
(2015) 11 PAT CK 0074

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 66, 24740 and 23224 of 2013

Tanuja Kumari and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Citation : (2015) 11 PAT CK 0074

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Nityanand, Advocate, for the Appellant; Devendra Kr. Sinha, AAG 2, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—Heard Mr. Yogesh Chandra Verma, learned Senior Counsel for the petitioner in C.W.J.C. No. 66 of 2013, Mr. Subodh Kumar Jha learned counsel for the petitioner in C.W.J.C. No. 24707 of 2013, Mr. Onkar Nath learned counsel for the petitioner in C.W.J.C. No. 23224 of 2015, Mr. Devendra Kumar Sinha learned AAG 2 for the State in C.W.J.C. No. 66 of 2013, Mr. Ashok Kumar, S.C. 11 in C.W.J.C. No. 24740 of 2013 and Mr. Sunil Kumar Mandal, S.C. 24 in C.W.J.C. No. 23224 of 2015.

2. The three petitioners herein are aggrieved by the decision of the Central Purchase Committee whereby the Committee has modified and reduced the rates offered by the petitioners for supply of consumable items for different periods.

3. Whereas the claim of the petitioner in C.W.J.C. No. 66 of 2013 pertains to the financial year 2012-13, in so far as the remaining petitioners are concerned they have made their supplies during the financial year 2013-14.

4. The supplies made by these petitioners are not in dispute nor there is any dispute regarding the quality of the supplies rather the dispute here is with regard to the rates at which the supplies have been effected. The complaint of the petitioners in each of the writ petition is that although the District Purchase

Committee which is headed by the District Magistrate recommended a particular rate which according to the tender notice was merely required to be ratified by the Inspector General (Prisons) but the Central Purchase Committee constituted under Rule 24 of the Bihar Jail Manual has exceeded its jurisdiction to usurp this power and to reduce the rate at which the supplies have been made by these petitioners.

5. Learned counsel for the petitioners with reference to the tender notice which is impugned at Annexure-1 to the respective writ petitions have stated that the petitioners were required to make supplies of the items so mentioned in the list appended to the tender notice at rates which was to be finally approved by the Inspector General of Prisons. It is the case of these petitioners that the rate so offered by these petitioners was considered by the District Jail Purchase Committee which is presided by the District Magistrate and who recommended the rates for approval by the Inspector General of Prisons. Learned counsel for the petitioners submits that since the rates were approved by the District Jail Purchase Committee hence on such acceptance, they proceeded to make the supplies as per the agreement and the petitioners in C.W.J.C. No. 24740 of 2013 and C.W.J.C. No. 23224 of 2011 have also been paid for the supplies, the evidence of which is placed in the respective writ petitions but was recovered subsequently.

6. Learned counsel for the petitioners with reference to the orders impugned in the respective writ petitions have submitted that it is after the lapse of more than 6 months that the recommendation so made by the respective District Jail Purchase Committee was considered by the Central Purchase Committee presided by the Inspector General of Prisons who decided on a rate which was below the rate recommended by the District Jail Purchase Committee and not in tune with the rates offered by the respective petitioners. It is contended that the Central Purchase Committee decided that the supplies effected prior to the date of the meeting which was held on 23.8.2012 in so far as C.W.J.C. No. 66 of 2013 is concerned and on 10th October, 2013 in so far as the other two writ petitions are concerned, the rates approved for the previous financial year, would stand approved and in so far as the subsequent period is concerned it would be as per the rate approved by the Central Purchase Committee.

7. Counsel for the petitioners submit that the period of contract is over and the petitioners have been paid as per the rate so fixed by the Central Purchase Committee. It is submitted that the grievance raised herein is with regard to the payment of the differential amount to the petitioners i.e. rate so fixed by the District Jail Purchase Committee less the payment made at the rate so determined by the Central Purchase Committee.

8. Learned counsel for the petitioners have with reference to Rule 24 of the Jail Manual submitted that a Central Purchase Committee is constituted for taking a decision in respect of purchase of principal raw materials which are normally purchased in large quantity. It is stated with reference to Rule 1051 of the Jail

Manual that whereas Central Purchase Committee is to cater to the wholesome needs of the Jails situated within the State, the individual needs is to be recommended by a Committee so constituted under Section 1051 which is known as District Jail Purchase Committee and which is headed by the District Magistrate concerned. It is thus with reference to the said two provisions submitted by learned counsel for the petitioners that the area of operation of the two Committees is entirely distinct but in either of the two cases the final say in fixation of rate, lies with the Inspector General of Prison as is manifest from Rule 24(6) and Rule 1051(ix) of the Jail Manual.

9. It is next with reference to the tender notice present at Annexure-1 of the respective writ petitions submitted that besides the statutory provisions even the tender notice vests jurisdiction in the Inspector General of Prisons to approve the rates. It is also with reference to Clause 7 of the Tenders Notice impugned in the respective writ petitions submitted that the rate so fixed was to be for the entire period of contract and could not have been interfered with during the midst's of the contract.

