

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13358 of 2015

=====

Nabin Bharos Choudhary Son of Sri Ram Chandra Choudhary, R/o Chandouli, P.O. Nifsi Nikaspur, P.S.- Tajpur, District- Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Bihar State Food and Civil Supplies Corporation Ltd. through the Managing Director, null Sone Bhawan, 5th Floor, Birchand Patel Path, Patna- 800001
3. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd., Sone Bhawan, 5th Floor, Birchand Patel Path, Patna- 800001
4. The Pramukh Adhiprpati, at the headquarters of the Bihar State Food and Civil Supplies Corporation Sone Bhawan, 5th Floor, Birchand Patel Path, Patna- 800001
5. District Manager, Food Corporation Ltd., Samastipur

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Jitendra Singh, Sr. Advocate Mr. Amresh Kumar Singh, Advocate Mr. Gopal Tiwari, Advocate Mr. Nitin Kumar, Advocate Mr. Yash Singh, Advocate Mr. Isshan Singh, Advocate
For the State	:	Mr. Arun Kumar Bhagat, AC to AAG-12
For the Corporation	:	Mr. Shailendra Kumar Singh, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 25.01.2024.

Heard the parties.



2. The present petition has been preferred for the grant of following reliefs:

(i) for issuance of a writ in the nature of writ of Certiorari or any other appropriate writ, order or direction, quashing that part of the reasoned order bearing memo no. 9848 dated 10.08.2015 issued under the signature of Managing Director, Bihar State Food and Civil supplies Corporation Ltd (henceforth for short, 'the Corporation') whereby the rate approved for payment for specified distances have been modified unilaterally by the respondent corporation in contravention with the terms of the written agreement with the petitioner;

(ii) for issuance of a writ in the nature of writ of Certiorari or any other appropriate writ, order or direction, quashing the letter no 1403 dated 10.08.2015 issued under the signature of District Manager, State Food Corporation, Samastipur whereby the new rates applicable subsequently selected Transporting to cum Handling Agent namely Deepak Kumar has been made applicable to the petitioner also, detrimental to the interest of the petitioner and without any notice or hearing to him.



3. The facts in narrow compass is/are as follows:

4. 'The respondent Corporation' published an advertisement inviting tenders for appointment of Transporting-cum-Handling agents in the district of Samastipur. Pursuant thereto, three persons including the petitioner herein submitted their respective tenders. Thereafter the offers were opened and out of the three persons, the tenders of two persons namely, Rajendra Prasad Gupta and Deepak Kumar were rejected for cogent reasons by the District Transport Committee (henceforth for short, 'the Committee') in its meeting held on 11.11.2013 under the Chairmanship of the District Magistrate, Samastipur.

5. Thereafter, the tender process proceeded to its conclusion and the petitioner was selected for being appointed as the Transporting cum Handling agent by 'the respondent Corporation' which was approved in the meeting of District Transport committee held on 14.11.2013 under the Chairmanship of the District Magistrate, Samastipur.

6. The aforesaid decision was accepted and implemented by 'the respondent Corporation'. Accordingly, the Chief Receiver (i.e. Pramukh Adhiprapti) at the headquarter of 'the respondent Corporation' vide letter



bearing no. 11150 dated 14.12.2013 instructed the District Manager, State Food Corporation, Samastipur to appoint the petitioner as the Transporting-cum-Handling agent and to enter into an agreement with him.

7. In pursuance of the direction issued by the Headquarters of 'the respondent Corporation', an agreement was entered into with the petitioner on 16.12.2013 specifying the different terms and conditions of the agreement.

8. It is relevant to mention here that the agreement specifically provided the approved rate for different slabs of distance for the purpose of transportation. The agreement mentioned that any revision of rates by 'the respondent Corporation' would be binding on the petitioner, if he agrees to it by its express consent or by implied action.

9. As stated, the tender of Deepak Kumar was rejected in the year 2013 itself on certain counts including on the ground of black listing. It appears that 'the Corporation' in the year 2015 reviewed his case and passed an order contained in memo no. 9848 dated 10.08.2015 issued under the signature of its Managing Director by which it was decided that the case of the Deepak Kumar was wrongly rejected and thus direction was issued for his appointment side by side



with the petitioner as Transporting cum Handling agent. The order further recorded that the rates of Deepak Kumar being lesser than the petitioner, the said rates shall be applicable on the petitioner too.

