

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11210 of 2019

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M/s R.S. Construction registered partnership firm having its office at Kalisthan Chowk, Police Station- Begusarai, Town, District- Begusarai, through one of its partner namely Rajeev Kumar, S/o Sri Rameshwar Prasad Singh, Resident of Village and Post- Sihma, Police Station- Matihani, District- Begusarai. Petitioner

Versus

1. The State of Bihar through District magistrate, Khagaria.
2. The District Magistrate, Khagaria.
3. The District Magistrate- cum- Chairman District Transport Committee, khagaria.
4. The Deputy Development Commissioner, Khagaria.
5. The Additional Collector, Khagaria.
6. The District Transport Officer, Khagaria.
7. Bihar State Food and Civil Supply Corporation Ltd., Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna.
8. The Managing Director, Bihar State Food and Supply Corporation Ltd. Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna.
9. The District Manager, Bihar State Food and Civil Supply Corporation Ltd., Khagaria.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 8251 of 2019

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Dinkar Choudhary S/o Sri Raja Ram Chaudhary, Resident of Bagwara, Post Office- Suhird Nagar, Police Station- Muffashil, District- Begusarai.

... .. Petitioner

Versus

1. The State of Bihar through District Magistrate, Khagaria.
2. The District Magistrate Khagaria.
3. The District Magistrate- cum- Chairman District Transport Committee, Khagaria.
4. The Deputy Development Commissioner, Khagaria.
5. The Additional Collector, Khagaria.
6. The District Transport Officer, Khagaria.
7. Bihar State Food and Civil Supply Corporation Ltd. Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna.
8. The Managing Director, Bihar State Food and Civil Supply Corporation Ltd. Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna.
9. The District Manager, Bihar State Food and Civil Supply Corporation Ltd. Khagaria.



10. M/s R.S. Consturction Shashi Palace, Hemra Road, Ward no. 20, Begusarai.
11. Sri Vikash Kumar Son of Sri Srinath Singh, Resident of Village- Ramdaouli, District- Vaishali (Bihar), Pin-844503.

... .. Respondents

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Appearance :

(In Civil Writ Jurisdiction Case No. 11210 of 2019)

For the Petitioner/s	:	Mr.Sanjeet Kumar, Advocate Mr.Sandeep Kumar, Advocate
For the State	:	Mr.Satya Prakash, AC to SC 22 Mr.Rohitabh Das, AC to SC 22
For the BSFC	:	Mr.Shailendra Kumar Singh, Advocate Mr.Harish Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 8251 of 2019)

For the Petitioner/s	:	Mr.Alok Kumar @ Alok Kr Shahi
For the Respondent/s	:	Mr.Ajay Kr. Rastogi (Aag10)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 18-09-2019 Heard learned counsel for the petitioners, learned counsel Mr. Shailendra Kumar Singh and Mr. Harish Kumar for the Bihar State Food and Civil Supplies Corporation, Mr. Satya Prakash, AC to SC 22 and Mr. Rohitabh Das, AC to SC 22 who is also representing the District Transport Committee.

Petitioners in the present case are aggrieved by and dissatisfied with the proceeding dated 30.04.2019 of the District Transport Committee, Khagaria (in short 'Committee') by which a decision has been taken to invite re-tender for appointment of Transport-cum-Handling Agent for the revenue district of Khagaria.

It is the case of the petitioners in the two writ applications that they had earlier participated in the tender pursuant to NIT No. 825 dated 11.07.2018. The petitioner in



C.W.J.C. No. 11210 of 2019 had filed an objection in the said case against one Sri Vikash Kumar who was one of the participants in the said tender. Since his objection had been rejected, he filed a writ application being C.W.J.C. No. 22336 of 2018. This Court held that the decision of the District Transport Committee contained in the minute of the meeting held on 13.09.2018 by which the objection of the petitioner was rejected is liable to be quashed and the same was accordingly quashed. This Court had in its concluding part of the judgment rendered on 27.03.2019 issued the following directions:-

"Consequent upon the setting aside of the decision of the District Transport Committee as contained in Annexure-P/1 to the extent indicated above, all subsequent action including the execution of agreement with the respondent no.10 is liable to be quashed; I.A. No. 8945/2018 is allowed; the District Transport Committee is at liberty to take a fresh decision including to go for re-tender and complete the whole process of selection afresh within 45 days from the date of receipt/production of a copy of this order.

At this stage learned counsel for the Corporation has apprised this court about the hardship which may be faced by the Corporation in sending supplies of food-grains for distribution under the Targeted Public Distribution System in case private respondent is restrained from carrying on the work, this court is making it clear that in case the Corporation is not having any alternative arrangement in accordance with its present policy, only then the Corporation may continue to take work from respondent no. 10 for a maximum period of 45 days awaiting fresh selection by the tender committee. If the tender



committee fails to complete selection afresh within the aforesaid period, it will not be open for the Corporation to continue with the arrangement with respondent no. 10 anymore. In case the District Transport Committee goes for re-tender it will be open to the parties to participate in terms of N.I.T."

