

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.6890 of 2016

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M/s Hi Tech Electronic Eye Systems having its registered office at 181, 2nd Floor, Maharaja Kameshwar Complex, Fraser Road, Police Station-Kotwali , Patna-800001 through its Proprietor namely Sri Chandra Bhushan Tiwary Son of Sri Anugrah Tiwary Resident of - 101, Mohalla- Mahesh Nagar, Police - Patliputra , District Patna-800024

.... .... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Mines and Geology, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The Joint Secretary cum Director, Mines and Geology, Government of Bihar, Patna.
4. The Under Secretary, Department of Mines and Geology, Government of Bihar, Patna.
5. The Deputy Secretary, Department of Mines and Geology, Government of Bihar, Patna.
6. The East Central Railways through the General Manager, ECR, Danapur Division, Khagaul.

.... .... Respondent/s

with

### Miscellaneous Jurisdiction Case No. 2786 of 2016

IN

### Civil Writ Jurisdiction Case No. 6890 of 2016

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M/s Hi Tech Electronic Eye Systems having its registered office at 181, 2nd Floor, Maharaja Kameshwar Complex, Fraser Road, Police Station-Kotwali , Patna-800001 through its Proprietor namely Sri Chandra Bhushan Tiwary Son of Sri Anugrah Tiwary Resident of - 101, Mohalla- Mahesh Nagar, Police - Patliputra , District Patna

.... .... Petitioner/s

Versus

1. The State of Bihar through Amrit Lal Meena Principal Secretary, Department of Mines and Geology, Patna.
2. Sri, Amrit Lal Meena the Principal Secretary, Department of Mines and Geology, Patna.
3. Sri, Satish Kumar the Joint Secretary cum Director, Mines and Geology, Patna.
4. The Sushil Kumar, Under Secretary, Department of Mines and Geology, Government of Bihar, Patna.
5. Sri Bishwajit Dan, the Deputy Secretary, Department of Mines and Geology, Patna.

... .... Respondent/s

### Appearance :

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



|                      |                                    |
|----------------------|------------------------------------|
|                      | Mr. Rajesh Ranjan, Advocate        |
| For the Resp. 2 to 5 | : Mr. Rajendra Prasad, Advocate    |
| For the State        | : Mr. Chitranjan Sinha, PAAG-2     |
|                      | Mr. Niraj Kumar Sinha, AC to PAG-2 |
| Fpr Resp. No. 6      | : Mr. Abhinay Raj, Advocate        |

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA**  
**ORAL JUDGMENT**

**Date: 27-10-2016**

Heard learned counsel for the petitioner and learned  
Special P.P. Mines and Geology Department, Government of Bihar.

The petitioner seeks quashing of the order dated  
16.2.2016 passed under the signature of the Under Secretary, Mines  
and Geology Department by which the contract of the petitioner has  
been cancelled, the Bank Guarantee of Rs. 4,58,544/- has been  
forfeited and further it has been directed to take steps for  
compensation equal to the amount of Rs. 45,85,440/- paid to the  
petitioner and the petitioner has also been blacklisted for indefinite  
period.

The petitioner was awarded a contract by letter dated  
29.1.2015 for instillation of Surveillance System on dispatch points  
of sand Ghats pursuant to a notice inviting tender. The scope of the  
work included erection, installation and commissioning of Digital  
Computerized (web enabled) Surveillance System at entry and exit  
points of major sand Ghats of Mines and Geology Department in  
the State of Bihar on pilot basis for stopping overloading and illegal  
transportation of sand. The agreement was executed 10.3.2015 for



installation of the same at five places, namely, Jehanbad, Arwal, Patna, Lakhisarai and Banka at the exit point of one major Sand Ghat in each Station for a total amount of Rs. 45,85,440/-. The petitioner by his letter dated 10.3.2015 stated that it had completed the work pursuant to the work order dated 29.1.2015 and submitted its bill/invoice for payment. The installation certificate at the five places was also duly issued by the competent authority of the Mines and Geology Department in each of the five districts on different dates from 26.2.2015 to 10.3.2015.

