

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14517 of 2017

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Binod Kumar Agrawal son of Late Laxmi Narayan Agrawal resident of at P.O. and P.S. Ujiarpur, District - Samastipur - 848132.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Affairs, Govt. of Bihar, Patna.
2. The Secretary, Department of Food and Consumer Affairs, Govt. of Bihar, Patna.
3. The Bihar State Food and Civil Supplies Corporation Ltd. through its Managing Director having its Office at Khadya Bhawan, Daroga Prasad Rai, R. Block, Patna.
4. The Managing Director, Bihar State Food & Civil Supply Corporation Limited, Khadya Bhawan, Daroga Prasad Rai, R - Block, Patna.
5. The Deputy Chief Manager (Transportation) Bihar State Food and Civil Supplies Corporation Ltd. Khadya Bhawan, Daroga Prasad Rai, R. Block, Patna.
6. The District Manager, Bihar State Food and Civil Supplies Corporation Ltd., Samastipur.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Gautam Kumar Kejriwal Mr. Mohit Agrawal, Mr. Alok Kr. Jha, Advocates
For the State	:	Mr. Santosh Kr. Mishra, AC to GP9
For the BSFC	:	Mr. Shailendra Kr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 07-03-2018

I.A. No. 808 of 2018

The interlocutory application has been filed with the prayer for amendment of the relevant portion of the prayer in the writ petition by adding the following prayer –

“(e) For issuance of a writ or order or a direction in the nature of certiorari for quashing of the letter no. 2:05:01:2016-8517 Patna dt. 06.07.16 in so far as the petitioner is concerned which letter has already been



quashed by this Hon'ble Court whereby the petitioner and other contractor had been blacklisted by the respondent corporation without issuance of any prior show cause notice with proposed blacklisting."

2. Having regard to the nature of the prayer, the interlocutory application is allowed and the same shall be treated as forming part of the writ petition.

CWJC No. 14517 of 2017

3. Heard learned counsel for the petitioner as well as learned counsel for the respondents.

4. The main writ petition has been filed for the following reliefs –

"(a) For issuance of a writ or order or a direction in the nature of mandamus upon the respondent No. 5 to issue the letter of intent or work order to the petitioner for transportation and handling contractor for the period of 2016-2019 pursuant to the tenders floated by the Bihar State Food and Civil Supplies Corporation Ltd. [hereinafter referred to as the corporation for the sake of brevity] vide letter no. 2:05:206:01:2014-1683 Patna dt. 06.02.16;

(b) For holding and declaration that once the letter no. 2:05:01:2016-8517 Patna dt. 06.07.16 having been quashed by this Hon'ble Court whereby the petitioner and other contractor had been blacklisted by the respondent corporation without issuance of any prior show cause notice there would be no reason for the



respondent corporation to not issue the letter of intent or work order in favour of the petitioner;

(c) For holding and a declaration that the case of the petitioner for the purpose of appointment of transporting and handling contractor having already been recommended by the district Magistrate Samastipur and the petitioner already having successfully served the corporation during the period 2008-11 and for Food Corporation of India for the period 2013-2015 and also there being no reason for disqualification of the petitioner in terms of the Notice Inviting Tender;

(d) For grant of any other relief/reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.

5. Learned counsel for the petitioner submits that the common order of blacklisting passed by the respondents against the petitioner as well as one Vivekanand Jha, is wholly arbitrary and illegal inasmuch as neither any specific show cause notice against the order of blacklisting was served on the petitioner nor a copy of the enquiry report was supplied to him prior thereto. It is further submitted that the impugned order has already been quashed in so far as it concerns the said Vivekanand Jha and the matter has been remanded for passing fresh orders, in terms of the judgment of this Court dated 06.09.2016 passed in CWJC No. 11041 of 2016 in which it has been held as follows –

“Heard learned counsel for the petitioner and learned



counsel for the State.

The petitioner seeks quashing of the letter dated 6.7.2016 and office order dated 8.7.2016 by which the transportation contract of the petitioner has been terminated and further the petitioner has been blacklisted for a period of five years as well as the security deposit of Rs. 10 lacs and Bank Guarantee of Rs. 20 lacs have been forfeited.

The grievance of the petitioner is that the petitioner who was duly selected as Transportation-cum-Handling Agent (Main) by the respondent-Corporation for a period of three years along with two other persons for Samastipur on the basis of a notice inviting tender dated 3.2.2016 but thereafter on the basis of an inquiry report of a three-member Committee conducted behind the back of the petitioner and without even serving a copy of the said inquiry report and giving reasonable opportunity to the petitioner to meet the points raised therein, his contract has not only been cancelled but he has also been imposed the aforesaid penalties.

It is also submitted by learned counsel for the petitioner that despite the stay order dated on 28.7.2016, the respondents have not been giving work to the petitioner on an equal basis with the other two Transportation-cum-Handling Agents (Main).

A counter affidavit has been filed on behalf of the respondents but it is not stated therein that the petitioner was either allowed to participate in the enquiry proceedings or that even after the enquiry a copy of the enquiry report was given to him along with an opportunity to meet the allegations and findings in the



said enquiry report.

In the above circumstances, there being a clear violation of the principles of natural justice, the writ application is allowed. The impugned orders dated 6.7.2016 and 8.7.2016 are quashed.

The respondents shall have the liberty to issue a show cause notice to the petitioner along with a copy of the enquiry report, if they intend to rely upon the three-member enquiry report, to enable him to meet the allegations against him and after considering the response of the petitioner, the Managing Director may pass appropriate order in accordance with law.

Until passing of fresh order, the petitioner shall be treated on the same footing as the other Transportation-cum-Handling Agents and the fresh notice inviting tender dated 20.7.2016 shall not be proceeded with in respect of Transportation-cum-Handling Agent (Main) for Samastipur.

The contempt application for deliberate disobedience of the order dated 28.7.2016 is also disposed of with the observations and directions given above."

6. Learned counsel for the petitioner submits that the case of the petitioner is similarly situated to that of the said Vivekanand Jha.

7. Learned counsel for the respondent-Corporation appears and has been heard.

8. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court



finds merit in the writ petition. A perusal of the impugned order, prima facie, does not disclose that any show cause notice was given to the petitioner nor any enquiry report was supplied to him. No counter affidavit has been filed controverting the stand of the petitioner despite service of a copy of the writ petition over six months ago.

9. In the above circumstances, the impugned order dated 06.07.2016 (Annexure-8/A) and the subsequent order dated 06.08.2016 (Annexure-8) are hereby quashed in so far as petitioner is concerned and the matter is remanded to the Deputy Chief Manager (Transportation) Bihar State Food and Civil Supplies Corporation Ltd., Patna (respondent no. 5) to pass fresh orders after serving specific show cause notice together with the enquiry report to the petitioner, if so advised, and after grant of reasonable opportunity of hearing in accordance with law.

10. It is made clear that in case the stand of the petitioner denying issuance of show cause notice and receipt of the enquiry report prior to order of blacklisting being passed is found to be incorrect, the respondents shall be at liberty to approach this Court for recall of this judgment.

11. As regards the prayer for a direction to the respondents to issue the letter of intent or work order, this Court is not inclined to enter into the merits of such issue. The petitioner shall be at liberty to file an appropriate representation before the Managing Director, Bihar



State Food and Civil Supplies Corporation Ltd., Patna (respondent no. 4) for redressal of his grievances.

12. The writ petition accordingly stands disposed of.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08.03.2018
Transmission Date	N.A.

