
(2002) 07 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 4642 of 2002

Pawan Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-07-2002

Acts Referred:

Citation : (2002) 3 PLJR 581

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Vivekanand Singh, for the Appellant; Nilu Agarwal, for the Respondent Nos. 2 to 4 and Lala Sachchindra Kumar, for the Respondent No. 5, for the Respondent

Judgement

P.K. Deb, J.—All the four writ petitions had been heard analogous as the grievances are of similar nature and Respondents are the same and the lawyer for all the Petitioners are the same.

2. Some hats from where market tolls are to be collected by the Agriculture Produce Marketing Committee, Bihariganj in the district of Madhepura were advertised settlement vide Annexure-1. It was mentioned that open bid was to be made on 20.2.2002 and failure of which the same may be done on 25.2.2002, 28.2.2002, 19.3.2002 and 26.3.2002. Time and place of open bid was also mentioned. The reserved amount was also mentioned together with deposit of 10% as earnest money of the different Bazars. The Petitioners were the tenderers of four such Bazars. Petitioner No. 1 submitted tender for Alamnagar Bazar but the grievance is that the open bid was not held on the notified days upto 3 p.m. on 26.3.2002 and the Petitioners were not in a position to participate in the open bid and the selection process was made behind the back of the Petitioners having lost its transparency. Pawan Kumar Singh Petitioner of CWJC No. 4642 of 2002 has further reiterated that after the bid was being concluded in favor of Private Respondent for Rs. 3.11 lacs he offered 5 lacs but still then his case was not considered and then Vigilance Department of the Marketing Board

had stopped such settlement and asked the Marketing Board to collect tolls until further orders. That was done only in respect of Alam Nagar Bazar and not in respect of other hats where the money involved for settlement were not so high.

3. In the counter affidavit filed by the Marketing Board it appears that the open bid was held on 26.3.2002 itself but could not be started at the fixed time of 11 a.m. but it was done within the time frame of 4 to 5 p.m. and the highest bidder in all the Bazars were being selected. The grounds for which time frame on 26.3.2002 could not be maintained has been specifically explained from the side of the Marketing Board. It has been stated that as the Finance year was ending the Respondent No. 4 Sub-divisional Officer-cum-Special Officer, Agriculture Produce Marketing Committee was busy in signing of huge number of bills and, as such, some delay was there in arriving at the fixed place and after arrival he could find that the Secretary i.e. the Respondent No. 3 of the Agriculture Produce Marketing Committee, Bihariganj had handed over charge to the new incumbent and such relieving and handing over of charge of the Secretary took some time and ultimately after completion of all formalities the open bid started at 4 p.m. and it was finalized by 5 p.m. itself. It appears that in respect of Alam Nagur Bazar there is already some enquiry being held by the Vigilance Committee of the Marketing Board and, as per their request the tolls are being collected by the Marketing Board itself. In that way the grievance of Petitioner of CWJC No. 4642 of 2002 regarding illegal settlement in favor of the private Respondent goes away. On the basis of the letter of the Vigilance Committee this Court had passed orders in relation to all the four cases including CWJC No. 4642 of 2002 that until further orders passed by this Court the Market toll shall be collected by the Marketing Board itself through its own agency. Although it appears that the Marketing Committee and the Respondent No. 4 would come with plausible reasons of not conducting the open bid on the scheduled time on last day i.e. on 26.3.2002 and the amount deposited by the highest bidder could not be deposited on that day or on the next two days because of the declaration of the holiday and the same could be deposited only on 30th March, 2002 and the certificate has been issued to that effect. But the fact remains that the eligible bidders could not participate in the open bid for no fault of them. As per the annexures attached it could be found that they were present up to 3 p.m. on 26.3.2002 and when bid was not there up to that time they had gone away expecting that fresh notice be issued by the committee for the purpose of open bid. In that way definitely the Petitioners of CWJC No. 4642/2002, CWJC No. 4692/2002 and CWJC No. 4691/2002 have got valid reasons of their grievances. The Marketing Committee ought not to have done the open bid at the late hours of the day. Their reasons for doing the same in the late hours may be genuine as the next two days i.e. on 27.3.2002 and 28.3.2002 were declared holidays for Holy festival but still then when the eligible bidders were not present then the same ought to have been deferred. In that way I hold that the open bid made on the last hours of 26.3.2002 in respect of the Bazars involved in these three writ petitions were not transparent and is liable to be interfered by a Court of law for

lack of transparency and also when the eligible bidders had been left out for no fault of them. In that way these three writ petitions are disposed of keeping the order of collection of Bazars tolls in respect of three Bazars as involved in these three writ petitions by the Marketing Committee itself through their own agency till an alternative arrangement is being made according to law. In this respect it should be maintained that similarly situated one person Suday Kumar came up before this Court in CWJC No. 2497/2002 in respect of Belaganj Bazar and a Bench of this Court after consideration of all the matters held that the same was not transparent and the writ petition was disposed of by giving several directions to maintain transparency in respect of the open bid. Those directions and the formulating of processes by this Court should be maintained henceforth by the Marketing Committee in making settlement of Bazars including the three bazars involved in the present case also.

4. But the case of CWJC No. 4844 of 2002 is a bit different. Here it appears that the Petitioner Manoj Kumar Singh was very much present at the time of bidding in the late hours of the day on 26.3.2002 and he could not succeed and the private Respondent of that writ petition being found to be highest bidder was settled with the Bazar in question in that writ petition. He had deposited the bid money but the same could be certified only on 30.3.2002 and practically on these grounds alone it has been challenged that the highest bidden has no money in his hand and, as such time was allowed to the private responded and he deposited the bid money after two days. The same has been protested from the side of Marketing Committee by stating that bid money was deposited on the same dates with the Committee but the same could not be deposited with the Treasury within the next two days because of holidays and the certificate had been issued on 30.3,2002. The plea of the Petitioner Manoj Kumar Singh that he was ready to give higher than the bid money accepted is of no avail when he became disgruntled one at the time of open bid itself. In that way although open bid was made in the late hours of the day but it does not appear that the eligible bidder including the Petitioner Manoj Kumar Singh was not given opportunity as in the other three cases. In that way this writ petition is dismissed and the order directing the Marketing Committee to collect tolls themselves through their own agency is hereby withdrawn in respect of this case giving opportunity to the private Respondent if he is still agreeable to collect tolls on the basis of selection being made in his favor but in future in respect of this Bazar also the Marketing Committee shall follow the direction of this Court as already mentioned above in the case of Suday Kumar in making settlement of Bazar regarding collection of tolls. Thus, as per discussion above the three writ petitions, namely, CWJC Nos. 4642/2002, 4692/2002 and 4691/2002 are disposed of with the direction as given above but CWJC No. 4344 of 2002 is hereby dismissed and the direction given interinely regarding collection of Bazar tolls by the Marketing Committee is hereby withdrawn.