

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.417 of 2023

Gayatri Narayan Construction Pvt. Ltd. through its Director, Gayatri Narayan, female, aged about 51 Years, D/O-Bansh Narayan, R/o-B-2 Vinita Villa, Bailey Road, Jagdeo Path, P.O.-B.V. College, District-Patna.

... .. Petitioner/s

Versus

1. The Chairman and Managing Director, Food Corporation of India New Delhi.
2. The Executive Director (East), Food Corporation of India, Zonal Office east, 10A, Middleton Row, Kolkata-700071.
3. The General Manager, Food Corporation of India, Regional Office, Arunachal Bhawan, Exhibition Road, Patna.
4. The Assistant General Manager, Food Corporation of India, Regional Office, Arunachal Bhawan, Exhibition Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Alok Ranjan, Advocate
For the Respondent/s : Mr.Prabhakar Tekriwal, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 09-05-2023

In the instant petition, petitioner has prayed for the following relief(s):-

“1). For quashing the order dated 09.09.2022 issued under the signature of General Manager (Region) whereby and where under the appeal filed on behalf of the petitioner before respondent no. 2 was rejected by respondent no. 3 in a very arbitrary and illegal manner, without even issuance of any showcause notice to the petitioner.



II). For quashing the Order dated 15.01.2021 issued under the signature of General manager Food Corporation of India, Regional office, Arunachal Bhawan, Exhibition Road, Patna, whereby and where under the contract for Handling and transport work has been terminated and security deposit amounting to Rs. 3,29,350/- and two Bank guarantees of Rs. 6,58,700 has been forfeited and was encashed and further the petitioner has been debarred from participating in future tender of the corporation for period of 5 years in a most arbitrary and illegal manner just before one day of closure of work period (agreement period was for 17.01.2019 to 16.01.2021) without issuing any show-cause notice for cancellation of contract, Debarment or for forfeiture of security deposit and Bank guarantee.

III) For directing and commanding the respondents authorities to refund the amount of security deposit amounting to Rs. 3,29,350/- and two Bank guarantees of Rs. 6,58,700 which has illegally been forfeited in most arbitrary manner.

IV). For directing and commanding the respondent authorities for payment of the amount dues for the work done by the petitioner, pursuant to the agreement.

V). For declaring and holding that the order dated 15.01.2021 passed by the respondent authority is arbitrary, illegal, colorable exercise of power, and the same has been issued without compliance of principals of natural justice.



VI). For commanding and directing the respondent authorities to make payment to the petitioner along with compound interest from the date it became dues till actual date of payment, penal interest and cost of litigation.

VII). For any other relief or reliefs for which the petitioner is entitled under law in the facts and circumstances of the present case.”

2. This is second round litigation. Earlier petitioner had filed CWJC No. 3176 of 2022, the same was disposed, order dated 30.09.2022 reads as under:-

“Petitioner has prayed for the following relief(s):-

“I. For quashing the Order dated 15.01.2021 issued under the signature of General manager Food Corporation of India, Regional office, Arunachal Bhawan, Exhibition Road, Patna, whereby and where under the contract for Handling and transport work has been terminated and security deposit amounting to Rs. 3,29,350/- and two Bank guarantees of Rs. 6,58,700 has been forfeited and was encashed and further the petitioner has been debarred from participating in future tender of the corporation for period of 5 years in a most arbitrary and illegal manner just before one day of closure of work period (agreement period was for 17.01.2019 to 16.01.2021) without issuing any show-cause notice for cancellation of contract, Debarment or for forfeiture of security deposit and Bank guarantee.



II. For directing and commanding the respondents authorities to refund the amount of security deposit amounting to Rs.3,29,350/- and two Bank guarantees of Rs.6,58,700 which has illegally been forfeited in most arbitrary manner.

III. For directing and commanding the respondent authorities for payment of the amount dues for the work done by the petitioner, pursuant to the agreement.

IV. For declaring and holding that the order dated 15.01.2021 passed by the respondent authority is arbitrary, illegal, colorable exercise of power, and the same has been issued without compliance of principals of natural justice.

V. For commanding and directing the respondent authorities to make payment to the petitioner along with compound interest from the date it became dues till actual date of payment, penal interest and cost of litigation.

VI. For any other relief or reliefs for which the petitioner is entitled under law in the facts and circumstances of the present case.”

Learned counsel for the respondent states that the impugned order dated 15.01.2021 stands recalled and a fresh notice issued to the petitioner.

