
(2009) 01 PAT CK 0016
In the Patna High Court
Case No : CWJC No. 13263 of 2008

Pawan Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(g)

Citation : (2009) 4 PLJR 104

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Ramakant Sharma, Akshay Lal Prasad, L.K. Sharma in 13263 and Mr. N.K. Agrawal in 13319, Vikas Kumar, for the Appellant; Ashok Kr. Dubey for the State, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—The two petitioners, in these writ petitions, raise a common question of law and with the consent of the parties, the cases have been taken up together for final disposal at this stage itself. Respondent-Bihar State Food & Civil Supply Corporation Limited, whose actions are in challenge, have appeared and filed a counter affidavit.

2. The two petitioners, in the two writ petitions, are Transporting and Handling Agents. A notice inviting tender was issued by the respondent-Bihar State Food & Civil Supply Corporation Limited for appointment of Transporting and Handling Agent in respect of District-Khagaria revenue district. The two writ petitioners applied but their tenders came to be rejected on the ground that there were criminal cases pending against them. This action was based upon clause (6) of the notice inviting tender, which provides that such a tenderer, who had been blacklisted by the Corporation or against whom criminal cases were pending, would not be considered competent for tender. It is substantially the validity of such a clause that is in challenge.

3. Mr. N.K. Agrawal and Mr. Ramakant Sharma, learned Senior Counsel appearing in support of the writ petitions submit that mere pendency of criminal cases against a person cannot be said to be a good ground to deprive him of his right to business. They submit that even if a false or vexatious case is instituted, it may take several years if not a decade to be finalized and if such clause is permitted then a person would be deprived from his right to business merely because of a criminal case against him, which is yet to be proved or established. A person would thus be put to irreparable loss and injury on basis of false cases. This may increase false cases being filed by rival trader and thus the term would be unreasonable, arbitrator/ and violative of Article 19(g) and Article 14 of the Constitution. A person cannot be irreparably punished even before he is found guilty.

4. In other hand, learned counsel for the Corporation submits that the Corporation in its wisdom does not intend to deal with tainted person. He draws my attention to clause (6) and states that those persons, who are blacklisted or having criminal cases pending against them are a class by themselves and Corporation can choose not to deal with them. There is nothing unreasonable in that regard.

5. Having heard learned counsel of the parties and considered the matter, in my view, clause (6) has to be read in harmonious manner. As pointed above, clause (6) consists of two parts. First, a person who has been blacklisted by the Corporation and Second, a person against whom criminal cases are pending. If the view, as made by the Corporation, is to be accepted, it would lead to most arbitrary result. It is well established that mere pendency of criminal case does not lead to any conclusion of guilt. On mere allegation by a party, if a person is to be deprived from his right to business it would amount to a punishment with irreparable injury, for if after five years the allegations are found to be false, the loss suffered, as a consequence of being deprived of business, cannot be compensated by any one in any manner. Thus, a person would be punished irreparably even on a false acquisition. This, in my view, makes the provision not only arbitrary but unreasonable and thus violative of Articles 14 and 19 of the Constitution. I have mentioned above that the clause (6) has to be read harmoniously. I mean by this that the Corporation itself has used the expression, "person put in blacklist". Thus. reading clause (6), in my view, would mean person blacklisted by the Corporation or person against whom Corporation has instituted criminal proceedings, which could ordinarily lead to blacklisting. Read, thus, there would be grounds for upholding the said clause as reasonable otherwise, it is too widely stated and as already discussed above unreasonable and violative of Constitution.

6. I may note that there are several decisions of this Court wherein similar consideration has been made. In Swami Distributors Vs. State of Bihar and Others, it has been held that mere pendency of criminal case is no ground for suspension and/or cancellation of trade licenses.

7. On facts, I may also note that so far as petitioner in CWJC No. 13263/08 is concerned, he is facing criminal case relating to criminal breach of trust in which after investigation there is recommendation of filing final form for not prosecuting the petitioner. This fact is not disputed.

8. In the second writ petition, the petitioner had two cases against him in one he was acquitted. In other case final form has been recommended by the police after investigation not sending the petitioner for trial. Thus, seen it would have been very reasonable if not unfair on the part of the Corporation of excluding the two persons from consideration on the facts aforesaid. Thus, in my view, excluding the petitioners of the two writ petitions from considering their tender, cannot be justified in fact or in law and as such action of the Corporation cannot be sustained.

9. I, therefore, direct that the tender of the two writ petitioners be considered by the Corporation in accordance with law at the earliest as the matter has been pending for quite some time before this Court. With the aforesaid observation and direction the two writ petitions are allowed.