

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3015 of 2016

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Md. Kalim son of Late Haji Mohammad Muslim, resident of Mohalla- Sabji Bazar Saharsa, P.S. Saharsa, District- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Home Commissioner, Home (Jail) Department, Bihar, Patna.
3. The Director (Work Shop), Jail Inspector, Home (Jail) Department, Bihar, Patna.
4. The Inspector General, Jail, Bihar, Patna.
5. The District Magistrate-cum-Chairman, District Jail Purchase Committee, Saharsa.
6. The Additional District Magistrate, Saharsa.
7. The Jail Superintendent, Divisional Jail, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nityanand, Adv.

For the Respondent/s : Mr. Raj Nandan Prasad, SC-9.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

6 11-08-2023

Re. I.A. No. 1 of 2023

This application has been filed by Arshad Reza, who is legal heir and representative of the petitioner, namely, Md. Kalim, who died on 14.10.2021 to substitute in his place.

2. For the reasons stated in the application, the I. A. No. 1 of 2023 is allowed. Let Arshad Reza be substituted in place of the petitioner, Md. Kalim.

Re. C.W.J.C. No. 3015 of 2016

Heard learned counsels for the parties.



2. The writ petition is filed for the following reliefs:-

(A)

- (i) The order dated 28.08.2012, contained in Memo No. 3866, issued by the Director (Work Shop). Jail Inspectorate, Home (Jail) Department, Bihar Government, Patna by which the standard rate of different articles for supply of the same in different jail of Bihar, has been fixed, stating therein that the payment for the supply of grains and other articles, made by the suppliers in jails for financial year 2012-13, till today, i.e. from 01.04.2012 to 23.08.2012, shall be made to the suppliers at the rate, fixed and approved for the financial year 2011-12 and the payment for the supply of grains and other articles, made by the suppliers after the meeting of Central Purchase Committee, i.e. after 23.08.2012, shall be made to the suppliers at the amended rate, fixed and approved for the financial year 2012-13, which is very lower to market rate and contrary to the rate, fixed by the District Purchase Committee, and approved by District Magistrate, Saharsa, in contrary to the provision of the Rule 24 as well as Rule 1051 of Bihar Jail Manual.
- (ii) The order dated 05.10.2012, contained in Memo No. 4527, issued by the Director (Work Shop), Jail Inspectorate, Home (Jail) Department, Bihar Government, Patna, by which the rate fixed by the order dated 28.08.2012, contained in Memo No. 3866, was revised/approved but contrary to the rate fixed by the District Purchase Committee, which is still very lower than that of the market.

(B)

- (i) For fixing and approving the rate of grains and other articles supplied by the petitioner/ supplier at the rate of market rate as well as



at the rate, fixed by the District Purchase Committee and approved by the District Magistrate, Saharsa, pursuant to the provision contemplated under rule 1051 of Bihar Jail Mannual as well as pursuant of different circular of Jail Department.

- (ii) For payment of the amount to the petitioner/supplier, against the articles supplied by him in Jail for financial year 2012-13, at the rate, fixed and recommended by the District Jail Purchase Committee, Saharsa and approved by the District Magistrate, Saharsa, in consonance with the market rate.

3. Learned counsel for the petitioner has prayed that the matter is squarely covered by the judgment of this Hon'ble Court in C.W.J.C. No. 19583 of 2015 and other writ petitions which were allowed by this Hon'ble Court. Learned counsel has also stated that C.W.J.C. No. 66 of 2013 pertaining to similar reliefs, as claimed in the present writ petition, was allowed by this Hon'ble Court and the said order was confirmed by a Division Bench in LPA No. 594 of 2016 vide order, dated 14.07.2017. Thereafter the said order of the Division Bench was also challenged before the Hon'ble Supreme Court vide Special Leave to Appeal (C) No. 28334 of 2017 and the Hon'ble Supreme Court was also pleased to dismiss the Special Leave to Appeal vide order, dated 03.11.2017, therefore, learned counsel has prayed this Hon'ble Court to allow the present writ petition.

4. Further, it is stated by the counsel for the petitioner that the order passed by this Hon'ble Court in C.W.J.C. No.



19583 of 2015, dated 05.05.2023, was also complied by the authorities concerned as the full payment was made to the writ petitioner therein.

5. Learned counsel for the respondents while fairly conceding the above made statement has not disputed the orders passed by this Hon'ble Court in the above referred case and that of the Hon'ble Supreme Court. Though the counsel has tried to distinguish the above judgments from the case on hand, the same is perfunctory and does not merit any consideration.

6. A perusal of the impugned order as well as the pleadings in the present writ petition shows that this Hon'ble Court under similar circumstances has allowed the writ petition filed by the petitioner therein. Therefore, the attempt of the counsel for the respondents to distinguish the same on facts is rejected as the above judgments squarely cover the present case.

