

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7940 of 2020

-
-
1. Samsheer Singh, aged about 38 years, (Male), Son of Sri Krishnnandan Singh Resident of village- Mosimpur, P.S.- Khusrupur, District- Patna.
 2. Sanju Kumari, aged about 24 years, (Female), Wife of Rahul Ranjan Resident of village- Mosimpur, P.S.- Khusrupur, District- Patna.
 3. Rahul Ranjan, aged about 32 years, (Male), Son of Sri Krishnnandan Singh Resident of village- Mosimpur, P.S.- Khusrupur, District- Patna.
 4. Ranvir Prasad, aged about 45 years, (Male), Son of Late Panbabu Prasad Resident of village- Kaladiara, P.S.- Naya Tola Bariyarpur, District- Patna.
 5. Din Dayan Singh, aged about 44 years, (Male), Son of Jay Ram Singh Resident of village- Barahpur, Ward No. 07, P.S.- Mokama, District- Patna.
 6. Ram Kanchan Kumar, aged about 39 years, (Male), Son of Late Sanjay Kumar Resident of village- Akhtiyarpur, P.S.- Paliganj, District- Patna.
 7. Sudesh Prasad Singh, aged about 52 years, (Male), Son of Late Manki Prasad Singh Resident of village- Gonwa, P.S.- Naubatpur, District- Patna.
 8. Krishna Singh, aged about 40 years, (Male), Son of Late Jay Narayan Singh Resident of village- Akbarpur, P.S.- Paliganj, District- Patna.
 9. Sumant Kumar, aged about 28 years, (Male), Son of Late Sudhir Singh Resident of village- Akhtiyarpur, P.S.- Paliganj, District- Patna.
 10. Dharmendra Kumar, aged about 32 years, (Male), Son of Late Ramanand Singh Resident of village- Akhtiyarpur, P.S.- Paliganj, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Mid Day Meal, Bihar, Patna.
4. The District Magistrate, Patna.
5. The District Development Commissioner, Patna.
6. The District Education Officer, Patna.
7. The District Programme Officer, Mid Day Meal, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Adv. Mr. Vikas Kumar, Adv.
For the Resp. No.3	:	Mr. Girijesh Kumar, Adv.
For the State	:	Mr. Samir Kumar, AC to SC16

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN



ORAL JUDGMENT

Date : 28-10-2021

Heard learned counsel for the petitioners and learned counsel for the respondents. Learned counsel for the petitioners hereby has filed an undertaking that all the defects pointed out by the stamp reporter shall be removed as and when required. It is accordingly directed that all defects pointed out by the Stamp Reporter be removed within one month hereof.

2. The present writ petition has been filed for the following reliefs as formulated by the petitioners-

“1(a). For quashing of letter contained in Memo No. 1393 dated 01.09.2020 issued by Director, Mid Day Meal, Bihar, Patna addressed to District Programme Officer, Mid Day Meal, Patna by which it was informed that selection of all the contractors pursuant to Advertisement No. 01/2019-20 has been cancelled as terms and condition of the said tender notice was not in accordance with direction of the department and several fault have also been found in the process of selection of contractors, therefore, direction was given to take fresh steps for publication of tender for appointment of contractor in accordance with the terms and conditions of direction of the department.

(b) For further direction to respondent authorities to allow these petitioners to work as



Transporting Cum Handling Agent in different Circle/Division of Patna District under Mid Day Meal Scheme who were validly selected pursuant to tender notice no. 01/2019-20.

(c) For any other relief/reliefs for which the petitioners are found entitled too.”

3. The short facts of the case, according to the petitioners, are that pursuant to the advertisement no. 01/2019-20 (Annexure-2), they participated in the tender for transportation of food grains from the depot of State Food Corporation to different schools under different circles/divisions of the district of Patna. In due course, the petitioners were selected and agreements dated 11.2.2020 (Annexure-4 series) were entered into between the parties. Soon thereafter, however, the Director, Mid Day Meal Scheme, Bihar, Patna (Respondent no. 3) issued a memo no. 532 dated 19.2.2020 to the District Magistrate, Patna (Respondent no.4) in the backdrop of complaints of irregularity in selection having been received, to conduct enquiry in that regard pending which further action in relation to the selection was kept in abeyance. Thereafter, by the impugned order dated 1.9.2020 (Annexure-1), the advertisement no. 01/2019-20 was cancelled by the Director (Respondent no.3).