The contention of the petitioners now is that in view of the aforesaid judgment of this Court, the Committee was obliged to take a fresh decision and thereby the Committee should have considered the tender submitted by the petitioners earlier and only after holding that for some reasons those tenders can not be considered the Committee would have gone for re-tender. Learned counsel for the petitioners have submitted that by the impugned order the Committee has decided to go for a re-tender but prior to that the Committee did not consider the tender submitted by the petitioners in the earlier NIT No. 825 dated 11.07.2018.

Learned counsel for the Bihar State Food and Civil Supplies Corporation (in short 'Corporation') as well as the Committee have opposed the writ applications. It is submitted that in the order dated 27.03.2019, this Court had granted liberty to take a fresh decision including to go for re-tender and complete the whole process of selection afresh within 45 days from the date of receipt/production of copy of the order. It is further submitted that this Court had not issued any specific



direction to consider the tender of the petitioners in the said case, in such circumstance, if the Court had granted liberty to the Committee to take afresh decision including to go for re-tender and the Committee has gone by the decision of the learned writ court by taking a decision to go for re-tender, no fault may be found with the same.

Learned counsel submits that the employer has some leeway in the contract matters and this Court had well understood that aspect of the matter while deciding C.W.J.C. No. 22336 of 2018 by granting liberty to the Committee to take a fresh decision including to go for re-tender. It is submitted that by not issuing a specific direction to consider the tenders submitted pursuant to NIT No. 825 dated 11.07.2018 and then by granting liberty to the Committee to take a fresh decision including to go for re-tender, this Court had made it clear to the Committee that the discretion of the Committee has not been touched upon.

Learned counsel for the Corporation as well as the Committee have submitted that in the judgment dated 27.03.2019 this Court had left it open to the parties to participate in terms of 'NIT' but this petitioner has not participated in re-tender which was floated on 11.07.2019. It is



submitted that earlier to this, on one more occasion re-tender was published on 30.04.2019 but because a single tenderer had participated, the said NIT was cancelled. It is submitted that the petitioners in both the writ applications could have very well participated in the re-tender.

At this stage, learned counsel for the petitioners submits that they would make an alternative prayer whereunder in case the Court is not willing to interfere with the decision of the Committee to go for the re-tender, by taking note of the fact that these petitioners were pursuing these writ applications under some bonafide belief and that the writ applications were entertained and an interim order was passed on 04.07.2019 by this Court saying that "any action taken in the meantime will be subject to the result of the writ application", this Court may direct the respondent-District Transport Committee to allow these petitioners to participate in the re-tender which has yet not been finalised.

At this stage, learned counsel for the Corporation submits that if the tender published on 11.07.2019 has already been opened and the financial bid has been considered by the Committee, any direction to give participation to these petitioners would set at naught the whole exercise which has



already been taken by the Corporation and the Committee, therefore, no such direction need be issued in this regard. Learned counsel, however, submits that he is not aware as to whether the financial bid has been opened or not.

Learned counsel for the Committee has also endorsed the aforesaid argument of learned counsel for the Corporation. It has, however, been agreed at the bar that if the financial bid has still not been opened and the tender has not been finalised thereby, this Court may pass an appropriate order keeping in view the interim order dated 04.07.2019 passed by this Court.

Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that so far as the decision of the Committee to go for the re-tender is concerned, no interference is required with the said decision. The Committee had the leeway available in the order dated 27.03.2019. This Court will not call upon the Committee to justify its decision one way or the other.

This Court, however, finds that in these writ applications the counter affidavits were invited by the Court and an interim order was passed on 04.07.2019 whereunder any action taken in the meantime was made subject to result of the writ applications. It is not in dispute that the last re-tender notice



has been published on 11.07.2019 i.e. after passing of the interim order.

In such circumstance, in order to balance the legal issues as well as the equity, this Court is of the considered opinion that in case the financial bids, pursuant to such re-tender notice published on 11.07.2019, has not been opened and thereby the tender has not been finalised as yet, the Committee shall give an opportunity to the petitioners to participate in the bids by issuing necessary corrigendum. It will be open for the Committee to fix a time in the corrigendum whereunder apart from the petitioners any other person may participate so that the issue of level playing field to others eligible be not raised. This would also be in public interest inasmuch as it will give a chance to all the participants of competing each other in the tender.

In case, however, the financial bids have already been opened, the Committee shall proceed to finalise the tender.

The writ applications are disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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