10. In the light of the aforesaid order dated 10.08.2015, a consequential order was issued by the District Manager, State Food Corporation, Samastipur vide letter bearing no. 1403 dated 10.08.2015 by which the petitioner was informed that Deepak Kumar has also been appointed as the Transporting – cum - Handling Agent with further information that he will have to work on the rates specified by the Headquarters on which Deepak Kumar has agreed to work.

11. Aggrieved, the writ petition was preferred by the petitioner.

12. Subsequently, I.A No. 01 of 2019 was preferred by the petitioner for addition of prayer in the writ petition by challenging the letter no. 3081 dated 13.03.2019 as also memo no. 221 dated 14.03.2019 issued by the District Manager of 'the Corporation' by which direction was given to the petitioner to deposit Rs. 1,54,37,557/- within a period of five days; as refund of excess amounts paid.



13. Learned Senior Counsel, Mr. Jitendra Singh appearing for the petitioner submits that the action of the respondent authority in revising the rates is contrary to the terms of the contract. It is settled law that a contract, duly signed and executed creates legal enforceable rights. As per the contract itself, the revision of rate, if any, by 'the respondent Corporation' shall be applicable upon the petitioner only when he agrees to it by expressed consent or implied conduct.

14. He submits that in this case, the petitioner has not accepted the said revision on the ground that it is detrimental to his interest and contrary to the limit of doing business by being a transporting agent. He drew attention to the Annexure-1 according to which the petitioner had declined to work on the lower rate. The submission as such is that the rate given by him pursuant to negotiation was first accepted by the District Transport Committee in its meeting held on 14.11.2013 and later on accepted by 'the respondent Corporation' in its agreement and as such the rates cannot be revised unilaterally by it. He thus submits that the orders passed are illegal, arbitrary and fit to be quashed.



15. A counter affidavit came to be filed on behalf of the respondent no. 5, the District Manager, State Food Corporation, Samastipur according to which, an agreement was executed with the petitioner appointing him as the Transporting -cum- handling agent on 16.12.2013 and there was specific provision in the agreement that any revision of rate by the respondent Corporation would be binding on the petitioner. The petitioner having accepted the agreement and signed on it on 16.12.2013, he is duty bound to accept the revision of rates.

16. The further contention is that 'the Corporation' having found the rate of Deepak Kumar to be lesser than that of the petitioner, he was also allowed to be the Transport -cum- handling agent and further, as the rates quoted by him was lower than that of the petitioner, it was revised and the petitioner was directed to accept the same.

17. We have heard the parties at length. From the facts that emerges is/are that for appointment of Transport -cum- handling agent in the revenue district of Samastipur, tender was invited whereafter, on 11.11.2013, the meeting of the District Transport Committee took place under the chairmanship of the District Magistrate, Samastipur.



18. After opening of the tender and perusing the mandatory/technical bids, three bidders were found to be in accordance with the tender notice whereafter, the financial bids were opened. After completion of signatures, the District Transport Committee handed over all the three such tender papers to the State Food Corporation, Samastipur.

19. Of the three tenderers viz. Deepak Kumar, Rajendra Prasad Gupta and Nabin Bharos Choudhary (the petitioner herein), so far as Rajendra Prasad Gupta is concerned, it was found that Pusa P.S. Case No. 291 of 2011 was instituted against him on 09.08.2011 under sections 406/409/419/420 and 7 of the Essential Commodities Act relating to blackmarketing of food grains under PDS system and in that backdrop, his tender was rejected.

20. Regarding the second person, Deepak Kumar, the minimum guarantee handling expense was mentioned as Rs. 2,000/- per truck which was in violation of clause 7 of the tender condition issued by 'the Corporation'. Further, the copy of the permit for the trucks for which the registration numbers were furnished was not attached in the technical form. In that background as also that he was earlier blacklisted vide letter no. 8725 dated 28.09.2013 by Chief Finance, Headquarters,



Patna and his brother had an outstanding due of CMR of 'the Corporation' to the tune of Rs. 11,21,41,193.03, his tender too was rejected.

21. This left the Committee with only one tender of the petitioner (Nabin Bharos Choudhary) whereafter 'the Committee' came to the following conclusion which is extracted from the translated copy provided by the petitioner and read as follows:

"In the aforesaid circumstances, in terms of directions contained in Clause 5 of letter bearing no. 9602 dated 24.10.2013 of Chief Procurement (Adhiprapti), for discussion for reducing the rate with 3 member committee comprising of Additional Collector (Disaster), District Transport Officer, District Manager, State Food Corporation-cum- Coordinator, Samastipur is unanimously approved after and discussions with the constituted committee, the recommendation and consent letter will be submitted to the District Transport Committee by 14.11.2013.