4. Mr. P.K. Shahi, learned senior counsel for the petitioners assails the impugned action of cancellation of advertisement on the very short plea of violation of natural justice. It is submitted that rights had vested and accrued in favour of the petitioners by reason of agreements entered into between the parties. Such rights could not have unilaterally been terminated by the respondents without prior issuance of notice granting an opportunity of hearing.

5. Mr. Girijesh Kumar, learned counsel for the respondent appears and vehemently opposes the writ application. It is submitted that pursuant to the complaints received, it was noticed that the advertisement as issued was in violation of the guidelines issued by the Bihar State Mid Day Meal Scheme Committee in its letter no. 2226 dated 20.11.2017 (Page-86). It is submitted that the guidelines did not impose any restriction with reference to the place where the vehicles were registered which could thus be anywhere in the State of Bihar. However, contrary to the said guidelines, the advertisement required the vehicles to be registered only within the district of Patna. It is stated that no work order had been issued in favour of the petitioners rather when the irregularity in the advertisement came to light, immediate steps were taken within a week of entering into the agreements with the



petitioners and further action was directed to be stayed in terms of the letter dated 19.2.2020 (Page-56). Action by way of a show cause notice (Annexure-C to the counter affidavit) had been taken by the Director (Respondent no.3) against the District Programme Officer, Mid Day Meal Scheme, Patna with regard to stipulation for registration of the vehicle within the district of Patna as contained in the advertisement. The irregularity is evident also from the very fact that the earlier restriction in Clause 22 of the guidelines requiring applicants to be residents of the district concerned, was later on removed by letter No. 1218 dated 10.7.2018 (Page-91). In that backdrop, it would be conflicting to require the vehicles to be registered only in the district of Patna even though a tenderer could be resident of any other district.

6. In reply, Mr. P.K. Shahi, learned senior counsel for the petitioners invites reference to letter no. 573 dated 15.5.2020 (Page-93) whereby the District Programme Officer has forwarded a copy of the enquiry report to the Director with the finding that no irregularity had been found in the decision taken and directions were sought in respect of three issues, which in any event had nothing to do with the issue of registration of vehicles within the district of Patna.



7. Having heard the parties and on consideration of the materials on record, this Court finds merit in the writ petition. It is not in dispute that agreements had duly been entered into between the parties. Consequently, rights had accrued in the petitioners under the terms of agreement. Unilateral cancellation of the advertisement by the respondents without reference to the petitioners had the effect of negating their agreements, which, therefore, resulted in civil consequences. No satisfactory reason has been pleaded by the respondents for not granting any opportunity of hearing to the petitioners prior to cancellation of the advertisement, save and except that such opportunity would have been a mere formality considering the manifest irregularity in the advertisement being contrary to the guidelines referred to above. This, in my view, cannot be assumed as a foregone conclusion, moreso in the light of the enquiry report having found that there was no irregularity in the selection. It is trite that Justice must not only be done but must manifestly be seen to be done.

8. In this regard, reference may be made to the decision of the Hon'ble Apex Court in the case of S.L. Kapoor Vs. Jagmohan reported in AIR 1981 SC 136, expressing its views in the following terms –

“In our view, the principles of natural justice know of no exclusionary rule dependent on whether it would have made



any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced.”

“Natural justice may always be tailored to the situation. Minimal natural justice, the barest notice and the ‘littlest’ opportunity, in the shortest time, may serve.”

9. The submission of the respondents that there was no error on the part of the petitioners which might have necessitated issuance of show-cause to them and that the error, being on the part of the District Programme Officer, a show-cause notice had duly been issued to him, is without substance. It is not so much a matter of fault on the part of the petitioners that would invite a show-cause notice rather it is a matter of grant of an opportunity of hearing to the petitioners to answer why the proposed action of the respondents should not be taken to their detriment.

10. In the above facts and circumstances, the impugned letter contained in Memo No. 1393 dated 01.09.2020 (Annexure-1) is hereby set aside and the matter is remanded to the Director, Mid Day Meal Scheme, Bihar, Patna (Respondent no.3) for passing orders afresh after grant of an opportunity of hearing to the petitioners in accordance with law.

11. The writ petition stands allowed.



12. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the petitioners within the stipulated time provided in para 1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Vikash Jain, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.10.2021
Transmission Date	