The petitioner claims to have after installation of the Surveillance System successfully connected the headquarter with the surveillance equipment installed at the sand Ghats and live pictures were shown at the monitors installed at the headquarter. It also imparted training to the concerned I.T. Manager and the Department made payment of the stipulated amount after deduction of applicable taxes. According to the petitioner the Department was satisfied with the installation of Surveillance System but was not pleased with the quality of online monitoring and the petitioner was directed to improve the same for which the categorical stand of the petitioner, amongst others was that the system cannot be improved due to poor connectivity of the network which is dependent upon the Internet Service Provider. It was also pointed out that there was security threat to its employees who visited the sites by anti-social elements.



By letter dated 22.7.2015 the respondent No. 3, the Joint Secretary cum Director, Mines and Geology Department, Government of Bihar directed the petitioner to ensure connectivity of all systems and to supply complete information to the I.T. Manager and submit photographs on regular basis for monitoring to which the petitioner by its letter dated 30.7.2015 informed that the computerized Surveillance System having been installed with one year warranty period has worked properly and it is installed at remote places where internet connectivity was almost non-existent which was beyond the control of the petitioner-firm. It was further asserted that no provision of safety and security of the employees of the petitioner-firm has been made by the respondents who had been threatened by the anti-social elements. By letter dated 14.8.2015 ultimatum was issued to the petitioner to ensure proper functioning of installed Surveillance System failing which the action of forfeiture of security amount, recovery of compensation equivalent to the amount paid, blacklisting and lodging of FIR would be taken. In reply to the same the petitioner by its letter dated 24.8.2015 clarified the situation and refuted the allegations. Thereafter by the impugned order dated 16.2.2016 the aforesaid action was taken against the petitioner.

The petitioner protested the aforesaid order and on enquiry it was informed that as many as five letters had been issued by the respondents from 15.10.2015 to 10.12.2015, none of which



was served upon the petitioner. The stand that attempt was made but due to closure of the office it could not be served, according to the petitioner is completely without any veracity as the petitioner's office has never been closed and nothing prevented the respondents to apprise the said matter through email.

The stand of the respondents in the counter affidavit is that even after installation the petitioner had to maintain the equipments and its functioning free of cost for a period of one year but having received the payment it lost its interest in the project and kept avoiding the task of maintenance and functioning of the monitoring system. It is the further stand that the petitioner violated the terms of the agreement and over looked it since the inception of the installation of the system and only once it could be monitored live and was not functional most of the times which was reported by the I.T. Manager on several occasions who has inspected the various sites of installation. It is also asserted in the counter affidavit that the work of the petitioner was not only to supply the hardware, equipments and installation of the same rather constant functioning of the system was also to be provided so that the aim and object of the monitoring/surveillance task could be achieved. The petitioner took alibi of network problem and other related problems for such non-functioning of the system whereas according to the respondents the petitioner ought to have done technical feasibility study before



participating in the tender process so as to provide all the facility to the Department in accordance with the terms and conditions of the tender, agreement and other conditions. It is reiterated that attempt to serve the notice to the petitioner through office peon could not succeed as the office of the petitioner was found closed and locked. It is also stated that message was also given through e-mail. However, nothing has been brought on the record to show that there was any such actual e-mail message delivered to the petitioner. It is thus the stand of the Department that the impugned order is justified in the facts and circumstances of the case.

Before this Court also several contentions were raised by learned counsel for the petitioner apart from the fact that the alleged notice had not been served upon the petitioner. It is also submitted by learned counsel for the petitioner that there could not have been any unilateral modification of the terms provided by the agreement. Learned counsel also asserted that in the face of certification by the Department in writing they cannot claim recovery of any compensation. In this regard learned counsel also relies upon the installation certificate duly signed by the competent Officer of the Mines Department. It is urged that the installation of equipment was fully operative and having been satisfied regarding successful working of the same, the installation certificate has been issued and thereafter the payments had been made.



Learned Spl. P.P., Mines, on the other hand, refutes the aforesaid stand of the petitioner stating that the petitioner has not properly installed the system.

In this regard the clear contention of the petitioner throughout has been that the difficulty in the functioning of the system is on account of poor connectivity of internet being provided by the Internet Service Provider and it is not on account of any defect in the equipments and systems supplied.

In view of the aforesaid clear cut dispute between the parties, learned counsel for the parties agreed that inspection be made by a third party and it was further agreed that the Divisional Signal Telecom Engineer, East Central Railway, Danapur Division, Khagaul would be competent to report in the matter in question as to whether the poor functioning is due to defects in equipments and systems supplied by the petitioner or on account of poor internet connectivity being provided by the Network Service Provider.

