

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7771 of 2017

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1. M/s Kumar And Kumar Through Its Proprietor Raj Kumar Gupta @ R. K. Gupta and Anr son of Sri Radha Prasad Gupta, resident of Bibiganj, Danapur Cantt, Banbasti, P.O. and P.S. Danapur Cantt and District- Patna.
 2. Sri Raj Kumar Gupta @ R.K. Gupta, Proprietor of M/S Kumar and Kumar, Son of Sri Radha Prasad Gupta. resident of Bibiganj, Danapur Cantt, Banbasti, P.O. and P.S. Danapur Cantt and District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Home Department, Government of Bihar, Patna
2. Director General of Police, Bihar, Patna.
3. Assistant to Deputy Inspector General of Police Q, office of Director General of Police, Bihar Pat
4. Deputy Inspector General of Police Protection Special Branch, Bihar, Patna.
5. Inspector General of Police Provision, Office of Director General of Police, Bihar, Patna.
6. Superintendent of Police Protection Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	M/s Ganpati Trivedi, Advocate Madan Mohan, Ritik Shah Pallavi Pandey, Rahul Raj Saurav Suman, Advocate
For the Respondent/s	:	Mr. Md.Nashrul Hoda Khan-SC 1 Md. Fazle Karim, AC to SC 1

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 18-11-2024

1. The Writ petition has been filed by the
petitioners for the following reliefs:-

*“That this application is for
issuance of appropriate Writ, order or*



direction for (i) quashing the order passed by Inspector General of Police (Provision) (respondent No. 5) contained in memo No. 3408 dated 16.03.2017 whereby he cancelled the previous tender No. 7/2008-09 which has been approved in favour of the petitioners for the purpose of sale of empty cartridges stored at Munger Gun Factory, Munger and with a further information that a fresh tender would be issued for the said purpose and (ii) further commanding upon the respondents to abide by the previously approved tender as the delay was not caused at the instance of the petitioner, with a (iii) further direction to restrain the respondents authorities from proceeding with the fresh notice inviting tender which had been previously issued in favour of the petitioner.

2. The brief facts culled out of the Writ petition is that the 1st petitioner/M/s Kumar and Kumar is a proprietary firm situated at Bibi Ganj, Danapur, Patna and the petitioner No. 2 is the proprietor of Firm 1st petitioner, who is engaged in the business of supplying



work as well as other works including the nature of work under challenge. The facts of the Writ petition disclose that a notice inviting tender (Tender No. 07/2008-09) was published for the purpose of empty cartridges stored in the Munger Gun Factory in which petitioner has participated and the tender submitted by the Writ petitioner was accepted by the respondents on 17.10.2008 vide Annexure-2. Thereafter, the date for measurement work of the empty cartridges was deferred either on the prayer of the petitioner or because of inconvenience of the respondents or due to Lok Sabha Election and the same could not be executed. It is submitted by the petitioner that all of a sudden without giving notice to the petitioner, the tender was cancelled vide Annexure-17 stating that the cost of the cartridges have gone up and eight years have lapsed, since the acceptance of the tender, in favour of the petitioner and a decision was taken to issue fresh tender vide Annexure-19.

3. It is submitted on behalf of the petitioner that



petitioner has filed I.A. No. 4175 of 2017 for stay of any action in pursuance of rider of Annexure-19, as the acceptance of tender already done in favour of the petitioner was cancelled without giving notice to the petitioner or affording any opportunity of hearing. However, by the order dated 31.5.2017, this Court has stayed the further action of the respondent pursuant to Annexure-19, i.e. notice inviting tender vide Notice No. 02/2017-18.

4. It is the specific contention of the Learned counsel for the petitioner that the entire action of the respondents is illegal and arbitrary and that the respondent authorities themselves deferred the matter for weighing of the empty cartridges stored at the Gun Factory Munger, for which petitioner should not be suffered. It is further contended that the order of the respondent authorities, cancelling the previous tender on the ground of lapse of several years was based on financial loss to the Government, whereas the respondents failed to consider that the petitioner's



amount remained blocked for continuous period of 8 years awaiting for the fixation of the date of the measurement of the empty cartridges.

5. A counter affidavit was filed on behalf of the respondent Nos. 2 to 5. It is averred in the counter affidavit that after selection of the Writ petitioner as a tenderer, AIG(Q), Bihar, Patna approved the Writ petitioner quote/price @ of Rs. 241.11 per kg through Memo No. 6321/S dated 17.10.2008 and in compliance of the said order a Committee of four members were selected by the DIG (Security), Special Branch, Bihar, Patna and all were to appear on 09.01.2009 at Gun Factory, Munger for weighing the empty cartridges and the same was informed to the petitioner, for his appearance and their team, for measuring the empty cartridges. However, the petitioner informed that due to extreme cold, labourers are not available and asked for the next date to be fixed after 15th February, 2009. Considering the request of the petitioner, again a Committee was constituted under the Chairmanship of



