

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19624 of 2016

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M/s Supreme Enterprises, a company having its Registered Office at East Ashok Nagar, Road No. 14(B), Kankarbagh, Patna, Bihar through its Authorized Representative Mr. Harsh Vardhan Singh

... .. Petitioner/s

Versus

1. The State Of Bihar, through its Principal Secretary, Urban Development and Housing Department, New Secretariat, Patna.
2. District Magistrate, Bihar Sharif, at Nalanda
3. Municipal Commissioner Cum Chief Executive officer, Bihar Sharif Municipal Corporation, Bihar Sharif at Nalanda
4. Additional Commissioner, Bihar Sharif Municipal Corporation, Bihar Sharif at Nalanda
5. Mayor, Bihar Sharif Municipal Corporation, Bihar Sharif at Nalanda

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar- SC 9
		Ms. Deepika Sharma, AC to SC-9
		Mr. Ravish Chandra, AC to SC- 6
For the Corporation	:	Mr. Gyan Prakash Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 17-02-2020

Heard Mr. Anurag Saurav, learned advocate for the petitioner, Mr. Gyan Prakash Ojha for Municipal Corporation, Bihar Sharif, Mr. Ravish Chandra, AC to SC-6 and Ms. Deepika Sharma, AC to SC-9 respectively.

The petitioner had supplied a chassis mounted skylift to Bihar Sharif Municipal Corporation against a tender in which a contract was entered into between the corporation and the petitioner.

The dispute now is that the corporation has taken a stand that since the delivery was much beyond the



stipulated time, the vehicle was not accepted at any point of time; rather another skylift was purchased, seeing the urgency, from another organization/firm.

The case of the petitioner is that he was asked to supply the aforesaid vehicle with a warranty period for three years. Later, on the showing of the petitioner that there was an agreement, in principle, for providing only one year warranty, necessary amendment in the work order was made. Thereafter, when the vehicle was not supplied, a warning letter was issued to the petitioner. Shortly thereafter, the petitioner purchased the vehicle and also obtained the permission of the corporation for temporary registration as such vehicle could not have been transported from the manufacturer to the premises of the corporation without temporary registration.

It appears that such permission was granted. It is on the basis of the aforesaid permission for temporary registration that the petitioner claims that the delay in supply of vehicle was condoned and the agreement between the petitioner and the corporation was made to subsist. The vehicle was put to a 3rd party test and according to the petitioner, the same was delivered and kept in the premises of the corporation.

These facts have been controverted by the learned advocate for the corporation on various counts *viz.* the presence of the vehicle in question in the premises of



the corporation and condonation of the delay in supply of the vehicle.

It was at that stage that the present writ petition was filed for setting aside the order of respondent no. 3, terminating the work contract/supply of skylift and for a direction to accept the same without demur.

The matter was heard on several dates by this Court but no definitive pronouncement could be given because of the fact that the corporation did not have a full fledged Commissioner/Chief Executive Officer.

Be that as it may, from the orders passed by this Court, it can be gleaned that one point of time, an adjournment was granted for the corporation to take a decision in that matter.

Be it noted that the primary grievance of the petitioner *viz.* no show cause notice having been issued to him before cancelling the work order, subsisted was continuously agitated throughout the present proceeding and in the proceedings before the Municipal Corporation.

It further appears from the records that an Empowered Standing Committee of which the Mayor of the city was also a member was constituted and deliberations were held. The deliberations of the Empowered Standing Committee referred to above have been brought on record by way of supplementary affidavit on behalf of the corporation (respondent no. 3). The order dated



12.07.2018 contained in Memo No. 2200 indicate the stages through which the claim of the petitioner was put to. The order of the standing committee takes note of the fact that the warranty period was reduced from three years to one year but no specific promise was doled out to the petitioner for any extension of time supply of the vehicle/apparatus in question. It is precisely for this reason that the petitioner got a 3rd party inspection done and claims to have delivered the vehicle in the premises of the corporation. The order takes note of the fact that the limitation period for supplying the vehicle started running from 29.06.2016 and when, after the lapse of thirty days, the vehicle was not supplied, a reminder was issued but to no avail. On 11.11.2016, the petitioner was asked for his explanation as to why he be not blacklisted. At this stage, the agreement with the petitioner was cancelled and a fresh contract for supply of the Access Platform (Skylift) was entered into with another firm and was purchased also. There is complete denial of the presence of the machinery in the premises of the corporation.

Learned advocate for the petitioner however asserts, as has been noted above, that but for the grant of permission for obtaining temporary certificate in the name of the corporation, the petitioner would not have ventured to purchase and supply the vehicle in question and now when the vehicle is not being accepted by the corporation,



it is also difficult for him to put it to re-sale to any person as there is a temporary registration in the name of the corporation.

In view of the disputed assertion of facts regarding presence of the vehicle in the premises of the corporation, it would be difficult to adjudicate the aforesaid issue in the present writ petition.

What this Court deems appropriate in the aforesaid circumstances, is to direct that the vehicle, if kept in the premises of the corporation be allowed to be taken away by the petitioner. This Court further provides that in case, necessary application is made before the concerned Transport Office for cancellation of temporary registration, such application shall be ratified by the corporation and the concerned Transport Office shall look into the matter, verify the facts and cancel such temporary registration so as to allow the vehicle to remain completely unencumbered on any account whatsoever. The very fact that a vehicle (skylift) has already been purchased through another source and the respondent corporation is not in need of any other vehicle of that kind and has also entered into an agreement with Energy Efficient Services Limited for maintenance of street lights for seven years, this Court ought not to and cannot issue any direction to the Corporation to accept the vehicle (skylift) offered by the petitioner.



However, with respect to no notice having been served upon the petitioner for cancelling the work order and giving an expectation in the estimation of the petitioner that delay in supply of the vehicle has been condoned and the legitimate expectation that supply would be accepted, the petitioner would be at liberty to sue the Corporation for damages before the appropriate forum.

This Court thus directs that the petitioner shall be allowed to take away the vehicle from the premises of the corporation if at all the same is lying there within a period of fifteen days of the production of a copy of this order before the respondent no. 3. Should an application be filed before the concerned Transport office for the cancellation of the registration within a period of thirty days, the same shall be endorsed by an authorized officer of respondent no. 3 and in that event, a decision shall be taken by the Transport office within a period of fifteen days of the receipt of such application.

With the aforesaid direction/observation, the writ petition stands disposed of.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.02.2020
Transmission Date	

