

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2569 of 2011

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Uma Shankar Prasad son of Late Ramchandra Prasad, M/E B.Civil Engg.
Bit-87 consulting engineer PRDA (Department of Urban Development)
Licensee, Member State resource group, Member Monitoring Technical
Cell, SSA,BEP, Bihar, Prasad Consultants, F-103 P.C. Colony,
P.S.Kankarbagh, District Patna

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. Executive Officer, Nagar Parisad (Now Nagar Nigam), Munger,
P.S.Munger, District Munger (Bihar)
3. Nagar Parisad, Munger, P.S.Munger, Distt.Munger (Bihar)
4. Chief Councillor, Nagar Parishad, Munger
5. Deputy Chief Councillor, Nagar Parisad, Munger
6. Director, Shahri Garibi Unmulan, Urban Development Department,
Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tuntun Kumar, Advocate

For the Respondent/s : Ms. Nitu Jha, AC to AAG 6

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

6 18-05-2015

Heard learned counsel appearing on behalf of the petitioner and learned State counsel appearing on behalf of the respondent no.1. However, despite valid service of notice, respondent nos. 2 to 6 have chosen not to appear and contest the claims raised in the present writ petition. No counter affidavit has been filed on behalf of the any of the respondents including the respondent State of Bihar.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order/communication dated 06.11.2010 (Annexure-7) issued by the respondent no.2, whereby the agreement dated 07.07.2007 (Annexure-1) signed by the petitioner at one side and the respondent no.2 at the other side has been

terminated and the petitioner has been directed to return Rs.50,000/- which was given to him by way of advance. The petitioner has further prayed for a direction to the respondent no.2 to pay his lawful dues.

3. It is not in dispute that an agreement was signed between the respondent no.2 as one part and to be referred to as the employer/client, and the petitioner, as the other part and to be referred to as Consultant for preparation of the project report and preliminary drawings for the town of Munger as also for other incidental and consequential acts indicated in the aforesaid agreement. The agreement signed between the parties on 07.07.2007 has been brought on the record as Annexure-1 to the writ petition. As per Article 5.0 of the aforesaid agreement, the agreement entered into between the consultant (petitioner) and the client (respondent no.2) and other functionaries of the respondent Nagar Parishad, Munger was terminable at any time by either party on expiry of minimum three months notice period and after payment to the consultant was done.

4. Learned counsel appearing on behalf of the petitioner, by referring to the averments made in paragraphs 3 (ix) and 3 (x) of the writ petition, submits that no notice was ever given to the petitioner for termination of the agreement (Annexure-1). He further submits that no notice was ever given to the petitioner by the respondents concerned indicating any errors in the DPR prepared by the petitioner pursuant to the agreement signed by the parties as contained in Annexure-1 to the writ petition. According to him, the impugned order/communication dated 06.11.2010 (Annexure-7) is in complete violation of terms and conditions of the said agreement (Annexure-1).

5. In the present case, notice was issued to the respondent nos. 2 to 6 by order dated 01.04.2011. As noticed above, despite valid service of notice, the respondent nos. 2 to 6 neither have appeared in the present matter for contesting the claims raised on behalf of the petitioner nor any counter affidavit has been filed on their behalf. Learned State counsel submits that the respondent no. 1 is a formal party and therefore, no counter affidavit has been filed on behalf of the respondent no.1.

6. In above view of the matter, the facts stated in the writ petition have to be accepted to be correct. In the aforesaid circumstances, this Court is left with no option but to hold that the impugned order/communication dated 06.11.2010 (Annexure-7) is in the teeth of Article 5.0 of the agreement dated 07.07.2007 (Annexure-1). Consequently, the impugned order/communication dated 06.11.2010 (Annexure-7) issued by the respondent no.2 is hereby quashed and set aside. Now, the respondent no.2 and other functionaries of the respondent Nagar Parishad, Munger shall be obliged to pay the lawful dues of the petitioner within a period of three months from the date of receipt/production of a copy of this order.

7. The writ petition stands allowed to the extent indicated above. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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