S.P.(Security), Special Branch, Bihar, Patna including five members, and date was fixed for measurements on 20.03.2009 and an information was also sent to the petitioner vide letter dated 06.03.2009 (Annexure-F). Again the petitioner filed a petition before the S.P. (Security), Special Branch, Bihar, Patna, stating that due to ending of financial year and work load, a next date may be fixed after March. In response to the request of the petitioner, the S.P. (Security), S.B. Bihar, Patna fixed a date i.e. on 06.04.2024 for final disposal of empty cartridges vide Memo No. D1497(7)/S.B. dated 16.03.2009. It is further averred in the counter affidavit that, thereafter, S.P. (Security), Special Branch, Bihar, Patna issued a letter to AIG (Q) Bihar, Patna stating that according to the agreement, six months fixed for authorized contractor, will end on 17.04.2009, but disposal of empty cartridges, was continuously delayed by the petitioner and time was also extended, every time by the concerned department. Once again vide letter dated 19.03.2009, direction was given to the



petitioner for disposal of empty cartridges. It is also averred that due to parliamentary election in the year 2009 and of election code of conduct, weighing process was postponed till next date by the order of S.P. (G), Special Branch, Bihar vide memo No. 1605 (7)/S.B. Patna dated 06.04.2009. It is further submitted that next date was fixed to 09.06.2009 by the S.P.(G) Special Branch, Bihar, Patna for disposal of empty cartridges however, it could not done, due to lapse of six months time, as per tender condition no. 05.

6. It is further averred that in the meantime a tender bearing No. 08/2011-12 was published by respondent for supply of Iron folding cot and in that tender also the petitioner participated but due to forgery the petitioner was black-listed vide Memo No. 6669/S dated 21.12.2011. It is also averred in the counter that a decision was taken by the respondent, that weighing of empty cartridges from the year 2009 could not be done and large quantity of additional empty cartridges were stored and that the cost of cartridges' rate has also gone



up, keeping in view that the previous tender was cancelled and a fresh tender was published vide Memo No. 3408/S dated 16.03.2017 and the same was received by the petitioner on 27.03.2017. It is further contended by the Learned counsel for the respondents that the Writ petition is not maintainable and it is liable to be dismissed.

7. In reply to the counter affidavit, the petitioner contended that prior to expiry date of six months i.e. 17.04.2009, the date for disposal of empty cartridges was fixed to 06.04.2009, which was deferred at the instance of the respondents themselves. It is further submitted by the petitioner that vide letter dated 06.04.2009 (Annexure-10), the respondent informed the petitioner that the next date for measurement of empty cartridges would be fixed after completion of Parliamentary Election but not due to lapse of six months time as per condition No. 5 of the notice, inviting tender. It is also contended by the petitioner, that order with regard to black-listing of the petitioner



was set aside by this Hon'ble Court vide order dated 24.08.2016 passed in CWJC No. 495 of 2016, and the respondents suppressed the said fact in the counter affidavit. It is submitted by the Learned counsel for the petitioner that in fact the petitioner had shown his willingness to lift the empty cartridges, within the stipulated time of six months but the respondents themselves have deferred the date of measurement of empty cartridges and now the respondents want to take the benefit, for their own latches on the ground of delay. It is submitted by the Learned counsel for the petitioner that in terms of notice inviting tender, it was mentioned therein that the allottee firm of the tender would have to lift the entire available empty cartridges within a period of six months, from the date of allotment of the order and in case of failure, the penalty in terms of money would be realized for which the Director General of Police would be competent to take a decision. However, the alleged letter dated 19.03.2009 was never issued to the petitioner and no communication



was made by the Inspector General of Police (Provision) to that effect. It is further contended that the Superintendent of Police (G), Special Branch, Bihar, Patna under his letter dated 06.04.2009 adjourned the measurement process till further order contrary to the terms of tender.

8. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents and perused the records.

9. On perusal of the record, it is evident that the petitioner has requested twice for time which was granted by the respondent. Pursuant to the petitioner's request, the Superintendent of Police (Protection) Special Branch, Bihar, Patna by order contained in memo dated 16.03.2009 fixed the date of measurement on 06.04.2009 and also directed the Deputy Superintendent of Police vide letter dated 25.03.2009 to make all necessary arrangement for completion of the measurement work of empty cartridges at Gun factory Munger and issued necessary gate pass for the labourers



of the petitioner. However, the Superintendent of Police, (G), Special Branch, Bihar, Patna under his letter dated 06.04.2009 (Annexure-10) adjourned the measurement process till further orders keeping in view the Parliamentary Election with a content that the date for disposal of empty cartridges would be informed at a later stage. The impugned order do not disclose that the tender was cancelled due to lapse of six months time as per condition No. 5 of the notice inviting tender. On perusal of condition No. 5 of notice to inviting tender the Director General of Police would be the competent authority to take a decision, but it appears that the Director General of Police has not passed any order. It also appears from the record that on last occasion, the respondent authorities deferred the matter themselves for the measurement of the empty cartridges, stored at the Gun Factory Munger due to Parliamentary Election and thereafter took a plea of lapse of six months time as per condition No. 5 of the notice inviting tender.

10. In view of the discussion it is evident



that the respondents, unilaterally cancelled the tender for no fault of the petitioners and the impugned order under challenge is liable to be quashed.

11. In result, the Writ petition is allowed and the order passed in Memo No. 3408 dated 16.03.2017 (Annexure-17) and notice inviting tender vide Notice No. 02/2017-18 (Annexure-19) are hereby quashed.

12. Interlocutory application, if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2024
Transmission Date	

