IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.694 of 2024

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Bihar Rajya Matsyajibi Sahkari Sangh Ltd. 1st Floor, Main Bhawan, West Boaring Canal Road, P.S.- S.K. Puri, District and Town- Patna through its Managing Director Rishikesh Kashyap @ aged about- 48 years, Son of Sri Jibachh Sahani, Resident of Mohalla- Shivajee Nagar, P.S. Town, District and Town-Darbhanga. ... ... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Finance (Development of Revenue), Govt. of India, New Delhi.
2. The East Central Railway, East Central Zone through the General Manager Sonepur, District- Saran at Chapra.
3. The Divisional Rail Manager (Engineering), East Central Railway, East Central Zone, Sonepur, District- Saran at Chapra.
4. The Divisional Engineer-II, Samastipur.
5. The Assistant Divisional Engineer, Samastipur.
6. The Principal Chief Commissioner of Central GST and State GST, Bihar at Patna.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 13305 of 2024

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Bihar Rajya Matsyajibi Shakari Sangh Ltd. (Bihar State Fisheris Co-operative Fedration Ltd) in shor COFFED, registered office at 1st Floor, Meen Bhawan, west Boring canal Road, P.S.- S.K Puri, District and Town- Patna, through its Managing Director, Rishikesh Kashyap, aged about 49 years, Male, S/o- Sri Jibach Prasad Sahni, Resident of Mohalla- Shivjee Nagar, P.S.- Town, District and Town- Darbhanga. ... ... Petitioner

Versus

1. The Union of India through the secretary ministry of finance (Department of Revenue) Government of India, New Delhi.
2. The East central Railway, East Central Zone, through the General Manager Hajipur, Vaishali.
3. The Divisional Rail Manager, East Central Railway, Danapur.
4. The Divisional Engineer (H.Q), East Central Railway, Danapur.
5. The Principal Chief Commissioner of Central GST, CGST. New Delhi.
6. The Commissioner, State GST, Patna, Bihar.

... ... Respondents

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Appearance :

(In Civil Writ Jurisdiction Case No. 694 of 2024)

For the Petitioner/s	:	Mr.Krishna Kumar
For the Respondent/s	:	Mr. Maurya Vijaay Chandra, Adv
		Ms. Preety Ranjan, Adv
		Mr. Shweta Verma, Adv
For the CGST	:	Mr. K.N. Singh, ASG

Mr. Shivaditya Dhari Sjnha, Adv
Mr. Vivek Prasad, GP- 7
(In Civil Writ Jurisdiction Case No. 13305 of 2024)

For the Petitioner/s	:	Mr.Krishna Kumar
For the Respondent/s	:	Mr. Maurya Vijaay Chandra, Adv Ms. Preety Ranjan, Adv Mr. Shweta Verma, Adv
For the CGST	:	Mr. K.N. Singh, ASG Mr. Shivaditya Dhari Sjnha, Adv Mr. Vivek Prasad, GP- 7

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

19 25-02-2025 Heard learned counsel for the petitioner(s), learned counsel for the Railways and learned A.S.G. for the C.G.S.T and CX in both the writ applications.

CWJC No. 694 of 2024

2. This writ application has been filed seeking the following reliefs:-

> "1) That this application is being filed for issuance of an appropriate writ/writs order/orders in the nature of mandamus for directing the respondent authority to exempt the petitioner society for levying the GST which has been levied by the respondent authority and further directing and commanding the respondent authority to refund back the amount of 18% GST of the license Fee for one year for the period of 2023 to 2024 amounting to Rs. 27552/- paid by the petitioner to the respondent authority with regard to the tender No. W4-F.R.-06-2023 SPJ issued in favour of the petitioner for fishing right (2023-26) for section Muzaffarpur (Ex) KM-11/100 to Runnisaidpur (In) Km/41/900, Both side of Railway Track, in the light of Notification

> No. 12/2017 Central Tax (Rate), Department of Revenue Ministry of Finance, Government of India and in a Similar matter the GST amount has been refunded by the respondent Railway after interference by this Hon'ble Court in CWJC No. 548/2022 and further any other relief or reliefs for which the petitioner is entitled in view of the facts and circumstances of the present case."