The proceedings under this meeting are hereby concluded."

22. This followed the proceeding of 'the Committee' once again under the chairmanship of the District



Magistrate, Samastipur on 14.11.2013. Negotiation took place with the petitioner whereafter it was recorded that he is not ready to work at lower rate and thus 'the Committee' decided in following terms and the translated copy is incorporated hereinbelow:

"1. If the tender of Shri Chaudhary is accepted by Bihar State Food and Civil Supplies Corporation Limited, Headquarters, Patna, then before issuing the work order, all the details related to the vehicles taken by him under the agreement with willing 35 vehicle owners for transportation-cum-handling to submit attested copies of valid documents (e.g. owner book, updated tax token, permit, insurance, fitness, labor certificate, etc.) shall be submitted by Sri Naveen Bharos Choudhary to the State Food Corporation. Samastipur office.

2. Apart from above, in future if the Corporation needs more vehicles for transportation- cum-handling, then Shri Choudhary will ensure to arrange for the same and along with the agreement for the vehicle arranged, all the above-mentioned valid documents related to the vehicle will be sent to the State Food Corporation, Samastipur.



3. According to the tender conditions, before taking the work order, he will install GPS systems on all the concerned vehicles and ensure that they are painted as per the instructions of the Corporation.”

23. Subsequently, the petitioner started working to the satisfaction of the respondent authorities. According to the writ petition, Deepak Kumar whose tender was rejected later moved before Patna High Court in CWJC No. 2922 of 2014 and after some argument, the same was dismissed as withdrawn.

24. However, two years after the tender was allotted to the petitioner and his writ petition challenging the same dismissed, on a complaint of Deepak Kumar, ‘the Corporation’ vide memo no. 9848 dated 10.08.2015 under the signature of the Managing Director without putting the petitioner on notice passed a cryptic order holding that justice has not been done to Deepak Kumar as his rates were the lowest while the District Transport Committee recommended the tenderer (the petitioner herein) whose rates were higher than the complainant which was not in the interest of ‘the Corporation’. Accordingly, the following order was passed and the translated copy read as follows:



“A complaint was filed by Mr. Deepak Kumar against the recommendation made by the District Transport Committee vide Letter no. 4023 dated 14.11.2013 after the meeting of the District Transport Committee, Samastipur. In light of the above complaint, on 05.08.2015, the Complaint received of Deepak Kumar for appointment of Trasnport-cum-Handling Agent, Samastipur was heard in his presence, in which the officers of the Corporation on behalf of the Corporation were present. The contention of the Applicant is that his tender upon being found technically correct, his Financial Bid had been opened. The same is mentioned in the 1 part of the proceeding of the District Transport Committee, Samastipur. On account of non-availability of permit of the trucks, his application had been rejected, though evidence of Challan had been submitted. Apart from above, the contention of the Applicant is also that the Transport Contractor whose tender had been accepted, documents relating to 15 trucks was not in terms of the tender. The Applicant has stated that the Corporation has approved in other districts, a minimum guarantee slab of 0-10 kms. Hence, on the said basis, rejection of the Applicant's tender has no justification. Further, rejection on the ground of fault of his brother also has no justification.

After hearing the Applicant and after perusal of records and file, it is found that in the



matter of Applicant (Tenderer) Deepak Kumar, justice has not been done. The District Transport Committee despite finding the Technical Bid of the Applicant non- responsive, yet opened Applicant's Financial Bid, whose rate was the lowest. The District Transport Committee has recommended the Tenderer at rates higher than the Complainant's rate, which is not in the interest of the Corporation. On consideration of all aspects and documents, the following orders are passed:

1. After verification of the 7 vehicles, the Complainant Deepak Kumar on the following lowest transportation rates and terms, Deepak Kumar is appointed as Transpiration-cum- Handling Agent for the remaining period of the agreement of the existing Transportation-cum- Handling Agent Sri Naveen Bharos Chaudhary.

