

Rajiv Kumar Vs. the Union of India and ors

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Court : Patna

Decided On : May-11-2012

Appellant : Rajiv Kumar

Respondent : The Union of India and ors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Miscellaneous Jurisdiction Case No.2339 of 2011 Rajiv Kumar, son of Sri Rameshwar Prasad Singh, resident of village Sihma, P.O. Sihama, P.S. Matihani, District Begusarai..Petitioner. Versus 1. The Union of India, through its Secretary, Ministry of Food, Government of India.

2. The Food Corporation of India, through its General Manager, Sri Dilip Kumar Gautam.

3. The Deputy General Manager(R), Sri S.K. Bhadani, Food Corporation of India Arunachal Bhawan, Exhibition Road, Chauraha 4th Floor, Patna.

4. The Area Manager, Sri Shakil Ahmad Ansari, Food Corporation of India, District Office Kashipur, Near Patel Maidan Samastipur, Bihar.

5. Sri Surendra Kumar Gupta, son of not known, At + P.O. Shambhoo Path, District SamastipurContemnors-Opposite parties. For the petitioner :Mr. Rajiv Kumar Verma, Sr. Advocate with Mr. Rajneesh, Advocate. For the opposite parties :Mr. P. Tekriwal, Advocate. ----- 13/ 11.01.2012 Heard

learned counsel for the petitioner and learned counsel for the opposite parties.

2. This petition has been filed by the petitioner for initiating a contempt against the opposite parties specially the Area Manager, Food Corporation of India, Samastipur (opposite party no.4) for deliberately and willfully disobeying the order of this court dated 25.04.2011 passed in C.W.J.C. No.3094 of 2011 by which the contract of opposite party no.5 was quashed and the opposite parties were directed to enter into a temporary agreement for the interim period with Sri Pankaj Kumar and in case of his refusal, then to extend the offer to the petitioner in case he is agreeable to adjustment of rate offered by him in accordance with the rate as notified under the Minimum Wages Act. -2- 3. The aforesaid writ petition bearing C.W.J.C. No.3094 of 2011 was filed by the petitioner challenging letter dated 21.01.2011 bearing no.SPJ/CONT/13(4)/ADHOC MIC/10-11/1202 by which the Area Manager, Food Corporation of India, Samastipur awarded contract in favour of opposite party no.5 appointing him Adhoc Mandi Handling Contractor for handling of food grains during KMS 2010-11 (Kharif Marketing Season) in the district of Samastipur at P.P.C. Sugar Mill, Samastipur and P.P.C., Rosera (Procurement Centres) against tender notice dated 18.11.2010 vide Reference not SPJ/CONT/13(4)/ADHOC MLC/2010-11/1017.

4. Both the parties were heard in detail and the writ petition was disposed of vide order dated 25.04.2011, concluding paragraphs of which read as follows:- 7. Hence, the said contract is not sustainable in law but respondent no. 5 has continued with the contract from January 2011 up till date and there is specific statement of the respondents in Paragraph 16 of the counter affidavit that the period of contract with respondent no. 5 expires on 30.4.2011, hence today being 25.04.2011, only five days are left. Hence, in view of the aforesaid facts and circumstances as well the materials on record, the impugned contract is hereby quashed and the respondents are directed to stop respondent no. 5 from doing any contractual work henceforth and no extension should be granted to the said contract in favour of respondent no.5 by any of the authority.

8. Now the procedure for fresh advertisement for the said purpose is required to be taken by the authorities concerned which in the earlier case had taken more

than two months. Hence for the interim period if the respondents feel necessity in case of wastage of food grains etc. they may ask the second lowest bidder Shri. Pankaj Kumar to enter into a temporary agreement for the said period at the rate earlier offered by him which -3- was between the rates offered by respondent no.5 and petitioner and was above the rate notified as per the Minimum Wages Act. If the said Pankaj Kumar is not agreeable to the said offer then the authorities may extend the offer to the petitioner in case he is agreeable to adjustment of the rate offered by him in accordance with the rate as notified under the Minimum Wages Act.

5. Learned counsel for the petitioner submits that the contract with the aforesaid opposite party no.5 having been quashed and the authorities having been directed to stop opposite party no.5 from doing any contractual work henceforth without any extension, the authorities sent letter dated 30.04.2011 (Annexure-2) to Sri Pankaj Kumar in compliance of the said order of this court, but the said Sri Pankaj Kumar refused to do such work by his letter dated 07.05.2011 (Annexure-2/A).

6. In the aforesaid facts two points have been raised on behalf of the petitioner. Firstly that the authorities should have extended the offer to the petitioner after refusal of Sri Pankaj Kumar as per directions of this court, but no such offer was ever sent to the petitioner. Secondly, that the authorities took work from Sri Surendra Kumar Gupta (opposite party no.5) although this court by the aforesaid order quashed his contract and had directed the authorities to stop taking work from him. Hence, it is submitted that on both counts, the authority concerned has violated the aforesaid order of this court.

7. As per the directions of this court dated 14.12.2011 the Deputy General Manager, Food Corporation of India, Patna as well as the Area Manager, Food Corporation of India, Samastipur are present in court and on their behalf learned counsel for the opposite -4- parties argues in detail stating that they have complied the order of this court to its letter and spirit as after refusal of the petitioner the Area Manager continued procurement in the interest of farmers and only the labourers, who were earlier working for Sri Surendra Kumar Gupta, were engaged as they had experience of handling bags of procured paddy and wheat merely with

a view to avoid interruption in procurement work.

8. So far the first point raised by learned counsel for the petitioner is concerned, it is not in dispute that letter dated 30.04.2011 (Annexure-2) was issued by the authorities to Sri Pankaj Kumar in accordance with order of the High Court but the said Sri Pankaj Kumar refused vide his letter dated 07.05.2011 (Annexure-2/A). No doubt after the said refusal of Sri Pankaj Kumar, the authorities were duty bound as per the directions of this court to make offer to the petitioner if he was agreeable, but before any offer could be made the petitioner himself refused to do the work vide letter dated 07.05.2011 (Annexure-C) stating that he must be appointed as handling agent for six places.

9. This letter cannot be termed to be as per the directions of this court as the writ petition and the orders dated 25.04.2011 passed therein were concerned with only two centres and no order had been passed by this court with respect to the remaining centres. In the said circumstances the authorities may not be very much wrong in assuming that the petitioner was not agreeable to accept only two centres and did not make any further offer in view of -5- letters of Sri Pankaj Kumar and Sri Rajiv Kumar both dated 07.05.2011.

10. So far second point raised by learned counsel for the petitioner is concerned, there is no material to show that the remaining work had been taken from the earlier contractor Sri Surendra Kumar Gupta. The statements merely show that the said works were completed by the Area Manager as the procurement was essential without any interruption in the interest of the farmers and only the labourers, who were working from before, were engaged for that purpose by the Area Manager.

11. In the aforesaid facts and circumstances, this court does not intend to take any action against the opposite parties and this M.J.C. petition is disposed of with a note of caution to the opposite parties. Harish (S.N.Hussain, J.)