Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 25/08/2026

(2020) 09 JH CK 0073

In the Jharkhand High Court

Case No : Writ Petition (C) No. 22 Of 2018

Pintu Rani — APPELLANT

Vs

State of Jharkhand And Ors — RESPONDENT

Date of Decision : 08-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2020) 09 JH CK 0073

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Rohit Roy, Pravin Akhouri

Final Decision : Dismissed

Judgement

1. The present case is taken up through video conferencing.

2. The present writ petition has been filed for quashing/setting aside memo no. 534 dated 31.10.2017 (Annexure-6 to the writ petition) issued by the District Panchayat Raj Officer, Hazaribagh (respondent no. 4) by reasons of which an order for recovery of Rs.3,77,016/- has been passed against the petitioner with a direction to deposit the same in the office of Block Development Officer, Katkamdag, failing which an F.I.R. would be lodged against her and the said amount would be recovered through certificate proceeding. Further prayer has been made for restraining the respondents from taking any step for ceasing the financial powers of the petitioner as Mukhiya of Adra Gram Panchayat, Block-Katkamdag, Hazaribag.

3. The factual background of the case as stated in the writ petition is that the petitioner is the Mukhiya of Adra Gram Panchayat since December 2010. In the year 2014, the Gram Sabha passed a resolution for purchase of solar street lights as the grants for the same was available under the 13th Finance Commission. The said resolution was also approved by the Panchayat Cabinet comprising the Ward Members, Panchayat Secretary (the government's

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pintu-rani-appellant-hash-state-of-...

representative) and the Mukhiya as its Chairman. Accordingly, quotations were invited from three dealers and thereafter on comparison, the supply orders for purchase of 17 solar street lights were placed to the dealer who quoted the lowest price. Again as per the available funds under the 14th Finance Commission, the Gram Sabha passed resolution for purchase of seven (07) solar street lights which was also approved by the Panchayat Cabinet and as per the procedure, the quotations were invited from three dealers. On comparison of the said quotations, the supply order for seven solar street lights was placed to the dealer quoting the lowest price i.e. M/s. Surya Energy, Hazaribagh. Subsequently, a complaint was made in the Chief Minister's Public Grievance Cell relating to purchase of the solar street lights under the 14th Finance Commission alleging inter alia that the solar light sets were available @ Rs.17,000/- per unit with the Jharkhand Renewable Energy Development Agency (JREDA), but instead of purchasing the same from JREDA, those were purchased at the higher rate from private dealer. The Block Development Officer, Katkamdag (the respondent no. 5) got the matter enquired through Panchayat Sewak who submitted the report vide letter no. 276 dated 01.04.2017 stating inter alia that the purchase of 7 set of solar street lights was made after comparing respective quotations obtained from three dealers out of which M/s Surya Agency was selected having quoted the lowest rate i.e. Rs.31,900/- each. The respondent no. 5, vide memo no. 789 dated 04.09.2017 issued a show cause notice to the petitioner as well as to the Panchayat Secretary, Adra Gram Panchayat seeking clarification regarding the circumstances under which supply orders were placed to M/s. Surya Energy instead of placing the order to the JREDA and as to why resolution no. 221/ finance dated 03.02.2011 was not followed in the matter of procurement of the solar street lights. The petitioner submitted reply to the said show cause notice through the Panchayat Secretary, however the said reply was not forwarded by the said Panchayat Secretary to the respondent no. 5. Thereafter, the respondent no. 5 vide letter no. 952 dated 30.10.2017 submitted his enquiry report to the Director, Accounts Administration and Self- Employment, District Rural Development Authority, Hazaribag, a copy of which was also forwarded to the respondent no. 4. Subsequently, an order for recovery of Rs.3,77,016/- as contained in impugned memo no. 534 dated 31.10.2017 was passed with a direction to the petitioner that if she failed to deposit the said amount, an F.I.R. would be lodged against her and the said amount would be recovered through certificate proceeding. As soon as the petitioner came to know that her reply was not submitted before the respondent no. 5, she requested the respondent no. 5 vide her letter dated 08.11.2017 to recall the order of recovery, however the said request was not considered by the respondent no.5. Thereafter, the petitioner filed representation before the Deputy Commissioner, Hazaribagh (respondent no. 2) on 11.12.2017, however the said representation was also not considered and in the meantime, the petitioner came to know from the news reports that her finanacial power as Mukhiya of the said Panchayat had been ceased. Hence, the present writ petition.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pintu-rani-appellant-hash-state-of-…

