
(2008) 10 PAT CK 0044
In the Patna High Court
Case No : CWJC No's. 12375 of 2008

Rajiv Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)

Citation : (2009) 2 PLJR 81

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : N.K. Agrawal, Sanjeet Kr. in 12375, Mr. Naresh Dixit in 14779, for the Appellant; R.S. Pradhan, A.N. Rai (in 12375), M/s P.K. Shahi, Vikas Kr. (in 14779) for the Corporation, Mr. Naresh Dixit (in 12375) for Respondent No. 9, M/s P.K. Verma, Dr. Makeswar Tiwari (in 12375) and Mr. P.K. Singh (in 14779) for the State, for the Respondent

Judgement

Navaniti Pd. Singh, J.—Bihar State Food and Civil Supplies Corporation moves foodgrains in large quantities intra district and inter district. It requires transporters for doing the said job. For each district, as per its policy decision, separate notice inviting tenders are issued and for each district, there is a District Transport Committee which then scrutinizes the tenders and then makes a recommendation for final selection to the Managing Director of the Corporation. In the present case, Rajiv Kumar, the writ petitioner in the first writ application applied pursuant to one such notice inviting tender. He was held to be ineligible and his tender was rejected. The District Transport Committee then selected respondent No. 9 to the first writ application and recommended his selection to the Managing Director. As such petitioner, in the first writ application, has challenged his disqualification and selection of respondent No 9, namely, Sunil Kumar Singh. In the second writ application, pursuant to the same very notice inviting tender, Sunil Kumar Singh being the writ petitioner in the second writ application, was originally recommended for selection by the District Transport Committee and his selection was approved by the Managing Director of the

Corporation but on a later complaint by the petitioner of the first writ application, the Managing Director recalled his earlier order and cancelled his selection. Thus, the writ petitioner in the second writ application has challenged the cancellation of his selection. As both writ applications deal with the same tender, with consent of parties, they have been heard together at the stage of admission itself for the purpose of final disposal.

2. Bihar State Food and Civil Supplies Corporation have filed a detailed counter affidavit in the first writ application which covers the controversy so far as the second writ application is concerned. In the counter affidavit, apart from stating other things, it has been stated that noticing various controversies, the Corporation has now decided to rescind the tender in totality and issue a fresh tender which process has been stayed by this Court by interim order passed in the first writ application. The petitioners of the two writ applications, as they were challenging their rejection, chose not to participate in the re-tender. It is not in dispute that pursuant to the re-tender, the tender forms have not been opened at all because in fact consequent to the stay order, no tenders were filed at all.

3. Mr. N.K. Agrawal, learned Senior Counsel appearing in support of the first writ application submitted that as would appear from the contemporaneous documents annexed with the writ application and the counter affidavit, his candidature was rejected primarily on two grounds. Firstly that the District Transport Committee had received information from rival tenderers that petitioner was involved in several criminal cases including those relating to blackmarketing of foodgrains. The second ground was that other family members of the petitioner were already Transporting Agents for the Corporation in other districts. Shri Agrawal contends that before the District Transport Committee could take cognizance of any alleged criminal case against the petitioner, it was bound to notice the petitioner in this regard. With reference to facts, he has demonstrated that the District Transport Committee noted four criminal cases against the petitioner. As petitioner was denied any opportunity of showing cause against that allegation, he cannot bring to the notice of the District Transport Committee that in two cases, he had been tried and acquitted. In one case, he was not even an accused. In the last case, police had not submitted charge-sheet against the petitioner. Thus, nothing could be held against the petitioner on this count.

4. Firstly, in this connection, I may only state that if any such ground is to be taken note of by the District Transport Committee while evaluating the tender for disqualifying a person then, consistent with the principles of natural justice, the person should be noticed otherwise false, misleading and wrong information by rivals in trade could be furnished to the District Transport Committee motivating its opinion in a particular direction to the prejudice of the person without the person getting a chance to either defend and/or explain. Thus, in my view, before the Tender Committee took cognizance of such allegations, it was in fact

and in law required to notice the petitioner and seek clarification in absence whereof, the decision making process stands vitiated.

5. Coming to the next issue of other family members being in the same business, in my view, that cannot be made a ground to deny right of trade and business to the petitioner in terms of Article 19(1)(g) of the Constitution of India. Every individual citizen has an independent right to carry on trade, business or profession. Merely because an independent member of the larger family is in a similar business cannot be made a ground to deny another of his right to do business. It is a different matter where pursuant to directive principles of State policy, monopolization has to be restricted in special trades but that cannot be a universal rule. Merely because brother of petitioner or uncle of petitioner is a Transporting Agent for the Corporation in another district would not disqualify the petitioner from being considered for being appointed as Transporting Agent in another district. That is also not one of the terms of the tender. Thus, taking into account the aforesaid facts, the consideration by the District Transport Committee stands vitiated so far as the petitioner in the first writ application is concerned.

6. Now coming to the second writ petition. One of the documents that were required to be submitted alongwith the tender papers was a bank guarantee. The writ petitioner in the second writ application did submit a bank guarantee but it was not in the correct format. He later substituted the bank guarantee by a fresh guarantee in lieu of the earlier one furnished in the proper format. The District Transport Committee ignored this as a mere technical irregularity not vitiating the tender. The Managing Director first approved the selection recommendation but later on disagreed with the District Transport Committee and withdrew his approval. Again all this was done without notice to the petitioner.

7. Be that as it may, Mr. Pradhan, learned Senior Counsel appearing for the Corporation submits that as re-tenders have been issued, the Corporation, in view of the controversies through which the first tender went, have decided to cancel the process and petitioners are free to participate in the re-tender. Petitioners submit that as they had challenged the first process, they had chosen not to participate in the re-tender for their challenge would have failed on that count alone. In my view, as it has also been stated by Mr. Pradhan, learned Senior Counsel for the Corporation that no tenders were received pursuant to the re-tender, the Corporation would be at a liberty to issue fresh tender immediately in which both the petitioners are at a liberty to participate. The District Transport Committee would evaluate the individual tenders in accordance with law and make recommendations accordingly. The earlier tender and its results would not be taken into consideration. With these observations and directions, the writ applications stand disposed of.