Brief Facts of the Case

3. The petitioner in the present case is a registered society under the Bihar Cooperative Society Act, 1935. It is engaged in taking tender for fishing. Pursuant to a notice inviting tender vide Tender No. W4-FR-06-2023, the petitioner(s) participated in the tender process for Water Control and Fishing Right (2023-26) for the Section Muzaffarpur (Ex) Km-11/100 to Runnisaidpur (In) Km 41/900 both side of the track.

4. Petitioner was declared a successful bidder of the highest bid of Rs. 4,59,955/-. Copy of the acceptance letter has been brought on record as Annexure-1 to the writ application. It is the case of the petitioner that in terms of acceptance letter, the petitioner deposited yearly license fee of Rs. 1,53,065/- but the respondent authority demanded 18% of G.S.T on license fee. The petitioner submitted an application dated 27.06.2023 to the Divisional Rail Manager (Engineering), East Central Railway, Samastipur wherein he requested that in terms of Notification

No. 12 of 2017 Central Tax (Rate) Department of Revenue, Ministry of Finance, Government of India and GST Advance Rulling No. KCR/100/2021 dated 25.05.2021 and in the light of the judgment of the Hon'ble High Court in CWJC No. 548 of 2022, no GST would be payable on the amount deposited by the petitioner under the agreement for fishing right. The petitioner submitted vide his letter (Annexure-P/2) that the demand raised by the railways for Rs. 27,552/- as CGST and SGST at the rate of 9% each be kept in the category of exemption. The grievance of the petitioner is that the respondent did not pay any heed with regard to the request of the petitioner vide Annexure-P/2 and demanded 18% GST of the bid license fee before executing agreement and the petitioner had no option but to deposit the amount of the GST to the tune of Rs. 27,552/- on 21.08.2023.

<u>CWJC No. 13305 of 2024</u>

5. This writ application has been filed seeking the following reliefs:-

> "1. That this writ application is being filed for issuance of an appropriate writ/writs or order/orders for quashing the demand made by the respondent no.-4 to extent that the petitioner has been directed to pay 18% GST of the licensing fee for the financial year 2024/25025 amounting of Rs. 53,222/- through the letter bearing no. W9 land fist OT 1DNR-22-2307/01534530080028 dt. 01/12/2023 which has been wrongfully included with the

demand of party of the license fee which is contravention to the notification issued by the ministry finance (Dept. of Revenue) is contained in annexure-5 to the petitioner and further in the nature of mandamus for directing the respondent to exempt the petitioner for levying GST 18% of licensing fee and further for any other relief of reliefs for which the petitioner is entitled in the facts and circumstances of the present case”

Brief Facts of the Case

6. The petitioner in the present case is a registered society under the Bihar Cooperative Society Act, 1935. It is engaged in taking tender for fishing. Pursuant to a notice inviting tender vide Tender No. W9 Land Fish OT 1 DNR- 22-23-07, the petitioner participated in the tender process for fishing right for licensing of tank/borrow pits at Hathidah Station for a period of 36 months.

7. Petitioner was declared a successful bidder having offered the highest bid and consequently, an agreement was executed between the parties for the fishing right for license of tank/borrow pits at Hathidah Station on 04.08.2023 as per approved plan no. 173/2022. Copy of the agreement has been brought on record as Annexure ‘2’ to the writ application. It is the case of the petitioner that though the right of fishing is exempted from GST after the agreement the petitioner was asked to deposit the license fee for the financial year 2024-25 i.e. Rs. 9,95,680/- and GST @ 18% on licence fee for the said period. The petitioner submitted an application dated 05.01.2024 to the Divisional Rail Manager (Engineering), East Central Railway, Danapur wherein he requested that in terms of Notification No. 12 of 2017 Central Tax (Rate) Department of Revenue, Ministry of Finance, Government of India and GST Advance Rulling No. KER/100/2021 dated 25.05.2021 and in the light of the judgment of the Hon'ble High Court in CWJC No. 548 of 2022, no GST would be payable on the amount deposited by the petitioner under the agreement for fishing right. The petitioner submitted vide his letter (Annexure '4') that the demand raised by the railways for Rs. 53,222.40/- as CGST and SGST at the rate of 9% each be kept in the category of exemption. The grievance of the petitioner is that the respondent did not pay any heed with regard to the request of the petitioner vide Annexure '4' and demanded 18% GST of the bid license fee after executing agreement.