4. Learned counsel for the petitioner submits that JREDA vide letter dated 21.07.2017 had informed the Secretary, Department of Panchayat Raj, Government of Jhakhand that it had no agency empanelled for supply of solar street lights, rather it used to invite e- procurement notice for supply of said articles as and when the need arose. The document related to technical specifications for solar photovoltaic lighting system and power packs was also enclosed with the said letter which would disclose that it was in relation to solar street light set of 40Wp outputs whereas those installed in the Gram Panchayat, Adra were of 74Wp power outputs. It is further submitted that Ministry of New & Renewable Energy, Government of India fixes the rates for solar street lighting system with reference to their output and vide letter dated 30.05.2013, the rate of solar street lighting system was fixed at Rs.450/- per Watt peak (Wp) which was subsequently revised to Rs.475 per Watt peak (Wp) vide letter dated 17.03.2017. The learned counsel for the petitioner thus submits that if the rate of Ministry of New & Renewable Energy, Government of India is taken into consideration, the procurement made by the Gram Panchayat, Adra is well within the prescribed limit. Moreover, the Block Development Officer-cum- Secretary, Panchayat Samiti, Giridih vide memo no. 896 dated 20.03.2015 placed the order for solar street light sets to a private firm @ Rs.31,920/- each. In Simdega district also, the National Small Industries Corporation Limited vide its letter dated 01.10.2015 had quoted Rs.34,125/- for solar lighting system of 80Wp. Thus on the basis of the said examples of procurement in other districts, it would be evident that the procurement of solar street lights made by the petitioner was fair, just and transparent. The respondent authorities have not taken any initiative or have apprised the petitioner being the Mukhiya of the said Panchayat and other functionaries about the resolution no. 221 dated 03.02.2011 issued by the Department of Finance, Government of Jharkhand. Even if there has been some violation of the said resolution, the same cannot be said to be intentional as the procedure adopted for procurement of the concerned solar light system was quite transparent and no foul play was involved in the same. The petitioner has however been penalized without providing due opportunity of hearing to her and thus there is a gross violation of the principles of natural justice. Aggrieved with the impugned action taken against the petitioner, the District Mukhiya Association, Hazaribag also represented the Commissioner, North Chotanagpur Division, Hazaribagh on 18.12.2017, however no action was taken by the said authority in this regard.

5. Per contra, the learned counsel for the respondent-State submits that the petitioner procured the solar street lights without following the procedure specified by the Department of Finance, Government of Jharkhand which was mandatory for making public procurement. The petitioner paid much higher rate than the rate prescribed by the JREDA for the said purchase. It is further submitted that a tender should have been invited by the concerned Gram Panchayat for procurement of any article valued more than Rs.1,50,000/- in view of resolution dated 03.02.2011 issued by the Department of Finance,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pintu-rani-appellant-hash-state-of-…

Government of Jharkhand, however the petitioner being the Mukhiya of the said Panchayat purchased the solar street lights having value of more than Rs.1,50,000/- merely on the basis of quotations. There is a well established guideline issued by the state government regarding the purchases to be made by the Panchayats, which has been violated by the petitioner. In fact, the petitioner purchased the solar street lights from the local market @ Rs.31,900/- per unit in place of price fixed by JREDA as Rs.16,191/- per unit. The petitioner altogether purchased 24 units of solar street lights @ Rs. 31,900/- per unit i.e. worth Rs.7,65,600/- thereby causing loss of Rs.3,77,016/- to the State exchequer. It is also submitted that the respondent no. 5 issued show cause notice to the petitioner and the Panchayat Secretary vide memo no. 789 dated 04.09.2017 with respect to the aforesaid financial irregularity committed by the concerned Panchayat. The petitioner's reply was received by the respondent no. 5 on 08.11.2017 i.e. after two months and till that time, the impugned order was already passed and as such there was no question of consideration of the same. The learned counsel for the respondent-State further submits that the financial power of the petitioner was not ceased till filing of the counter affidavit. The petitioner was required to submit her reply directly to the respondent no. 5 and by not doing so, it can only be said to be a lapse on the part of the petitioner. It is also submitted that Panchayat Raj Office is functional in each and every district of the State to provide relevant information and guideline to the Panchayats in case of any confusion and as such, the petitioner should have approached the said office for seeking instructions before making purchase of solar street lights at higher rate. However by not doing so, Adra Gram Panchayat headed by the petitioner, has committed financial irregularity in purchasing 24 solar street lights and thus put the public exchequer to loss.

6. Heard learned counsel for the parties and perused the materials available on record. The petitioner has challenged the impugned order as contained in memo no. 534 dated 31.10.2017 issued by the respondent no. 4 wherein it has been alleged that the petitioner made purchase of solar street lights by using the funds available under 13th and 14th Finance Commission from a private dealer in violation of the government resolution/circular due to which the public exchequer was put to loss.