Upon inspection made in all the five districts, a report dated 29.8.2016 has been submitted on affidavit by the Divisional Signal Telecom Engineer, East Central Railway, Danapur after visiting of all the five sites by an enquiry team headed by Shri Chandra Bhushan Rai, Sr. Section Engineer/Telecom/East Central Railway, Danapur. The relevant part of the report is in the following terms:



“During visit at all the sites it was found that the system was installed properly as per work order. The camera’s (Four nos. at one location) were installed at CCTV Tower in all four directions and the other equipments i.e. DVR, 12V battery, Web enabled Wi-Fi System were in the box. The Tower where the CCTV Camera’s were installed was wrapped with barbed iron wire by which was no one can access to the equipments easily.

The systems were checked on the monitor which was carried along with us and on entry of the relevant IP address of the concerned location as available in the writ petition (Page-39) the system was working properly and view of the live pictures are sufficient enough to fulfill the requirement for which the purpose it was installed. At the locations of Arwal and Jehanabad one of the camera at each locations were found not working but when the connections were checked and cleaning the lens of camera the view of these camera’s were clear.

Net connectivity at all the five locations was very poor. Though the mobile signals are available but internet access especially video format is not proper. Due to poor net facility online monitoring of the system at far locations is not available.

Finally it was observe that at all the locations the system installed by M/s Hi Tech Electronic Eye



Systems is as per work order and the system is still working but the questions of online monitoring which is related with net connectivity has been found very poor at these locations.”

From the perusal of the aforesaid report, it is evident that the stand of the petitioner stands vindicated by what is stated therein. It is clearly stated in the said report that the System was working properly and the live pictures were sufficient to fulfill the requirement for which purpose it was installed and further at all the locations the system is installed as per the work order and the system is still working but the question of online monitoring which is related to net connectivity has been found very poor at these locations. Thus, according to the said report also, the net connectivity at five locations being very poor, the internet access especially video format is not proper and therefore, online monitoring of the system at far locations is not available.

Aforesaid being the finding on the basis of independent third party inspection, it appears that the respondents have acted in a shameful and most ignorant manner in laying the entire blame upon the petitioner whose duty was to install the system which was effective and proper. It was however, no part of the duty of the petitioner to improve the net connectivity of the area which depends upon the Internet Service Provider and the blame for



the same cannot be laid at the door of the petitioner. If at all the said internet connectivity is to be improved it was for the respondents to have approached the Internet Service Provider to ensure improvement of the net connectivity at the five locations for which they have taken no steps and in a very arbitrary and irrational manner laid the blame upon the petitioner which appears to have fulfilled the terms of the contract in a proper and responsible manner as is evident from the independent enquiry report of the third party.

For the aforesaid reasons the impugned order dated 16.2.2016 is fit to be quashed on the ground of being arbitrary and unreasonable. It is, accordingly, quashed. If the money under the Bank Guarantee has been received by the respondents then the same must be refunded to the petitioner within a period of four weeks from the date of receipt/production of a copy of this order.

The writ application is, accordingly, allowed.

So far as the contempt application being MJC No. 2786 of 2016 is concerned, the same was filed for disobedience of the order dated 25.7.2016 passed in the instant writ petition by which this Court had directed the respondents that no coercive action shall be taken against the petitioner. It is alleged in the contempt petition that even after the said order Certificate Case for No. 7/2016-17 recovery of Rs. 45,85,440/- has been initiated.



In the counter affidavit filed on behalf of the Opposite Party Nos. 1 to 5 it is stated that after the opposite parties got information about the interim order, no coercive action was taken and by letter dated 29.07.2016 the Assistant Director, Mines was directed to comply with the same but on 25.07.2016 itself the certificate case was filed having no knowledge of the interim order of that date. It is therefore, submitted that thereafter the Certificate Officer was approached and by his order dated 2.8.2016 he stayed the further proceedings of the Certificate Case No. 7/2016-17.

In the aforesaid circumstances, the explanation of the opposite parties is accepted and the contempt application is, therefore, dismissed subject to the withdrawal of the aforesaid certificate case which has in any case become non est.

**(Ramesh Kumar Datta, J)**

S.Pandey/-

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