

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1630 of 2018

Sanjay Kumar Jaiswal, Son of Sri Ramchandra Sah, resident of Mohalla-
Ward No. 11, Bhabhua, P.S- Bhabhua, District- Kaimur.

... .. Petitioner

Versus

1. The Bihar State Food and Civil Supply Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna-800 001.
2. The Managing Director, Bihar State Food and Civil Supply Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna-1.
3. The Chief of Procurement, Bihar State Food and Civil Supply Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna-1.
4. The Chief of Transporting, Bihar State Food and Civil Supply Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna.
5. The District Manager, Bihar State Food and Civil Supply Corporation Ltd., Kaimur, District- Kaimur.

... .. Respondents

Appearance :

For the Petitioner : Mr. Amrendra Narayan Rai, Advocate
For the BSFC : Mr. Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

4 11-05-2026 Heard learned counsel for the parties.

2. The present writ application has been filed seeking,

inter alia, the following reliefs:-

“1 (I) For quashing the Memo No. 2259 dated 29.12.2017 (Annexure-6 series) issued by District Manager, SFC, Kaimur by the order (Memo No. 13056 dated 23.12.2017) of Managing Director, whereby and



whereunder, agreement for Door Step Delivery between the petitioner and SFC, Kaimur has been cancelled and the petitioner has been declared black listed for three years and his security amount alongwith Bank guaranty has been forfeited.

(II) For directing the respondent authorities to re-engaged the petitioner immediately as transporting agent for Door Step delivery of food grains under Kaimur District because the petitioner's agreement has been illegally cancelled by the respondent authorities.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for grant of any other reliefs to which the petitioner may be found entitled under the facts and circumstances of the case.”

3. The brief facts of the case are that the respondent-Corporation issued a tender notice dated 05.02.2016 inviting applications for appointment of Transporting and Handling Agents for doorstep delivery of food grains in various districts of Bihar including Kaimur. The petitioner participated in the tender process and submitted all requisite documents and affidavits. Upon scrutiny by the District Transport Committee, Kaimur, the petitioner was found eligible and his name was



recommended to the Head Office. Thereafter, in the meeting of the Head Office Transporting Committee, the petitioner was declared eligible and, vide letter dated 16.07.2016, the District Manager, Kaimur was directed to appoint him as Transporting Agent up to 31.03.2019. Pursuant thereto, an agreement was executed and the petitioner commenced work.

4. It is further the case that after about one year, a show cause notice dated 10.10.2017 was issued alleging submission of false affidavit and violation of certain clauses of the tender conditions. The petitioner submitted his reply denying the allegations. However, thereafter, vide memo dated 29.12.2017 issued pursuant to Memo No. 13056 dated 23.12.2017 of the Managing Director, the agreement was cancelled, the security deposit and bank guarantee were forfeited, and the petitioner was blacklisted for a period of three years.

5. Learned counsel for the petitioner submits that the petitioner had been duly selected after verification by the competent authorities and had been discharging his duties without any allegation of misappropriation.

6. It is further submitted that the allegation regarding violation of Clause 9(iii)(d) is misconceived as no



such clause formed part of the Nit dated 05.02.2016.

7. Learned counsel submits that while the show cause notice referred to Clause 9(iii)(d), the impugned order contained refers to violation of Clause 9.6, which itself shows contradiction in the stand of the respondents.

8. Learned counsel for the petitioner further submits that the petitioner is neither a fair price shop license holder nor owner of any rice mill and, therefore, there was no suppression of facts. Accordingly, the impugned action is arbitrary, mala fide and violative of Articles 14 and 19(1)(g) of the Constitution of India.

9. Per contra, learned counsel for the respondents submits that the petitioner was issued show cause notice alleging submission of false affidavit and violation of Clause 9(iii)(d) of the terms and conditions of the NIT. It is submitted that after considering the petitioner's reply, the Managing Director, BSFC vide memo no. 13056 dated 23.12.2017 terminated the agreement, forfeited the security amount and bank guarantee and blacklisted the petitioner for three years.

10. It is further submitted that the petitioner had executed an agreement in the name of his wife, Madhu Devi, for milling of paddy in 2013-14 and public food grains amounting



to Rs. 2,01,72,768.32 including interest had been defalcated. Therefore, under Clause 9.6 of the NIT, the petitioner was ineligible for selection and had submitted a false affidavit at the time of bidding.