2. The Documents relating to 15 trucks submitted by Sri Naveen Bharos Chaudhary shall be enquired into.

3. Approved Transport Rate

<i>Distance slab (kg per kilometre)</i>	<i>Transport rate Quinted per kilometre</i>	<i>Minimum guarantee for minimum load of 9 metric tones</i>
<i>0 to 10 kilometres</i>		<i>Rupees 1500</i>
<i>0 to 20 Kilometres</i>	<i>Rs. 1.30 paise</i>	
<i>0 to 50 kilometres</i>	<i>93 paise</i>	
<i>0 to 100 kilometres</i>	<i>63 paise</i>	
<i>Above 100 kilometres</i>	<i>60 paise</i>	



4. The above approved lowest transportation rate shall be applicable on existing/ working Transport-cum-Handling Agent Naveen Bharos Chaudhary and Vikram Kumar Chaudhary. The other terms of the agreement shall continue to remain the same.

The District Manager, State Food Corporation, Samastipur is directed that after obtaining the necessary original documents on required stamp paper to execute an agreement within 15 days, if the agreement is not executed within the time specified, his claim for appointment will not be valid. To ensure, after the agreement, one copy along with necessary documents and certificates being enclosed is sent to the Headquarters.

1. In terms of security, a Bank Draft for a sum of Rs. 7,00,000/-, payable in favour of Bihar State Food and Civil Supplies Limited.

3. 3.50-3.50 (Three Lakh Fifty Thousand - Three Lakh Fifty Thousand) 2 Surety Bonds (Pratibhubandhan Patra).

4. Rs. 10,00,000 (Ten Lakh) Bank Guarantee which will be valid till last date of the agreement period.

5. Rs. 25,00,000/- (Twenty-Five Lakhs) worth personal property which will be mortgaged/ pledged in favour of the Corporation.

A copy of the agreement is being annexed. After the agreement, a copy of the



required documents along with the agreement, be sent to the Corporation Headquarters, please ensure.”

25. This followed consequential letter/order issued by the District Manager of ‘the Corporation’ by which demand of Rs. 1,54,37,557/- was made. The same has been brought on record by way of Interlocutory Application.

26. It is to be noted that while passing the order, the Managing Director of ‘the Corporation’ did not even bother to put the petitioner on notice and unilaterally the decision was taken by him.

27. This leads us to only one conclusion, the order/memo no. 9848 dated 10.08.2015 is complete abuse of power invested by ‘the Corporation’ on its Managing Director who sat in judgment of a decision taken by a Committee headed by the District Transport Committee two years ago.

28. This Court cannot ignore the fact that despite the writ petition filed by the said Deepak Kumar challenging rejection of his tender having been dismissed as withdrawn by High Court, the Managing Director chose to comment that justice has not been done to him. The said Deepak Kumar having initiated the proceedings before the High Court, and withdrawn it, would be estopped from raising the grievance



before the respondent authority; since no such liberty was sought by the petitioner or reserved by the High Court. Further, the Managing Director was in such a haste that he did not even bother to put the petitioner on notice before modifying the rates and making it applicable to him retrospectively.

29. This Court thus holds that the Managing Director of 'the Corporation' passed an illegal order by unilaterally taking decision and directing the petitioner to work on the lower rate as quoted by Deepak Kumar which also prompted the respondents to demand the amount on the basis of the rates so found. As such the same will not be binding on him. We also hold that 'the Corporation' thus has no right to demand the amount of Rs. 1,54,37,557/-.

30. Clearly, the then Managing Director abused the power conferred upon him in passing the order with ulterior motive. We wanted to implead the Managing Director who passed the order as party respondent by name and put him on notice but it has been informed by Mr. Shailendra Kumar Singh representing 'the Corporation' that the gentleman has since retired.

31. The order vide memo no. 9848 dated



10.08.2015 passed by the Managing Director of ‘the Corporation’ (so far as the same relates to direction given to the petitioner) as also the consequential letter no. 3081 dated 13.03.2019 and memo no. 221 dated 14.03.2019 passed by the respondent authorities are quashed with a cost of Rs. 50,000/- imposed upon the Bihar State Food and Civil Supply Corporation which will be payable to the petitioner within a period of three months from the date of production of the copy of the order to the concerned respondent. It is for ‘the Corporation’ to take appropriate steps for recovery of the amount in accordance with law from the erring official, if it so desires.

32. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

kiran/-

AFR/NAFR	AFR
CAV DATE	15.01.2024.
Uploading Date	25.01.2024.
Transmission Date	

