

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8030 of 2012

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M/s BSS Project Private Limited, Flat No. 65, Street No. 01, Sagar Society, Banjara Hill, Hyderabad (Andhara Pradesh) New Address:-Pragati Nagar, Srinagar Colony, Yusufguda Post, Hyderabad-500045 through its Managing Director, Shri Yudhishtirudu Gaddipati, Son of Shri Govardhana Rao, residing at Flat No. 307, Krishe Meadows, Srinagar Colony, Main Road, Hyderabad.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Rural Work Department, Government of Bihar, Patna
2. The Principal Secretary, Rural Work Department, Government of Bihar, Patna
3. The Engineer-In-Chief, Rural Work Department, Government of Bihar, Patna
4. The Chief Engineer, Rural Work Department, Division-III, Patna
5. The Superintendent Engineer, Rural Work Department, Darbhanga
6. The Executive Engineer, Rural Work Department, Works Division, Samastipur

.... Respondents

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Appearance :

For the Petitioners:	Mr. Ashish Giri, Advocate.
For the Respondents:	Mr. Chitranjan Sinha, Sr. Adv., PAAG 2
	Mr. Niraj Kumar Sinha, AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-08-2016

I.A. No. 409 of 2013.

This interlocutory application has been filed for amendment in the relief by adding the following prayer:

“1(v) For issuance of writ/order/direction in the nature of certiorari for quashing the order dated 07.12.2012 passed by the Empowered Standing Committee constituting of the Secretary, Rural Works Department, the Chief Engineer-4, Rural Works Department and Mr. Ram Dhayan Ram retired Engineer-in-Chief, Road Construction Department by which the rescinding of the contract and forfeiture of the Bank

Guarantee of the petitioner has been upheld holding the petitioner to be solely responsible for delay in execution of the project”.

2. Having regard to the nature of the prayer, I.A. No. 409 of 2013 is allowed and the petitioner is permitted to make appropriate amendments in the writ petition in course of the day.

C.W.J.C. No. 8030 of 2012.

3. The present writ petition has been filed for quashing the order bearing no. 754 dated 12.04.2012 issued by the respondent, Rural Works Department, Works Division, Samastipur, by which the PMGSY Contract Work Package No. 30R/II and 30R/IV granted to the petitioner has been rescinded under Clause 52.2 of the Standard Bid Document (S.B.D.) and further the security deposit has also been forfeited (Annexure-11); for directing the respondent authorities not to rescind the contract of the petitioner and further to grant the extension of period of completion of contract in light of Clause 27 read with Clause 40 of the General Conditions of Contract (Annexure-2) and/or alternatively close the contract simpliciter and grant compensation to the petitioner due to failure of the authorities in performing their part of the reciprocal promises; and for preventing the authorities from forfeiting and encashing the security deposit, performance security and mobilization bank guarantee in relation to the contracts in question.

4. At the very outset, learned counsel for the petitioner states that the second and third prayers in the writ petition for

directions to the respondents not to rescind the contract and for preventing forfeiture and encashment of the security deposit etc. are not pressed, as having become infructuous in view of subsequent developments brought on record in terms of the aforesaid interlocutory application.

5. The petitioner is a Limited Company and was awarded contract under the Prime Minister Gramin Sadak Yojna (for short "PMGSY") for the purpose of construction of village road for which a letter of award of contract was issued on 01.02.2010, pursuant to which agreements were entered into between the parties. According to the petitioner, progress in the work was delayed for reasons attributable to the respondents who did not release funds to the petitioner in terms of the agreements and the General Conditions of Contract (hereinafter referred "G.C.C"). Objections were raised by the petitioner in this regard. The respondents on their part alleged delay by the petitioner and required it to immediately proceed to complete the work. The matter culminated in the impugned order dated 12.04.2012 (Annexure-11) being passed, by which the contract was rescinded in terms of Clause 52.2 of the Standard Bid Document (SBD) and the security deposit of the petitioner was directed to be forfeited.

6. Among the various contentions raised on behalf of the petitioner, learned counsel raises the preliminary issue of violation of natural justice in the matter of forfeiture of security deposit. He invites attention to the letter dated 26.04.2011 (Annexure-6) issued by the Executive Engineer by which the petitioner was requested to speed up

the progress of work, failing which the contract was proposed to be rescinded and the registration of the petitioner to be placed in the blacklist. He further invites attention to a similar letter dated 23.08.2011 (Annexure-8) according to which the petitioner was once again required to complete the work without delay, failing which appropriate action would be taken in accordance with the agreement.