Submissions on behalf of Petitioner(s)

8. It is specifically pleaded in paragraph '15' and '14' of CWJC No. 694/2024 that similar matter like this case of the petitioner came before this Court in CWJC No. 548 of 2022 for the refund of GST amount deposited by the petitioner. During the pendency of the writ application, the collected GST amount was refunded to the petitioner with reference to notification No. 12/2017 dated 28.06.2017 and this Hon'ble Court considering the same passed an order dated 20.06.2023 directing the respondent to pay interest at the rate of 6% per-annum. The order of this Court has been brought on record as Annexure '6' to the writ application.

<u>Stand of Respondents</u>

9. A counter affidavit has been filed on behalf of the Respondent Nos. 2 to 6 in CWJC No. 694 of 2024. In the counter affidavit, it is stated that the GST exemption notification dated 28.06.2017 is not applicable in case of the petitioner as there is no cultivation of animals i.e. fish. It is stated that the GST at the rate of 18% has been charged under contractual obligations and so far as the statements made in paragraphs '15' and '16' of the writ application (CWJC No. 694 of 2024) are concerned, they have been denied saying that the answering respondents have no clue or information that whether the issues with respect to fishing was actually involved in CWJC No. 548 of 2022.

10. Counter affidavit has also been filed on behalf of the Respondent No. 7 in CWJC No. 694 of 2024. The counter affidavit of Respondent No. 7, however, nowhere denies the applicability of notification no. 12 of 2017 dated 28.06.2017 in the case of the petitioner.

Consideration

11. We have heard learned counsel for the parties. It is evident from the materials on the record that in CWJC No. 548 of 2022 the railways refunded Rs. 2,19,016/- with reference to notification no. 12/2017 dated 28.06.2017. It is stated in the said order of this Court that the deposited amount was wrongly collected as GST amount from the petitioner. A reading of the order, however, does not give the facts of the case.

12. Learned counsel for the petitioner(s) has, however, submitted that the said writ application was also filed for refund of the GST amount which was collected against an agreement for fishing rights granted by the railways. It is the submission that in-fact while answering paragraph '15' of the writ application (CWJC No. 694 of 2024), the respondent -railways made a completely vague statement of the matter. Referring to paragraph '20' of the counter affidavit of Respondent No. 2 to 6 in CWJC No. 694 of 2024, it has been shown to us that though the respondents have denied the statements made in Paragraph No. '15' and '16' of the writ petition (CWJC No. 694 of 2024) but the reason for such denial is not emphatic and it has been merely stated that the respondents denied the statements as the answering respondents had no clue or information whether the issues with respect to fishing was actually involved in CWJC No. 548 of 2022 or not.

13. We find much substance in the submission of the learned counsel for the petitioner(s). In all fairness, equity and justice, the railways were required to look into their records as it is they who had refunded the GST amount under memorandum dated 19.06.2023. There was no reason for the railways to take a plea that they had no clue or information whether the issue with respect to fishing was actually involved in CWJC No. 548 of 2022 or not.

14. Be that as it may, we direct respondent no. 3 i.e., the Divisional Rail Manager (Engineering), East Central Railway, East Central Zone, Sonepur, District- Saran at Chapra to look into the grievance of the petitioner(s), consider their representation as contained in Annexure 'P/2' in CWJC No. 694 of 2024 and Annexure '4' in CWJC No. 13305 of 2024 in the light of the Notification No. 12/2017 and further consider the plea of similarity/parity raised by the petitioner(s) to that of CWJC No. 548 of 2022 in which the railways has refunded the GST amount.

15. In case, it is found that the case of the petitioner(s) is standing on similar footing with that of the petitioner in CWJC No. 548 of 2022, there is no reason as to why the railways would not take a similar view in case of the petitioner(s) in these writ applications and refund the entire amount with interest if deposited by the petitioner as had been ordered by this Court in CWJC No. 548 of 2022.

16. Respondent No. 3 shall consider the entire materials as discussed hereinabove and any other material which may be brought to the notice of Respondent No. 3 within a period of four weeks from today by the petitioner(s). Respondent No. 3 shall pass a reasoned order in case of the petitioner(s) within two months thereafter.

17. The admitted amount, whatever is found payable to the petitioner in these writ application shall be paid within 15 days from the date of passing of the order by the Respondent No. 3.

18. Both the writ applications stand disposed of.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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