted their explanations and found both the appellants to be eligible for participating and carrying out the work as entailed in the tender conditions. This is evident from the resolution dated 29th



May, 2017 which has been filed as Annexure-8 to the writ petition.

5. The appellants thereafter tendered their documents pertaining to the vehicles that they had to offer for carrying out the said transportation work but the District Transport Committee neither did allocate any work to the appellants nor any information was given. To the contrary, the appellants who in spite of having been found eligible failed to get any intimation as a result whereof they filed Writ Petition No. 15989 of 2017. The said writ petition along with another Writ Petition No. 15929 of 2017 came to be heard by the learned Single Judge who arrived at the conclusion that the appellants had the remedy of approaching the District Magistrate who is the Chairman of the District Transport Committee by filing a representation for appropriate redressal of their grievance. It was also held that since the authority to award the said tender work lay within the domain of the Corporation, therefore, a writ petition would not be maintainable.

6. Learned counsel for the appellants contends that the learned Single Judge erred in rejecting the writ petition inasmuch as this being a public contract and since the decision was arbitrary in spite of the appellants having been found to be



eligible, therefore, a writ petition was maintainable as the decision of the Corporation not to give any work to the appellants was unreasonable and arbitrary and thereby hit by Article 14 of the Constitution of India. It was further submitted that since the work continued to be allotted to those persons who had been found to be eligible along with the appellants, therefore, the cause of action still survives inasmuch as no fresh contract has been entered into and the work still continues to be taken from those persons. In this view of the matter, it is urged that the appeal still survives inasmuch as if the appellants are found to be eligible and if they are awarded the work, they will be entitled to continue for one year which is the stipulated period of the contract.

7. Learned counsel for the State and for the Corporation have resisted this appeal contending that this being a pure matter of contract the appellants cannot compel the Corporation to award the same to them, the choice being available with the Corporation in such matters.

8. We have considered the submissions raised and we find that insofar as the eligibility of the appellants is concerned, the District Transport Committee itself under the resolution dated 29th May, 2017 found that the candidature of



the appellants did not suffer from any infirmity and they would be entitled to participate in the work as against the said tenders. This decision was taken almost after one year of the initial notice of the tender itself. In this background, the claim of the appellants did stay alive when the said conscious decision was taken by the District Transport Committee.

9. The issue is as to whether such a dispute would become justifiable at the first instance before this Court in the exercise of jurisdiction under Article 226 of the Constitution of India or not.

10. The learned Single Judge has negated the contention of the appellants and has mentioned that the District Magistrate who is the Chairman of the District Transport Committee will look into the grievances of the appellants.

11. We have gone through the terms and conditions of the tender floated by the respondent-Corporation and we find that Clause 9.4. read with Clause 21 clearly stipulates that in the event of any dispute the decision of the Chairman-cum-Managing Director of the Corporation shall be final and binding who reserves the right to accept or reject all the tenders without assigning any reason and further has the right to award contract to one or more than one Transport, Handling-cum-Delivery



Agent. Clause 9.4 and Clause 21 are extracted hereinunder:-

“9.4. Managing Director, Bihar State Food & Civil Supplies Corporation Ltd., Patna reserves the right to accept or reject any/all the tenders without assigning any reason and has the right to award contract to one or more than one Transport, Handling-cum-Delivery Agent.

21. In case of any dispute, the decision of the Chairman-cum-Managing Director/Managing Director of the Corporation shall be final and binding.”

12. Learned counsel for the appellants contends that the direction issued by the learned Single Judge to the District Tender Committee appears to be in consonance with the document on which reliance has been placed, copy whereof has been filed as Annexure-5 to the writ petition which is an intimation by the Managing Director to all the District Magistrates/Chairman of the District Transport Committee that henceforth they shall exercise all powers relating to issuance of the advertisement for tender, the selection of the agents, the extension of the period and the duration of the agreement, distribution of the work amongst various agents who have been selected etc. This document dated 17th August, 2016, therefore, according to the learned counsel for the appellants confers an



authority on the District Transport Committee to take all decisions including decision on disputes.

13. Having gone through the said letter, we do not find any specific delegation of power for decision on any dispute on the District Transport Committee but at the same time it is settled principle of law that any such delegation of power does not denude the delegator of his rights to continue to exercise such powers. In the absence of any such prohibition that the delegator after having delegated his authority loses the basic authority as contained in the terms and conditions, it cannot be construed that the Managing Director no longer has the authority to decide any such dispute. Consequently, we hold that the direction issued by the learned Single Judge to the District Transport Committee itself does not appear to be in consonance with the aforesaid terms and conditions and it was the Managing Director to whom the direction ought to have been given for the appellants to approach for the redressal of their grievances.

14. We, accordingly, partly allow the appeal to the aforesaid extent and modify the impugned judgment of the learned Single Judge with liberty to the appellants to approach the Managing Director of the Corporation along with a certified



copy of this order who shall call upon a report about the current status of the duration of the contract and in the event the same is being continued as per the original proceedings of 2016, then in that event, the claim of the appellants shall be examined and it shall be disposed of in accordance with law as expeditiously as possible, preferably within six weeks of the date of presentation of the certified copy of the orders before the Managing Director.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-R.S.Sen

AFR/NAFR	
CAV DATE	
Uploading Date	19.12.2018
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