

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6186 of 2014

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M/s. Kalika Swachchhanda Joint Venture Private Limited, Kalimati, Kathmandu, Nepal, at Present having its Branch Office at Sarsaula , Sheohar (Bihar) through their Authorized Representative Siddha Pd. Lamichhane, son of Mr. Bharat Pd. Lamichhane, resident of Mohalla Lampati, Kathmandu, Ward No. 14, P.S.Kalimati, Dist. Kathmandu, Nepal.

.... Petitioner

Versus

1. State of Bihar through Secretary Rural Works Department Govt. of Bihar, Vishweswaraiya Bhawan, 5th Floor, Bailey Road, Patna
2. Bihar Rural Roads Development Agency (A Govt. of Bihar Undertaking), Under Pradhan Mantri Gram Sadak Yojana, 3rd Floor, Land Development Bank Building, Budha Marg, Patna - 800001
3. Engineer-In-Chief, Rural Works Department, Govt. of Bihar, Vishweswaraiya Bhawan, 5th Floor, Bailey Road, Patna
4. Chief Engineer (Hazipur), Rural Works Department, Govt. of Bihar, Vishweswaraiya Bhawan, 5th Floor, Bailey Road, Patna
5. Superintending Engineer, Rural Works Departments, Department Circle Office, Shankar Chowk, Dumra, Sitamarhi, Bihar
6. Executive Engineer, Belsand (Division - II) , Rural Works Department, Bihar

.... Respondents

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Appearance:

For the Petitioner : Mr. Jyoti Shankar, Advocate
Mr. Sriprakash Srivastava, Advocate

For the Respondent : Mr. S.K.JHA, GP3

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 24-08-2015

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for quashing the order of termination of the agreement bearing No. 01580/2009 dated 25.05.2009 under the package No. BR-32R/Sheohar-II by the Respondents by letter dated 05.10.2013 and for connected reliefs.

3. A supplementary affidavit has been filed enclosing a



copy of letter dated 18.05.2015 by which the Bank Account of the petitioner in Laxmi Bank Ltd., Kathmandu, Nepal has been requested by the respondents to revoke the Bank Guarantee and pay the amount guaranteed to the respondents by Bank Draft.

4. Learned counsel Mr. Sriprakash Srivastava, appearing for the petitioner submits that the order of termination of the agreement has been passed in violation of the principles of natural justice and without affording adequate opportunity of being heard in the matter. He invites attention to the show cause notice as contained in letter No. 633 dated 14.09.2013 requiring compliance by 23.09.2013, but the same has been served on 24.09.2013 i.e. a day after the date fixed for filing the show cause. In that view of the matter, the petitioner also informed the Executive Engineer in his letter dated 24.09.2013 that the show cause notice had been received that same day and a reply would be furnished within a week.

5. Despite the same, however, the impugned letter No. 687 dated 05.10.2013 has been issued terminating the agreement with the petitioner on the ground that the show cause reply had not been received. Learned counsel for the petitioner however, states that the show cause reply was duly filed on 30.09.2013, well before the agreement was terminated on 05.10.2013 and such show cause reply has been completely ignored by the respondents.

6. Learned counsel for the respondents on the other hand invites attention to the counter affidavit containing a copy of the newspaper publication dated 20.09.2013 by way of notice to the petitioner to file a show cause reply, failing which proceedings for termination of the agreement would be taken. It is, therefore,

submitted that the petitioner had adequate notice, but failed to reply within the time fixed on 23.09.2013 and the action taken against the petitioner is in accordance with law.

7. Having heard the parties and after going through the materials on record, this Court finds considerable merit in the submission of the petitioner. There is a clear statement in paragraph 40 of the writ petition that the notice has been served upon the petitioner on 24.09.2013 as well as the fact of his having written letter dated 24.09.2013 acknowledging receipt of the notice. This aspect of the matter has not been repudiated in the counter affidavit, in paragraph 28 whereof attention is invited only to the newspaper publication. A reference to the newspaper publication dated 20.09.2013 discloses that the petitioner was required to file show cause reply within one week by 23.09.2013, but considering the date of the newspaper publication, in fact it amounted to grant of only two days' time to the petitioner. The respondents, therefore, on their own saying did not grant the intended time of one week to the petitioner for filing the show cause.

8. It cannot therefore be said that sufficient and reasonable opportunity has been granted to the petitioner to file a show cause. It is further noted that the petitioner in fact filed show cause on 30.09.2013 within a week of having received the show cause notice on 24.09.2013 and the same was very much available on the records on the date when the impugned order was passed on 05.10.2013.

9. In the above facts and circumstances and in the interest of justice, the impugned letter No. 687/Belsand dated

05.10.2013 is set aside and the respondents are restrained from giving effect to the same or taking any further action against the petitioner pursuant thereto. It is made clear that the respondents are at liberty to issue fresh show cause notice, if so advised, and proceed against the petitioner in accordance with law.

10. The writ petition stands allowed.

(Vikash Jain, J)

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