In this view of the matter, we find the present petition to have become infructuous.

As such, petition is disposed of, reserving liberty to the petitioner to take all pleas in response to the notice now issued to the petitioner.



*Interlocutory Application(s), if any,
shall stand disposed of.”*

3. Respondents inadvertently made a submission that impugned order dated 15.01.2021 stated to have been recalled and fresh notice issued to the petitioner. On the other hand, it is incorrect, therefore, either the petitioner or respondent should have filed review petition to recall the order dated 30.09.2022 passed in CWJC No. 3176 of 2022.

4. On the other hand, fresh writ petition has been filed by the petitioner in which he has assailed order dated 09.09.2022 and Annexure-7 dated 15.01.2021 and Annexure-13 dated 09.09.2022. The petitioner was a successful bidder insofar as handling transport contract for handling of stocks at Rail Head Dehri-on-Sone as well as PWS Dehri-on-Sone and transportation of stock from Rail Head Dehri-on-Sone to PWS Dehri-on-Sone for a period of two years with effect from 17.01.2019 to 16.01.2022, one day earlier to tenure the impugned action has been taken that his performance in executing the contract were not in order. Both the Annexure-7 and Annexure-13 dated 15.01.2021 and 09.09.2022, do not reveal whether petitioner has been heard in the matter or not?

5. No doubt, show-cause notice was issued asking her appearance on 11.07.2022 at 5:30p.m. However, General Manager



(Region) proceeded to pass impugned order stating that petitioner failed to produce additional document as demanded by the General Manager. The petitioner is also stated to have violated Clause IV relating to subletting. On these issues the petitioner has not been provided show-cause notice in writing and seeking his explanation whatever the violation of contract alleged to have committed by the petitioner. In fact, Clause VIII (ii) reads as under:-

“VIII. Period of Contract

(I) The Contract shall remain in force for a period of two years from the date of issue of acceptance letter or such later date as may be decided by the General Manager.

(ii) The General Manager reserves the right to terminate the Contract at any time during its currency without assigning any reasons thereof by giving Thirty Days Notice in writing to the Contractor at the notified address and the Contractor shall not be entitled to any compensation by reason of such termination. The action of the General Manager (Region) under this clause shall be final, conclusive and binding on the Contractor.”

6. On the other hand, Clause XI(b) reads as under:-

“The General Manager shall also have without prejudice to other rights and remedies, the right, in the event of breach of the contractor of any of the terms and conditions of the contract to terminate the contract forthwith and to get the work done for the unexpired period of the contract at the risk and cost of the contractor and/or forfeit the security deposit or any part thereof for the sum of sums due to any damages, losses, charges, expenses or costs



that may be suffered or incurred by the Corporation due to the contract's negligence or unwork-man like, performance of any of the services under the contract."

7. *Prima facie*, there is overlapping insofar as providing notice before taking action of termination of contract and consequential action. Taking note of these dates and events, the civil action taken by the respondent resulted in effecting the petitioner civil right such action of the respondent is without hearing in the sense issuing specific notice of proposed action and thereafter considering the petitioner's reply, if any. These actions have not been taken by the respondent, therefore, on sole ground that the petitioner has not been provided show-cause notice before impugned action at Annexure-7 dated 15.01.2021 and Annexure-13 dated 09.09.2022 are set aside. Reserving liberty to the concerned respondent to pass afresh order if it is warranted, for the reasons that the contract was required to be executed during the intervening period from 17.01.2019 to 16.01.2021, whereas the proposed action taken on 15.01.2021 just a day before completion of the execution of the contract.

8. The same shall be taken note of before taking further action. In the event, of taking any further action concerned respondent is hereby directed to take note of decision of the Apex Court in the case of ***UMC Technologies Pvt. Ltd. vs. Food***



Corporation of India and Another, reported in **(2021) 2 SCC 551**
read with *Isolators And Isolators Through Its Proprietor Mrs. Sandhya Mishra vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. & Anr.* reported in **2023 LiveLaw (SC) 330.**

9. The above action shall be taken within a period of three months from the date of receipt of this order. Further, the concerned authority is hereby directed to take a decision whether any adverse action could be taken against the petitioner insofar as forfeiting of EMD or security deposit, for the reasons that there was in action on the part of the respondent in not taking action timely.

10. On the other hand, at the fag end of contract the respondent have taken action and this may also be taken note of before taking any further action. With the above observation the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2023
Transmission Date	NA