10. Mr. Verma learned Senior Counsel for the petitioner in C.W.J.C. No. 66 of 2013 has submitted that in these uncontested circumstances, the Central Purchase Committee has illegally assumed jurisdiction to consider the matter and vide a decision taken on 23.8.2012 they have decided that the rates for the supplies made prior thereto would be in terms of the rates prevalent during the period 2011-12 and in so far as remaining period of the contracting year 2012-13 is concerned it would be as per the rates decided by the Central Purchase Committee. He submits that even if the committee so presided by the Inspector General of Prison yet it was contrary to the statutory prescriptions as well as the tender notice which vested exclusive jurisdiction in the Inspector General of Prisons to approve the rates. In fact Mr. Jha and Mr. Nath appearing for the petitioners in the remaining writ petitions have seconded the arguments to submit that similar is the case in other writ petitions which pertain to the district of Saharsa and Nawada respectively and in which case also the Central Purchase Committee vide separate orders passed on 10.10.2013 has overreached the statutory prescription as well as the conditions of tender. It is submitted that when the tender notice prescribed that the rate would be prevalent for the entire period of contract and which rate was approved by the District Jail Purchase Committee then the Central Committee has exceeded its jurisdiction to interfere with the rates even when the petitioners have been paid as per the rates recommended by the District Purchase Committee for the period prior to the meeting of the Central Purchase Committee. It is thus submitted by learned counsel for the petitioners in C.W.J.C. No. 24740 of 2013 and C.W.J.C. No. 23224 of 2013 that the action of the respondents to not only pay a rate lower than the rate recommended by the District Jail Purchase Committee in Saharsa and Nawadah districts but to recover the differential amount already paid to them of the period prior to the date of the special meeting, is wholly arbitrary. Mr. Verma informs that the petitioner in C.W.J.C. No. 66 of 2013 has

been paid as per the decision of the Central Purchase Committee.

11. The argument of the learned counsel for the petitioners have been contested by the respondents and Mr. Sinha learned Additional Advocate General leading the arguments has with reference to the provisions of Rules 24 and 1051 submitted that there is no infirmity in the decision of the Central Purchase Committee which admittedly is presided by the Inspector General of Prison who has been vested with the jurisdiction to take a final decision in this regard. It is further the contention of Mr. Sinha that the period of contract is over and thus the claim raised by the petitioner partaking the nature of a money dispute, cannot be raised by way of writ petitions.

12. I have heard learned counsel for the parties and I have perused the records.

13. Having given anxious consideration to the arguments advanced by learned counsel for the contesting parties, it would not detain this Court any further to hold that the decision of the Central Purchase Committee impugned at Annexures-4 and 7 to C.W.J.C. No. 66 of 2013, Annexure-4 to C.W.J.C. No. 24740 of 2013 and Annexure-3 to C.W.J.C. No. 23224 of 2013 suffers from the vice of assumption of jurisdiction.

14. A bare perusal of the statutory provisions underlying Rule 24 read alongside Rule 1051 of the Jail Manual, would manifest that no appellate jurisdiction is vested in the Central Purchase Committee to preside over the rate recommended by the District Jail Purchase Committee. In fact the area is clearly demarcated and whereas the Central Purchase Committee is required to give a wholesome consideration to the requirements and the needs of the Jails established across the State and thus exercises jurisdiction where the purchases are to be made in large quantities, on the other hand, the District Jail Purchase Committees are constituted in each district and are presided by the District Magistrate. These Committees are looking into the individual needs and interests of the jail situated within the district. The area of operation of the two Committee is clearly demarcated and in the circumstances it is clearly established that the Central Purchase Committee has exceeded its jurisdiction to sit in appeal over the rates so recommended by the respective District Jail Purchase Committee in the present batch of cases.

15. Another infirmity which is eloquent from a very look of the tender notice is that it is first of its kind where the tenderers are required to make supplies without any agreement on the rates. In fact the tender on record of these batch of writ petitions reflect that the willing tenderers were only applicants for the supplies and the rates for such supplies was to be determined by the District Jail Purchase Committee who had to consider the fixation in the backdrop of the rates prevalent in the markets. Rule 1051 of the Jail Manual manifests that such Committee is to be presided by the District Magistrate and Rule 1051(v) further provides that the current prices is to be ascertained by the Committee by making enquires.

16. In a similar manner Rule 24 requires a Central Purchase Committee to take a decision in this regard and Sub Rule (6) thereof vests jurisdiction in the Inspector General to sanction a higher rate than recommended by the Purchase Committee. This singular provision by itself is supportive of the fact that a rate recommended by the District Jail Purchase Committee is not to be interfered with in a light manner unless the Inspector General of Prisons is of the opinion to sanction a higher rate. In the present case it is absolutely the converse and the rates as recommended by the respective District Jail Purchase Committee has been interfered with by the Central Purchase Committee to reduce the same. The period of supply is over and the petitioners have made their supplies under the legitimate expectation of the rates recommended by the District Jail Purchase Committee. In my opinion once the District Jail Purchase Committee has approved and recommended the rates offered by the petitioners by following the procedure provided under Rule 1051(v) and it is upon such approval that the supplies were made by the petitioners then the same cannot be reversed unilaterally, midway in the contract and without the consent of the contracting party i.e. the petitioners herein. The respondents are estopped from interfering with the rates so recommended by the District Jail Purchase Committee in view of the statutory prescriptions as well as on the principles of legitimate expectation and promissory estoppel. In so far as the District of Saharsa and Nawada is concerned, the illegality is further perpetuated when the respondents have gone ahead to recover the differential amount. Apart from the fact that the Central Purchase Committee though presided by the Inspector General of Prisons has no jurisdiction to reverse the rate recommended by the District Jail Purchase Committee even otherwise, once the petitioners have made their supplies at a rate recommended by the District Jail Purchase Committee then the rate can not be interfered in the midst of the contract to the prejudice of a contracting party.

17. For the reasons so assigned hereinabove, the writ petitions are allowed, the orders impugned in the respective writ petitions are set aside. The respective Jail Superintendents are directed to make payment of the balance differential amount to the petitioners for the supply made during the financial year 2012-13 in so far as the petitioner in C.W.J.C. No. 66 of 2013 is concerned and for the period 2013-14 in the case of the remaining two writ petitioners, as per the rates recommended by the respective District Jail Purchase Committee after adjusting the amount already paid to them. The Inspector General of Prisons is accordingly directed to release the funds for the purpose.