

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18219 of 2018

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Mukesh Bhushan (Contractor, Mid day meal project at Suryagarha Block) son of Ram Nandan Prasad Singh, Resident of Village- Hathidah, P.S. and P.O. Hathidah, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary Education Department, Bihar, Patna.
2. Director, Midday Meal Project, Bihar, Patna.
3. District Magistrate, Lakhisarai, District- Lakhisarai.
4. The District Programme Officer, Midday Meal Project, Jay Nagar, Lal Pahari, Lakhisarai, District- Lakhisarai.
5. District Education Officer, Lakhisarai, District- Lakhisarai.
6. Arbind Kumar, son of Late Brahmdeo Singh, resident of Village- Rahatpur, P.S.- Piparia, District- Lakhisarai, newly appointed contractor of midday meal, Suryagarha Block, Lakhisarai.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Ashok Kumar Chaudhary, Advocate
		Mr.Madan Kumar, Advocate
For the Respondent/s	:	Mr.Subhash Chandra Mishra- SC-16
For the Res. No. 6	:	Mr.Arun Kumar, Advocate
For the Res. No. 2 (MDM)	:	Mr. Girijesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 25-01-2019

Heard learned counsel for the petitioner, learned counsel representing the State, learned counsel representing the respondent no. 6. Mr. Girijesh Kumar, learned counsel submits that he is representing respondent no. 2.

The petitioner in the present case initially moved this Court for issuance of a writ of Mandamus commanding the respondents to stay the process of tender and to quash it. According to him, the tender published in Dainik Bhaskar daily



newspaper on 22.06.2018 for selection of Mid Day Meal Project Contractor in Suryagarha Block in the District of Lakhisarai was bad, inasmuch as, the same was published without complying with the order passed by this Court in C.W.J.C. No. 8534 of 2018.

It appears that during pendency of the writ application the tender was given effect to and the respondent authorities issued Memo No. 625 dated 26.09.2018 to implement the decision of the District Level Contractors Selection Committee (hereinafter referred to as the 'Selection Committee') in its meeting held on 26.07.2018. Prior to issuance of Memo No. 625 dated 26.09.2018, the learned co-ordinate Bench of this Court dealing with the this writ application on 24.09.2018 while granting time to the respondents to file counter affidavit within four weeks directed that "In the meantime, status quo existing as on today shall be maintained."

Since the Memo No. 625 dated 26.09.2018 was issued by respondent authorities whereby respondent no. 6 was selected as successful contractor for lifting of the Mid Day Meal materials, the petitioner sought to challenge the Memo No. 625 dated 26.09.2018 by filing an interlocutory application being I.A. No. 8621 of 2018.



On 04.01.2019, when the matter was taken up, this Court while directing addition of respondent no. 6 as party respondent took a serious view of the matter as to how during the status quo period the respondent authorities could issue Memo No. 625 dated 26.09.2018.

Pursuant to the aforesaid order dated 04.01.2019, respondent no. 6 has appeared and filed a detail counter affidavit, the respondent nos. 2 has filed his own counter affidavit whereas respondent nos. 3, 4 and 5 have also appeared and they have filed their counter affidavit.

The brief facts which are not in dispute are that this petitioner was earlier selected as a contractor for the Suryagarha Block to transport the Mid Day Meal foodgrains for a period of one year with effect from the issuance of office order vide Memo No. 581 dated 22.07.2014. A copy of the office order is available on the record which shows that the contract period for which the petitioner was selected was liable to end on 31.03.2015 but by virtue of condition No. 5 of the work order, in case the work of the petitioner was taken as satisfactory, the Selection Committee was empowered to recommend to the District Magistrate for extension of the contract period of the petitioner for the next financial year. Condition No. 5 makes it



very clear that in any case the extension of period of contract shall not be done beyond three years limit.

It is an admitted position that the petitioner got the extension of contract period for the said maximum period of three years in terms of condition No. 5. His case is that he was also allowed to work for sometime during the period 2017-18, however, this time the benefit of extension has not been given to him and the Director, Mid Day Meal (respondent no. 2) illegally deprived him from continuing with his work.

The petitioner had approached this Court earlier vide C.W.J.C. No. 8534 of 2018. It is apparent from a reading of the order dated 24.05.2018 passed in C.W.J.C. No. 8534 of 2018 that it was the petitioner who at the outset gave an impression to the learned Writ Court that he would be satisfied in case he is given liberty to file a representation regarding his grievance mentioned in the writ petition and the concerned authority is directed to dispose off the same within a specified time frame.

On the prayer of the petitioner the writ petition was disposed off with a direction to the petitioner to file a representation within a period of two weeks before respondent no. 2 and respondent no. 2 was directed to dispose off the same within a period of four weeks thereafter.



It is crystal clear from a reading of the order of the learned Writ Court that there was neither any submission nor any consideration that the tender process which was already going on for the Suryagarha Block and on two occasions the tender was published but could not be finalized shall be subject to a decision on the representation of the petitioner. In other words, the petitioner while pressing his writ application earlier did not seek to question the tender process which were earlier initiated for the Suryagarha Block. There was no prayer that until a decision is taken on his representation no tender be floated by the respondent authorities. His only prayer was with regard to consideration of his representation.

