
(2017) 03 JH CK 0123
In the Jharkhand High Court
Case No : 441 of 2015

Vinay Sao @ Vinay Kumar @ Binay Kumar	APPELLANT
Vs	
The State of Jharkhand & Ors.	RESPONDENT

Date of Decision : 13-03-2017

Acts Referred:

Citation : (2017) 03 JH CK 0123

Hon'ble Judges : D. N. Patel, Ratnaker Bhengra

Bench : DIVISION BENCH

Advocate : Delip Jerath, Mr. Amritansh Vats

Judgement

1. This Letters Patent Appeal has been preferred by the original petitioner against part of the order passed by the learned Single Judge dated 3rd July, 2015 in W.P.(C) No. 867 of 2013.

2. Learned counsel appearing for the appellant (original petitioner) submitted that this appellant was highest no. 1 in the process of tender finalisation for supply of food grains, green vegetables, potatoes etc. in Saraikela Jail in the State of Jharkhand for the period running from 1st October, 2012 to 31st December, 2012. The vegetables and other articles were supplied to Saraikela Jail and for earlier period also such type of articles were supplied by this very appellant. This appellant is supplying the food grains, green vegetables, potatoes etc. from 200304 and even today, he is supplying the same.

3. Learned counsel appearing for the appellant further submitted that after the supply period is over as on 31st December, 2012, the rates for supply of food grains, green vegetables, potatoes etc. have been reduced, as stated in 2Annexure2 to the memo of this appeal which is dated 2nd January, 2013. The effect of this reduction is mentioned at Annexure3 in tabular format and the total amount involved is Rs.2,99,579/which is to be recovered by this appellant from the respondentState authorities.

4. Learned counsel appearing for the appellant also submitted that similarly

situated matter was previously decided by the learned Single Judge of this Court in the writ petition being C.W.J.C. No. 2204 of 1996(R) vide order dated 10th December, 1996 (Annexure4). Once the items have been supplied, the rates cannot be reduced by the I.G. (Prisons) especially in teeth of earlier order passed by this Court in C.W.J.C. No. 2204 of 1996(R). These aspects of the matter have not been properly appreciated by the learned Single Judge while disallowing the part of the relief as prayed by this appellant in W.P.(C) No. 867 of 2013 vide judgment and order dated 3rd July, 2015 and, hence, the same deserves to be quashed and set aside.

5. Learned counsel appearing for the respondents submitted that looking to the terms of the Contract especially Clause 5, there was condition that the rates are to be finalised by the I.G. (Prisons). The rate prescribed by the Purchase Committee of the Jail is not final at all. There was also a communication to this appellant (original petitioner) dated 26 th October, 2012 that the I.G. (Prisons) has reduced the rates of food articles. Despite this communication and knowing fully well that the rates have been reduced, this appellant (original petitioner) continued the supply of eatable articles and without any delay, the I.G. (Prisons) on 2nd January, 2013 has finalised the rates. These facts make the present case different from earlier decided case where the period of supply of food articles was 1st October, 1995 to 31st December, 1995 and the rates were finalised on 1st March, 1996, whereas, in the present case, absolutely within two days, the rates have been finalised after 31st December, 2012. These aspects of the matter have been properly appreciated by the learned Single Judge and, hence, this Letters Patent Appeal may not be entertained by this Court.

6. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly for the following facts and reasons: (i) This appellant is an original petitioner, who has preferred W.P.(C) No.867 of 2013 for recovery of money of Rs.2,99,579/which is the difference of price for supply of food grains, green vegetables, potatoes etc. in Saraikela Jail, DistrictSaraikelaKharsawan, State of Jharkhand for the period running from 1st October, 2012 to 31st December, 2012.

(ii) Clause 5 of the Contract makes it abundantly clear that the rates approved by the Purchase Committee will be subject to the approval by the I.G. (Prisons). With this condition, offer was made by this appellant which was accepted by the respondents. Thus, the Contract was entered into between the parties subject to Clause 5 of the Contract.

(iii) Clause 5 of the Contract is not under challenge at all by this appellant.

(iv) It appears that this appellant (original petitioner) has supplied food grains, green vegetables, potatoes etc. in Saraikela Jail for the period running from 1 st October, 2012 to 31 st December, 2012 . Hence, we are concern with this period only. For the earlier period also, this appellant has supplied the food articles from 200304, as submitted by the learned counsel appearing for the appellant. (v) It

also appears that a letter was written by the respondents dated 26 th October, 2012 that the I.G. (Prisons) has reduced the rates of food articles. Despite the knowledge of this letter, this appellant continued the supply of food articles at his own peril and risk. Calculated risk has been taken by the businessman appellant. Keeping in mind the principle of "Ikgl's Jh% olrh LeA", calculated risk was taken, but, the I.G. (Prisons) has reduced the rates of food articles, as stated at Annexure 2 as per Clause 5 of the Contract.

(vi) Thus, no error has been committed by the learned Single Judge in appreciating these facts in view of the Contract and we see no reason to take any other view than what is taken by the learned Single Judge.

(vii) Much has been argued out about earlier order passed by this Court in the writ petition being C.W.J.C. No. 2204 of 1996(R). In the facts of the present case

(a) There was already a communication between the respondent and this appellant dated 26 th October, 2012 that the I.G. (Prisons) has reduced the rates of food articles. This vital fact was missing in earlier case.

(b) Despite the aforesaid communication, this appellant being a businessman or being a monopolist, because he was supplying the food articles from 2003/04, was confident enough that nothing is going to happen to him, took a risk and continued the supply of food articles. These facts were also missing in earlier case.

(c) Never any immediate protest was raised by this appellant. The aforesaid facts, make the present case different, from the facts of C.W.J.C. No. 2204 of 1996(R). Moreover in the earlier case, the rates were revised after three months from the last date on which the contract was over, whereas, in the present case, immediately within two days after the last date of contract, the rates have been revised. This is also a vital fact. These facts have been properly appreciated by the learned Single Judge in paragraph nos. 7 and 8 of the decision rendered in W.P.(C) No. 5867 of 2013 dated 3rd July, 2015. No error has been committed in appreciating these facts by the learned Single Judge. We are in full agreement with the reasons given by the learned Single Judge.

(viii) It appears that this appellant is getting Contract from 2003/04. This appellant is over confident monopolist. It is submitted by the learned counsel appearing for the appellant that even today this appellant is also getting the Contract. It is now high time for the jail authorities to look into the matter whether any one else is competent or not or cartel is going on for making offers.

7. In view of the aforesaid facts and reasons, there being no substance in this Letters Patent Appeal and, hence, the same is, hereby, dismissed with a cost of Rs.10,000/(Rupees Ten Thousand only) which will be deposited by this appellant before the Member Secretary, Jharkhand State Legal Services Authority, Nyaya Sadan, Doranda, Ranchi within a period of six weeks from today.

8. A copy of this order will be sent by the Registry of this Court initially by FAX

and thereafter by registered post with A/D to: (a) Chief Secretary, State of Jharkhand, Ranchi; (b) Secretary, Human Resources Development Department, State of Jharkhand, Ranchi;

(c) I.G. (Prisons), State of Jharkhand, Ranchi; and

(d) Member Secretary, Jharkhand State Legal Services Authority, Nyaya Sadan, Doranda, Ranchi.