

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21909 of 2018

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Rohit Kumar Son of Krishna Prasad, resident of Mohalla- Matakhudi Lane,
Mahendru, P.O.- Mahendru, P.S.- Sultanganj, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. Bihar State Food and Civil Supplies Corporation through its Managing Director.
3. Managing Director, Bihar State Food and Civil Supplies Corporation.
4. District Magistrate, Patna-cum- Chairman, District Transport committee.
5. District Manager, Patna, Bihar State Food and Civil Supplies Corporation.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Y.V. Giri, Senior Advocate Mr.Pranav Kumar, Advocate
For the Respondent/s	:	Mr.Upendra Pratap Singh, AC to SC-4
For the BSFC	:	Mr. Shailendra Kumar Singh, Advocate Mr. Nirala Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 14-02-2019 Heard learned Senior Counsel representing the

petitioner and learned counsel for the State.

Petitioner in the present case is seeking following
reliefs:-

“i) To issue a writ/order/direction in the nature of certiorari for quashing the memo no. 1707 dated 09.10.2018 issued under the signature of District Magistrate, Patna where-under it has been directed to the District Manager, Patna BSFC to impose appropriate punishment as provided in Bihar State Food & Civil Supplies Corporation Transportation Rule, 2018 within a period of 15 days to the petitioner. (Annexure-



9).

ii) To issue a writ/order/direction in the nature of mandamus commanding the respondent not to give effect the order as contained in memo no. 1707 dated 09.10.2018.

iii) To issue a writ/order/direction in the nature of mandamus commanding the respondent not to take decision to award the contract/agreement to any third party during the pendency during the pendency of the writ application.

iv) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

Learned Senior Counsel representing the petitioner has drawn the attention of this Court towards Annexure-10 to the writ application which is Bihar State food and Civil Supplies Transportation Policy, 2018 (hereinafter referred to as ‘the Policy of the year 2018’). It is submitted that in terms of Clause 3(IV) of the Policy, 2018 it is the District Transport Committee which would be the competent authority to take any decision with regard to cancellation of agreement for the alleged violation of the conditions prescribed thereunder or to impose any penalty and/or to pass any order of debarment.

Submission is that when the petitioner was called upon to show cause by the District Manager, State Food and Civil Supplies Corporation, Patna (hereinafter referred to as ‘the



Corporation') for his allegedly submitting forged insurance certificates with regard to two vehicles for obtaining the work in question, the petitioner submitted his reply thereto which was considered by the District Manager and then a recommendation was made by him to the District Magistrate, Patna saying that this appears to be a case of mistake on the part of the petitioner for which he may be exonerated taking a sympathetic view of the matter but then the District Magistrate, Patna by the impugned letter as contained in Annexure-9 directed the District Manager of the Corporation, Patna to impose a punishment in accordance with the Policy of the year 2018 as contained in Annexure-10.

Learned Senior Counsel submits that by issuing direction to the District Manager to impose a punishment as prescribed in the Policy of the year 2018, the District Magistrate has exceeded his power and is imposing a decision upon the District Manager. Learned Senior Counsel has also placed reliance on the judgment in the case of **Manohar Lal (DEAD) By LRS. vs. Ugrasen (DEAD) By LRS. and others** reported in **2010 (11) SCC 557**. Para 23 of the judgment has been relied upon to submit that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of



statutory authority nor can the superior authority mortgage its wisdom and direct the statutory authority to act in a particular manner.

On the other hand, learned counsel representing the State submits that the District Manager of the Corporation, Patna had recommended to the District Magistrate, Patna to take a sympathetic view of the matter but then the District Magistrate having found from the Policy of the year 2018 that for such matters penalty is required to be imposed, directed the District Manager to take a decision in terms of the Policy of the year 2018.

Learned counsel submits that in fact the petitioner had submitted forged insurance certificates with the tender documents which on verification from the New India Insurance Company Limited have been found to be a forged document. It is for this reason that the District Magistrate, Patna did not take a sympathetic view of the matter. Learned counsel submits that it would not be correct to say that the District Magistrate has decided or has taken any decision to impose the punishment upon the petitioner and has issued any command or direction to the District Manager of the Corporation, Patna. The fact is that he has only directed the District Manager of the Corporation,



Patna to take a decision in the light of the Policy of the year 2018.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that in the counter affidavit the District Manager of the Corporation, Patna is admitting to the extent that in this matter the decision is to be taken in the light of the Policy of the year 2018. The impugned order as contained in Annexure-9 issued by the District Magistrate, Patna is also referring to the same policy, no doubt with a direction to the District Manager to impose a punishment in terms of the Policy of the year 2018.

In the opinion of this Court, the letter as contained in Annexure-9 directing the District Manager of the Corporation, Patna to take a decision under the Policy of the year 2018 is required to be read down to the extent that it is no more than a direction to take an appropriate decision in the light of the Policy of the year 2018 without being prejudiced by the observations of the District Magistrate, Patna, if any as contained in Annexure-9 to the writ application.

This Court, thus, by reading down Annexure-9, would be directing the competent committee under the Policy of the year 2018 to consider the matter afresh from the stage of the



reply of the petitioner and take an appropriate decision in terms of the policy while complying with the principle of natural justice.

At this stage Mr. Giri, learned Senior Counsel representing the petitioner submits that the petitioner may be permitted to file an additional reply in the interest of justice.

This Court is of the considered opinion that the Committee may in order to comply with the principles of natural justice will be justified in giving one opportunity to the petitioner to file any additional reply within a period of 15 days from today which will also be considered by the Committee and an appropriate decision thereon shall be taken within a period of 90 days keeping in mind the Policy of the year 2018.

This writ application is disposed off.

(Rajeev Ranjan Prasad, J)

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