While the representation of the petitioner was pending, since the earlier efforts to get a contract pursuant to the tenders did not yield any result, the third tender process for Suryagarha Block was initiated; Respondent no. 6 participated in the same but the petitioner chose not to participate in the tender process.

The Selection Committee which was empowered to take a final view had a meeting on 26.07.2018. In the said meeting the order passed by the learned Writ Court and the subsequent developments were brought to the notice of the



Selection Committee. The Selection Committee considered the entire matter at length and at the end a decision was taken taking note of the contents of letter No. 370 dated 26.02.2018 issued by the Directorate. The Selection Committee found that even if the work of a contractor is held to be satisfactory, the maximum extension to such contractor would have been given only for a maximum period of three years.

The Selection Committee was informed that the work of this petitioner was not satisfactory. At the end the Selection Committee had taken into consideration the aforesaid letter dated 26.02.2018 and took a view that the petitioner who had already work continuously for six years (in fact he was working since 2012) cannot be granted further extension of time.

The Selection Committee took a view that for the said Block only a fresh selection was permissible. It is only after taking the aforesaid view of the matter the Selection Committee proceeded to consider the tenders of the three Blocks namely Suryagarha, Lakhisarai and Pipariya. These facts are apparent from perusal of Annexure-2 series to I.A. No. 8621 of 2018. At the end the respondent no. 6 was selected for the Suryagarha Block.

Mr. Ashok Kumar Chaudhary, learned counsel



representing the petitioner has though attempted to interpret letter No. 370 dated 26.02.2018, in such a way that it would confer benefit of extension to the petitioner for further three years from 26.02.2018, this Court finds that interpretation of Mr. Chaudhary that period of three years be counted from 26.02.2018 is wholly erroneous and cannot be accepted by this Court. It is apparent from a reading of letter dated 26.02.2018 that there was some query with respect to the maximum period of extension which may be provided to a contractor in case his work is satisfactory. It appears that the guideline vide letter No. 13 dated 04.01.2018, provided that on satisfactory performance of work, the contract period may be extended for a maximum period of three years but there were some confusion as to whether in case of old contractor two years of maximum period of extension will be allowed or it will be a maximum period of three years. In that context letter dated 26.02.2018 speaks that upon consideration a decision was taken that in case of satisfactory completion of work by the old contractor, the maximum period of three years extension which was provided earlier shall be applicable. This is in consonance with condition no.5 of the work order dated 22.07.2014 issued in favour of the petitioner and others.



Learned counsel for the respondents have opposed the writ application on grounds inter alia that the petitioner has moved this writ application under a misconceived and mistaken notion that the respondent authorities could not have issued notice inviting tender without disposing off the representation of the petitioner. It is submitted that there was no bar against the respondent authorities in either issuance of notice inviting tender and/or selection of a contractor. They have supported the decision of the selection committee in its meeting held on 26.07.2018.

In the opinion of this Court, the Selection Committee has rightly interpreted letter no. 370 dated 26.02.2018 and took a view that even in case of satisfactory performance of contract, a maximum period of three years may only be provided as extension. The Selection Committee has noted though the various complaints which were there against the petitioner in the resolution but the fact remains that the petitioner had availed three extensions as he had continued to work in fact for six years since his first selection and in any case for these financial years since 2014 and as per the policy decision he could not have been granted any further extension.

The petitioner had never challenged the advertisement



calling for fresh tender issued on 23.06.2018 on any legal and valid grounds, his only grievance was that said advertisement could not have been issued without considering his representation. This Court is afraid, no such order was passed by the learned Writ Court while disposing of the writ application of the petitioner on 24.05.2018. The petitioner has only misconstrued the order of the learned Writ Court for seeking an advantage in the garb of the order of the Court. The conduct of the petitioner cannot be appreciated.

It is also apparent from the record that the Selection Committee had taken up the exercise for a final decision. Pursuant to the report of the respondent no. 2, before considering the selection of respondent no. 6 the selection committee dealt with the matter arising out of the representation of the petitioner. It is only after the Selection Committee came to a conclusion that in any case the petitioner would not be entitled for getting a further extension of contract, they proceeded to consider fresh selection and in the said process respondent no. 6 was selected. Thus, at this stage also the decision of the Selection Committee in its meeting dated 26.07.2018 cannot be faulted with.

In the aforesaid facts and circumstances of the case,



this Court finds that the explanation given by the respondent authorities that Memo No. 625 dated 26.09.2018 was issued only to notify the decision of the Selection Committee taken on 26.07.2018 and that too because no information about the 'status quo' order passed by this Court on 24.09.2018 in the present writ application was communicated to the respondents is fit to be accepted. Since in ultimate analysis this Court has found that the petitioner has failed to make out a case for interference with the advertisement and then the decision taken by the Selection Committee, the writ application is liable to be dismissed and the same is dismissed accordingly.

The interim order has already been vacated. In the circumstances, the respondent State shall be at liberty to proceed in accordance with its decision in the meeting held on 26.07.2018.

(Rajeev Ranjan Prasad, J)

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Uploading Date	26.01.2019
Transmission Date	

