

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1071 of 2018

In

Civil Writ Jurisdiction Case No.6891 of 2013

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1. The Bihar State Warehousing Corporation, B-2, 1st Floor, Muauya Lok Complex, Patna, Bihar through its Managing Director, Bihar, Patna.
 2. The Managing Director, Bihar State Ware Housing Corporation, B-2, 1st Floor, Maurya Lok Complex, Patna, Bihar.

... .. Respondents-Appellant/s

Versus

1. The Food Corporation of India, through its Managing Director-cum-Chairman, 16/20, Bara Khamba Lane, New Delhi, 110001.
2. The General Manager (Regional), Food Corporation of India, 9th Floor, Mahavir Tower, Ranchi, Jharkhand
3. The Area Manager, Food Corporation of India, Usha Kunj, 1st Floor, Chiragora, Dhanbad, Jharkhand.

... .. Respondents/ Respondents.

4. M/S Rajhansh Transport, Purani Katchhery Road, Saharsa through it's Proprietor Vidyapati Singh, S/O Late Ganpat Singh, R/O 802, Gharaunda Complex, Jagdeo Path More, P.S.- Khajpura, Bailey Road, Patna-800014.
5. Vidyapati Singh, S/O Late Ganpat Singh, R/O 802, Gharaunda Complex, Jagdeo Path More, P.S.-Khajpura, Bailey Road, Patna-800014 Proprietor of M/S Rajhansh Transport, Purani Katchhery Road, Saharsa.

... .. Petitioners-Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mithilesh Kumar Rai, Advocate
For the FCI	:	Mr. Prabhakar Tekriwal, Advocate
For the Respondent nos.4&5	:	Mr. Kumar Gaurav, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-03-2019

The appellant- Bihar State Warehousing Corporation has questioned the impugned judgement of the learned Single Judge dated 2nd of July, 2018 contending that the learned Single Judge has erroneously allowed the writ petition for making payment to



the respondents-petitioners-contractors whereas no such liability can be fixed on the appellant- Corporation as it is only a facilitator under an agreement to enable the transportation to be carried out for handling the essential commodities of the Food Corporation of India. The payment for such handling has to be made by the Food Corporation of India and the appellant-Corporation for such negotiation and settlement is entitled for a certain amount of percentage as commission thereon. The Contractors in case of any non-payment have to claim their liability against the Food Corporation of India under the terms of the agreement.

It is admitted that the agreement is between the appellant- Corporation and the Contractors to which the Food Corporation of India is not a party. Any dispute arising between the Contractors and the appellant-Corporation arising out of the terms of the agreement has to be referred to an Arbitrator, but in the present case, it appears that in the absence of any available Contractor, no formal agreement could be executed and it was by way of a negotiation that the Contractors were allowed to do the work at the rates that were permissible in relation to the center at Giridih.

The Food Corporation of India filed a counter affidavit in the writ petition and it came up with a plea that it had agreed to



pay the new rates only up till 7th of May, 2011 or till a new Contractor is appointed, whichever is earlier. This letter dated 26th April, 2011 was filed as Annexure-J to the third supplementary counter affidavit of the Food Corporation of India filed before the Writ Court. It is thus evident that the payment at new rates was available from the Food Corporation of India only up to 7th of May, 2011 and not beyond that. The said letter dated 26th April, 2011 was nowhere questioned either by the appellants or by the Contractors. In that view of the matter, we are of the considered opinion that there was no liability on the Food Corporation of India to make any such payment at the new rates.

The respondents-petitioners-Contractors filed the writ petition taking their claim against the appellant-Corporation. We fail to understand that if the payments have not to be made by the Food Corporation of India, then under what capacity or liability will the appellants be liable to make any such deficit good as claimed by the appellants. We are apprehensive that it is quite possible that the appellants and the respondents-petitioners were in hands-in-gloves with each other in generating this litigation in order to claim higher rates as both of them would be benefited, the respondents-Contractors by getting higher payments and the appellant-Corporation getting more commission out of the



enhanced amount. This, therefore, is more in the nature of a proxy litigation and consequently, we do not find this to be a bonafide claim of interest raised by the respondents-petitioners in the background aforesaid.

Apart from this, such a money claim which becomes highly disputed keeping in view the letter dated 26th April, 2011 has completely escaped the notice of the learned Single Judge who has allowed the writ petition as if there was no dispute about the payments. The controversy, therefore, does not appear to have been construed and appreciated in the background of the aforesaid facts as a result whereof the impugned judgment erroneously proceeds to allow the claim of the respondents-petitioners.

We are, therefore, of the considered opinion that the impugned judgement cannot be sustained and accordingly, the judgement and order dated 2nd of July, 2018 is set aside. The appeal is accordingly allowed and the writ petition bearing Civil Writ Jurisdiction Case No.6891 of 2013 stands dismissed.

However, the appellants contend that if the respondents-petitioners are entitled for any such claim against the appellants, it is open to them to raise an arbitration dispute or raise a claim in accordance with law. In the event, any such claim is raised against



the appellants, the dismissal of the writ petition and allowing of
this appeal would not be an impediment.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

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