

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23850 of 2019

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1. Rajesh Kumar, Son of Late Ram Naresh Singh, resident of Rajopatti, Ward No. 28, P.S. Sitamarhi, District- Patna.
 2. Abhinit Kumar, Son of Jitendra Prasad Singh, resident of Ramdauli, P.S.- Bidupur, Bazar, P.O.- Bidupur, Bazar, District- Vaishali.
 3. Satyendra Pandey, Son of Hari Shankar Pandey, resident of P.S. Piprahi, P.O.- Kamrauli, District- Sheohar.
 4. Pappu Kumar, Son of Shri Ram Prit Mahaseth, resident of Mohalla- Panda Sarai, P.S.- Laheria Sarai, P.O.- Laheria Sarai, District- Darbhanga.
 5. Deepak Kumar Patel, Son of Shri Jai Ram Rai, At and P.S.- Sheohar, District- Sheohar.
 6. Sita Ram Mahto, Son of Late Thaga Mahto, resident of Mahonpur, P.S.- Sonbarsa, P.O.- Bhutahi, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Consumer Protection Department, Government of Bihar, Patna.
2. The Managing Director, Bihar State Food Corporation Building, Patna.
3. The Deputy General Manager, Bihar State Food Corporation Building, Patna.
4. The District Transport Committee through its Chairman, Sitamarhi.
5. The District Manager, Bihar State Food Corporation Building, Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate Mr. Sumit Kumar Jha, Advocate
For the Respondent/s	:	Mr. Alok Ranjan, AC to A.A.G. - 5
For the BSFC	:	Mr. Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT



Date : 03-12-2019

Heard Mr. Y. V. Giri, learned senior Advocate for the petitioners, Mr. Alok Ranjan, learned Advocate for the State and Mr. Shailendra Kumar Singh, learned Advocate for the BSFC.

This writ petition has been filed for setting aside / quashing the Notice Inviting Tender (NIT) for selection and empanelment of Door Step Delivery (DSD) transporting contractors for transportation of foodgrains *vide* NIT No. 1115 dated 29.10.2019, which has been floated by Bihar State Food and Civil Supplies Corporation, Sitamarhi through its District Manager. Additionally, it has also been prayed that the respondents be directed to dispose off the representation / application of the petitioners, seeking extension of work contract for a further period of one year as per the terms of the contract by extending the period of agreement.

The short facts leading to the filing of the present petition are as hereunder:



A tender was invited on 21.07.2016 by the BSFC, Patna for selection / empanelment of DSD transporters for the district of Sitamarhi and the petitioners being successful, respective contracts were concluded with them for a period of three years. The contract with respective petitioners is about to end on various dates between and November to December, 2019.

It has been pointed out by the learned senior counsel for the petitioners that in the tender referred to above, there is a clause which provides for the extension of agreement for a further period of one year on the recommendation of the District Transport Committee and which recommendation is agreed upon mutually. It is on the basis of the aforesaid clause that the present writ petition has been founded. In the interregnum, a development took place in as much as a new Transportation Policy of 2018 came to be adopted on 01.04.2018, indicating the ways and means of selecting transporters and controlling their activities for DSD in



various districts. The clauses of the new Transportation Policy is almost similar to the earlier policy as in the new policy also, there is a provision for extension of agreement which would be concluded with respective tenderer for two consecutive times for a period of six months but only on the recommendation of District Transport Committee and agreed upon mutually.

One of the arguments of Mr. Giri, learned senior Advocate is that in the event of the petitioners having filed a representation / application for extension of agreement for a further period of one year as it is in consonance with the earlier Transportation Policy and an enabling clause in the tender of 2016 for such extension, the application ought to have been considered before floating a new tender.

This argument has been further spiked by Mr. Giri on the ground that there is a legitimate expectation of the petitioners because of their experience, investment and



their having performed their part of the obligation under the contract without any demur.

The other ground raised by Mr. Giri is that the request of the petitioners ought to have been considered in view of the communication made to the District Manager of Sitamarhi by the Managing Director of Bihar State Food and Civil Supplies Corporation Limited, asking him to consider the cases of the petitioners. Along with the aforesaid direction, the copies of the respective representation / application of the petitioners were also forwarded to the District Manager.

Taking these two points further, Mr. Giri submits that it was not proper on the part of the BSFC through the District Manager of Sitamarhi, to float a fresh tender. Because of the legitimate expectations of the petitioners that their respective agreements with the respondent would be extended, they did not even download the tender papers for which the last date is 25.11.2019 till 05.00 P.M.



There is no gainsaying that the petitioners have the experience of running door to step transportation service in the district of Sitamarhi and during the existence of the agreement of the petitioners with the BSFC, no complaint was received with respect to the quality of services tendered by them. Nonetheless, merely because of an enabling clause in agreement for extension on the recommendation of the District Transport Committee and on mutually agreed to and that such an expectation would be given the status of a vested right in a tender to compulsory get an extension of the agreement for the good services that they have rendered.

In matters of tender, it has long been decided that there should not be any unnecessary interference of the Court of law as only the authority which floats the tender knows its best requirements / interests.

In view of a new Transportation Policy having been adopted and pursuant to such policy, if a fresh notice inviting tender for selection / empanelment of door to step



transportation agency has been floated, there is no reason why this Court should stall the process of tender.

However, on grounds of fairness, this Court deems it appropriate to direct the respondents to consider the representation of the petitioners for further extension within a period of two weeks of passing of this order and the result of such consideration be communicated to the petitioners forthwith.

However, it is made clear that for consideration of the respective representations of the petitioners, the tender process shall not be stopped.

In the event of the petitioners making an application showing their intention of participating in the tender, they shall be afforded an opportunity of downloading the tender paper, but for that they would file such representation before the District Manager within 48 hours, to be counted from tomorrow morning.

Needless to state that the representation shall be disposed of before the finalization of the tender by a



speaking order. In the event of their representation being allowed, the respondents shall take logical decision in that regard.

With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	04.12.2019
Transmission Date	