11. The limited issue which arises for consideration before this Court is as to *whether the employer can pass an order of cancellation, forfeiture and blacklisting by going beyond the terms and conditions of the tender notice?*

12. This Court has considered the rival submissions advanced on behalf of the parties and perused the materials available on record. The admitted position which emerges from the pleadings is that the tender notice along with the terms and conditions was issued on 05.02.2016 inviting applications for appointment of Transporting and Handling Agents for doorstep delivery of food grains. The petitioner participated in the tender process and, after scrutiny of his documents and affidavits by the District Transport Committee as well as the Head Office Committee, was found eligible and consequently appointed. An agreement was thereafter executed between the parties and the petitioner continued to discharge the work assigned to him.

13. The impugned action against the petitioner is primarily founded upon the allegation that the petitioner



violated Clause 9(iii)(d) of the terms and conditions of the NIT and submitted a false affidavit. However, the petitioner has specifically asserted that no such Clause 9(iii)(d) formed part of the original NIT dated 05.02.2016. Significantly, despite opportunity, the respondents have failed to bring on record any material to demonstrate that Clause 9(iii)(d), on the basis of which the show cause notice dated 10.10.2017 was issued, actually formed part of the original tender conditions. Moreover, while passing the final order dated 29.12.2017, the respondents themselves shifted the basis of the allegation from Clause 9(iii)(d) to Clause 9.6 of the NIT. Such inconsistency further strengthens the petitioner's case that the impugned action has not been founded upon the original terms and conditions of the tender notice.

14. At this stage, it would be apposite to take note of settled principle of law that in matters of public tender, the State and its instrumentalities are bound to act strictly in accordance with the terms and conditions stipulated in the Notice Inviting Tender and cannot deviate therefrom in an arbitrary or selective manner. Any relaxation or departure from the prescribed eligibility conditions, unless expressly permitted in the tender document itself, would be violative of Article 14 of the



Constitution.

15. In *Ramana Dayaram Shetty v. International Airport Authority of India* reported in (1979) 3 SCC 489, the Hon'ble Supreme Court held that the State is rigorously bound by the standards it prescribes and cannot act arbitrarily in the matter of public contracts. It was categorically observed that once eligibility conditions are laid down in the tender, the authority is not competent to relax or ignore them in favour of any bidder, as such action would result in discrimination and denial of equality of opportunity under Article 14. The relevant part of the said order reads as follows:

“10. Now, there can be no doubt that what para (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered IIInd Class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by Respondent 1 and since the Respondents 4 did not satisfy this standard or norm, it was not competent to Respondent 1 to entertain the tender of Respondents 4. It is a well-settled rule of administrative law that an



executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them....

....

20. Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

21. This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well-settled as a result of the decisions of this Court in E.P. Royappa v. State of Tamil Nadu [(1974) 4 SCC 3 : (1974) 2 SCR 348] and Maneka Gandhi v. Union of India [(1978) 1 SCC 248] that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-



discriminatory: it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in Erusian Equipment and Chemicals Ltd. v. State of West Bengal where the learned Chief Justice pointed out that

“the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by



discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods”.

It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non discriminatory ground.”

16. In ***Harinder Singh Arora v. Union of India*** reported in (1986) 3 SCC 247, the Hon’ble Supreme Court held



that the State and its instrumentalities are bound by the terms and conditions of the tender notice and cannot act beyond or contrary to the conditions stipulated therein while dealing with bidders. The relevant part of the said order reads as follows:

“19. .. The tenders had been invited for the supply of pure fresh buffalo's milk or fresh cow's milk but the respondent had submitted tender for supplying pasteurized milk, and therefore, the tender submitted by Respondent 4 being not in conformity with the tender notice should not have been accepted by the authorities. In any case, if the tender of Respondent 4 regarding supply of pasteurized milk was accepted and the original terms of the tender notice were changed, the appellant should have been given an opportunity to submit his tender in conformity with the changed terms but this was not done which has caused serious prejudice to the appellant. If the tender forms submitted by any party is not in conformity with the conditions of the tender notice the same should not have been accepted but the authorities concerned arbitrarily and in a fanciful manner accepted the tender of Respondent 4. The State or its instrumentality has to act in accordance with the conditions laid down in the tender notice. In any case if the authorities chose to accept the tender of Respondent 4 for supplying pasteurized milk, the appellant should also have been given an opportunity to change his tender.