7. Admittedly, in the present case also the petitioner was selected for the purpose of supplying of different articles, including the tendered article, i.e., (i) Pulse (Masur), (ii) Pulse (Gram), (iii) Pulse (Arhar), (iv) Gram, (v) Potato, (vi) Coal, Steam Grade – 2, (vii) Mustard Oil – Dhara and (viii) Milk Powder and the rate which was earlier fixed by the District Jail Purchase Committee was approved by the District Magistrate,



Patna, but, after the articles were supplied at the rate fixed by the District Jail Purchase Committee, the Central Purchase Committee has unilaterally reduced the rate fixed. This Court in a catena of cases under similar circumstances has passed the following order :

A bare perusal of the statutory provisions underlying Rule 24 read alongside Rule 1051 of the Jail Manual, would manifest that no appellate jurisdiction is vested in the Central Purchase Committee to preside over the rate recommended by the District Jail Purchase Committee. In fact the area is clearly demarcated and whereas the Central Purchase Committee is required to give a wholesome consideration to the requirements and the needs of the Jails established across the State and thus exercises jurisdiction where the purchases are to be made in large quantities, on the other hand, the District Jail Purchase Committees are constituted in each district and are presided by the District Magistrate. These Committees are looking into the individual needs and interests of the jail situated within the district. The area of operation of the two Committee is clearly demarcated and in the circumstances it is clearly established that the Central Purchase Committee has exceeded its jurisdiction to sit in appeal over the rates so recommended by the respective District Jail Purchase Committee in the present batch of cases.



Another infirmity which is eloquent from a very look of the tender notice is that it is first of its kind where the tenderers are required to make supplies without any agreement on the rates. In fact the tender on record of these batch of writ petitions reflect that the willing tenderers were only applicants for the supplies and the rates for such supplies was to be determined by the District Jail Purchase Committee who had to consider the fixation in the backdrop of the rates prevalent in the markets. Rule 1051 of the Jail Manual manifests that such Committee is to be presided by the District Magistrate and Rule 1051 (v) further provides that the current prices is to be ascertained by the Committee by making enquires.

In a similar manner Rule 24 requires a Central Purchase Committee to take a decision in this regard and Sub Rule (6) thereof vests jurisdiction in the Inspector General to sanction a higher rate then recommended by the Purchase Committee. This singular provision by itself is supportive of the fact that a rate recommended by the District Jail Purchase Committee is not to be interfered with in a light manner unless the Inspector General of Prisons is of the opinion to sanction a higher rate. In the present case it is absolutely the converse and the rates as recommended by the respective District Jail Purchase Committee has been interfered with by the Central Purchase Committee to reduce the same. The period of supply



is over and the petitioners have made their supplies under the legitimate expectation of the rates recommended by the District Jail Purchase Committee. In my opinion once the District Jail Purchase Committee has approved and recommended the rates offered by the petitioners by following the procedure provided under Rule 1051(v) and it is upon such approval that the supplies were made by the petitioners then the same cannot be reversed unilaterally, midway in the contract and without the consent of the contracting party i.e the petitioners herein. The respondents are estopped from interfering with the rates so recommended by the District Jail Purchase Committee in view of the statutory prescriptions as well as on the principles of legitimate expectation and promissory estoppel. In so far as the District of Saharsa and Nawada is concerned, the illegality is further perpetuated when the respondents have gone ahead to recover the differential amount. Apart from the fact that the Central Purchase Committee though presided by the Inspector General of Prisons has no jurisdiction to reverse the rate recommended by the District Jail Purchase Committee even otherwise, once the petitioners have made their supplies at a rate recommended by the District Jail Purchase Committee then the rate can not be interfered in the midst of the contract to the prejudice of a contracting party.

8. The above said judgment has been affirmed by the



Hon'ble Division Bench holding as under :

In the matter of purchase made to the jail in question, based on the recommendations of the District Jail Purchase Committee as approved by the Inspector General of Prison, the subsequent action taken by the Central Purchase Committee has been examined by the learned Writ Court in the backdrop of the rules contained under the Jail Manual and it has been found that once the petitioners had supplied the materials based on the recommendations and the price fixed by the District Jail Purchase Committee approved by the Inspector General of Prison, the Central Purchase Committee has no jurisdiction to sit over the matter and reconsider the issue.

After going through the statutory provisions in detail and discussing the issue involved, we find that learned Writ Court has decided the issue in accordance with law, which does not warrant any consideration.

9. Having regard to the above laid legal proposition, the writ petition stands **allowed**. The impugned order is set aside. The Jail Superintendent, Divisional Jail, Saharsa, respondent no. 7, is directed to make payment of the balance differential amount for supply made in the financial year 2012-13 to the petitioner as per the rate recommended by the District Jail Purchase Committee, after adjusting the amount already



paid to the petitioner. The Inspector General, Jail, Bihar, Patna, is directed to release the fund for the said purpose. The above exercise shall be complied within eight weeks from the date of receipt/communication of this order.

(A. Abhishek Reddy , J)

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