7. Learned counsel for the petitioner submits that the impugned order has been passed rescinding the contract and directing forfeiture of the petitioner's security deposit, in complete violation of the principles of natural justice and without any show cause against such forfeiture. It is submitted that neither of the two letters issued to the petitioner as aforesaid constitutes a show cause notice for the proposed action of forfeiture of the petitioner's security deposit. Reliance is placed on the decision of the Supreme Court in *(2014) 9 SCC 105 [Gorkha Security Services vs. Government (NCT of Delhi) and others]* which makes it abundantly clear that any action proposed to be taken by the department needed to be specifically stated in the show cause notice. To the same effect is the principle laid down in *AIR 1973 Patna 111 [Qudrat Ali vs. The State of Bihar and others]*, in para-12 whereof it has been observed that "if the petitioner is not entitled to a refund of the security deposit in respect of the licence, he is surely entitled to a notice when an order to that effect is proposed". He further invites attention to the judgment of this Court reported in *2012 (4) PLJR 258 [Rama Kant Singh vs. The National Hydraulic Power Corporation Ltd]* wherein, being a case also involving termination of the contract under

Clause 52.2 of the G.C.C., this Court had quashed the order terminating the contract and it was held that the petitioner was entitled to refund of the full security deposit, bank guarantee and liquidated damages recovered from the petitioner.

8. Learned counsel for the respondents, on the other hand, submits that no show cause notice was in fact required to be given in cases of fundamental breach of contract as held in para-17 of the order of the Empowering Committee dated 07.12.2012 (Annexure-17). In any event, the letter dated 23.08.2011 (Annexure-8) was in the nature of a show cause notice which clearly informed the petitioner that upon assessment of the progress of work, the department had directed appropriate penal action to be taken for the slow rate of progress of work. It is therefore submitted that the impugned order cannot be faulted on grounds of violation of natural justice as sought to be contended by the petitioner.

9. Having heard the parties and on careful consideration of the materials on record, this Court finds merit in the writ petition. A bare perusal of the letters dated 26.04.2011 (Annexure-6) and 23.08.2011 (Annexure-8) shows that the petitioner was never confronted with any proposal for the forfeiture of its security deposit. While the former letter contemplated cancellation of the agreement and blacklisting of the petitioner, the latter required the petitioner to submit its explanation with regard to delay in completion of the work failing which the agreement was proposed to be cancelled. The respondents have not been able to show from any correspondence that



the petitioner was required to submit its show cause reply with reference to the proposed action of forfeiture of its security deposit. The submission of the respondents that no show cause was required in cases of fundamental breach of contract is not worthy of acceptance, considering that Clause 52.2 of the SBD only contemplates termination of the contract in case of fundamental breach thereof and does not visualise forfeiture of the security deposit. Moreover, Clause 53.1 of the SBD relied upon by the respondents merely provides for recovery of any excess owing to the employer over the amount owing to the contractor, out of the security deposit, but not for its forfeiture in the event of fundamental breach of contract. The order of the Empowering Committee dated 07.12.2012 does not also throw any light with regard to the source of power exercised by the authorities in this regard in absence of any show cause notice. The observation in para-43 of the said order of the Empowering Committee is rather suggestive of non-application of mind in holding that there was proper notice to the petitioner merely by referring to various letters of the department enumerated therein, none of which however have been shown to contain a show cause notice against forfeiture of the security deposit. This Court therefore finds that the impugned action of the respondents effecting forfeiture of the petitioner's security deposit without prior show cause notice for such proposed action was unauthorized in law and is thus liable to be set aside.

10. In the circumstances, the impugned order dated 12.04.2012 (Annexure-11), and so also the order dated 07.12.2012

passed by the Empowered Standing Committee (Annexure-17), are hereby set aside insofar as concerns the issue relating to forfeiture of security deposit of the petitioner. The respondents shall take steps for refund of the amount of the security deposit in question to the petitioner within a period of six weeks from the date of receipt/production of a copy of this judgment. The writ petition stands allowed to the extent above.

11. I.A. No. 3857 of 2012 filed for quashing the notice inviting re-tender dated 09.06.2012 for the PMGS work earlier awarded to the petitioner, stands disposed.

12. Before parting with this judgment, it may be noted that the petitioner has not agitated the issue relating rescinding of the contract which is thus dismissed as not pressed. It is also made clear that since the issue relating to forfeiture of security deposit has been decided on the basis of violation of natural justice, this Court is not entering into the merits of the remaining contentions of the petitioner.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
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