7. Learned counsel for the respondent-State has put reliance on resolution no. 221 dated 03.02.2011 issued by the Department of Finance, Government of Jharkhand and has submitted that in view of the said resolution, if the purchase was to be made having value of more than 1,50,000/-, the petitioner was required to invite tender by way of making publication in daily newspaper. However, the said resolution was not followed by her. The applicability of the said resolution has not been put in question by the learned counsel for the petitioner, however it has been submitted that the said violation is not intentional as she was not made aware of the said resolution by the state authorities.

8. In the case of Nagar Nigam Vs. Al Faheem Meat Exports (P) Ltd. reported in

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pintu-rani-appellant-hash-state-of-…

(2006) 13 SCC 382, the Hon'ble Supreme Court has held as under:

"The law is well settled that contract by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/ public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject-matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of government contracts through public auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through "private negotiations". (see Ram and Shyam Co. v. State of Haryana [(1985) 3 SCC 267: AIR 1985 SC 1147].) .

18. The law is, thus, clear that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have an opportunity to bid in the bid (sic auction), and there is total transparency. In our opinion this is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence."

9. It is thus well settled that ordinarily the State instrumentalities should not give contracts on the basis of private negotiations, rather the same should be done by way of open public auction/tender on wide publicity. The purpose behind this is to maintain transparency in public purchase on competitive rate.

10. Coming back to the present writ petition, learned counsel for the petitioner has tried to convince the Court that violation of the resolution dated 03.02.2011 issued by the Department of Finance, Government of Jharkhand was not intentional, rather the same was due to ignorance of the petitioner as she was never made aware of the said resolution. I do not find any substance in the said contention of the learned counsel for the petitioner. Since the petitioner being the Mukhiya was holding a statutory post, it was expected from her that she would know the manner/procedure in which public purchase was to be made while exercising the financial powers. Moreover, the stand of the respondent-State is

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pintu-rani-appellant-hash-state-of-…

that the petitioner by making purchase of 24 solar street lights from a private dealer on higher rate than prescribed put the state exchequer to loss.

11. Further argument of the learned counsel for the petitioner is that the respondent no. 4 has violated the principles of natural justice while passing the impugned order as the reply submitted by the petitioner in pursuance of issuance of show cause notice was not considered. To appreciate the said argument of the learned counsel for the petitioner, I have gone through the record of the case and on perusal of the same, it is evident that the show cause notice contained in memo no. 789 dated 04.09.2017 was duly served to the petitioner which was not directly submitted by her to the concerned Block Development Officer (the respondent no. 5), rather according to her, she submitted it through the Panchayat Secretary who allegedly did not forward the same to the respondent no. 5 in time due to which her reply was not considered. The petitioner has however failed to explain any justifiable reason as to why the reply was not directly sent to the respondent no. 5. Thus, I am of the considered view that the petitioner by not choosing to file her reply directly to the respondent no. 5 cannot allege violation of principles of natural justice for her own wrong. I find justification in the contention of the learned counsel for the respondent-State that since the impugned order was already passed by the respondent no. 4, the reply having been received subsequently i.e. on 08.11.2017, could not have been considered. Accordingly, I do not find any infirmity in the decision making process of the respondent authorities.

12. One of the contentions of the learned counsel for the petitioner is that the procurement of solar street lights has been made at a reasonable rate by inviting quotation from three different dealers. On the contrary, the contention of the learned counsel for the State respondent is that the petitioner made purchase of solar street lights @ Rs.31,900/- per unit i.e. much higher than the rate fixed by JREDA i.e. @ Rs.16,191/- per unit and thereby the petitioner caused revenue loss to the State exchequer. In my view, the matter regarding public purchase is to be considered strictly by the Court. The petitioner by giving examples of purchase of solar street lights in different districts on the higher rates cannot justify the purchase of concerned solar street lights @ Rs.31,900/- particularly when she admittedly did not follow the resolution dated 03.02.2011 issued by the Department of Finance, Government of Jharkhand.

13. Considering the aforesaid facts and circumstance, I find no ground to interfere with the impugned order as contained in memo no. 534 dated 31.10.2017 passed by the respondent no. 4. So far as the prayer of the petitioner with regard to restraining the respondents from taking steps for ceasing her financial power is concerned, there is no need to pass any order on the same in view of the stand of the respondents taken in the counter affidavit that till filling of the same, no such action was taken against the petitioner.

14. The writ petition being devoid of merit is accordingly dismissed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pintu-rani-appellant-hash-state-of-…