The authorities have, however, given preference to the tender of Respondent 4 for offering to supply pasteurized milk contrary to the terms contained in para 2 of the tender notice. We find considerable force in this contention of the appellant....”

17. The Supreme Court has further consistently held that a bidder cannot be disqualified or penalized on the basis of a condition which did not form part of the tender document. In ***Maha Mineral Mining & Benefication Pvt. Ltd. v. Madhya Pradesh Power Generating Co. Ltd*** reported in (2025) SCC OnLine SC 1942, it was observed that conditions must be expressly stated in the tender document and cannot be supplemented subsequently to the prejudice of a bidder. The relevant part of the said order reads as follows:

“19. We are unable to accept such arguments for the following reasons:—

(i) Clause 5(D) merely states the appellant would be entitled to use the past-experience of a previous consortium/JV in the event its proportionate share is defined in the JV agreement failing which the past-experience shall be attributed to the lead partner. The clause does not mandate the submission of the JV agreement itself to satisfy such criteria.



Appellant had relied on the work execution certificate issued by MSMC which in no uncertain terms states the appellant had 45% share in the JV consortium named M/s Hind Maha Mineral LLP and successfully executed similar work of a volume larger than required under the clause. The certificate also mentioned the JV agreement had been submitted and was in the custody of MSMC.

(ii) It is nobody's case that the 1st respondent had doubted the authenticity of the certificate but had disqualified the appellant on the ground that Clause 5(D) mandated furnishing of the JV agreement alone and nothing else to prove proportionate share in a previous JV in order to use such experience.

(iii) Conditions in a NIT must be clear and unambiguous. In the event the tendering authority insisted on furnishing of the JV agreement alone and no other document as proof of the proportionate share of the bidder to avail previous JV experience as prior qualification, it should have been spelt out clearly in the NIT. Having not done so, the 1st respondent cannot thrust the responsibility on the appellant to seek clarification and submit such document. As Clause 5(D) does not require



submission of JV agreement itself to establish proportionate share in the JV whose past-experience the bidder is seeking to use, non-submission of such JV cannot be a ground to disqualify the bidder for submission of incomplete documents in terms of Clause 8.1 of NIT. Admittedly, the appellant had submitted the work execution certificate, as required under clause 5(D), which also unequivocally sets out its proportionate share in the JV agreement whose prior experience it had relied on.

...

20. In these circumstances, we are inclined to hold the 1st respondent acted contrary to the terms of the NIT and unfairly rejected the appellant's bid for non-production of JV agreement although Clause 5(D) did not prescribe production of such agreement as mandatory to rely on past-experience of such consortium in which the bidder had a defined proportionate share."

18. The underlying rationale behind the aforesaid principle is that every participant in a tender process is entitled to know with certainty the exact conditions governing the tender and any deviation therefrom would render the process arbitrary and violative of Article 14 of the Constitution of India.



19. Applying the aforesaid principles to the facts of the present case, this Court finds that the respondents have failed to establish that the condition forming the very basis of the show cause notice and subsequent punitive action was part of the original tender conditions dated 05.02.2016. Once the petitioner had been declared eligible by the competent authorities and agreement had already been executed, the respondents could not have subsequently resorted to cancellation of agreement, forfeiture of security amount and bank guarantee and blacklisting of the petitioner on the basis of a condition not forming part of the original tender document.

20. This Court is, therefore, of the considered opinion that the impugned action of the respondents suffers from arbitrariness and cannot be sustained in the eye of law. Consequently, the issue framed hereinabove is answered in favour of the petitioner and against the respondents.

21. Considering the aforesaid facts and discussions, Memo No. 2259 dated 29.12.2017 and Memo No. 13056 dated 23.12. 2017 (Annexure-6 series), is hereby set aside.

22. Accordingly, the present writ application stands allowed.

23. It is further directed that the security amount



and bank guarantee, which were forfeited pursuant to the impugned order, shall be returned/released in favour of the petitioner within a reasonable period from the date of receipt/production of a copy of this order.

24. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J.)

(Shailendra Singh, J.)

U.K., B.K.S./-
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