

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8921 of 2012

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M/s BSS Projects Private Limited, Flat No. 65, Street No. 01, Sagar Society, Banjara Hill, Hyderabad (Andhra Pradesh) New Address:- Pragati Nagar, Srinagar Colony, Yusufguda Post, Hyderabad - 500045 through its Managing Director, Shri Yudhishtir 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 Secretary-Cum-Empowered Officer, BRRDA, Bihar, Patna.
4. The Engineer-in-Chief, Rural Work Department, Government of Bihar, Patna.
5. The Chief Engineer, Rural Work Department, Division- III, Patna.
6. The Superintendent Engineer, Rural Work Department, Chapra.
7. The Executive Engineer, Rural Work Department, Works Division - 1, Chapra.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Ashish Giri, Adv.

For the Respondents : Mr. Subhash Pd. Singh, GA-3

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 05-08-2016

I.A. No. 3562 of 2012 and I.A. No. 361 of 2013.

These interlocutory applications have been filed for amendment in the relief portion of the writ petition by adding the following prayers respectively:

“1(x) For issuance of writ/order/direction in the nature of certiorari for quashing the orders dated 09.05.2012 bearing no. 921, 922, 923, 924, 925, 927, 928, 929, 930, 931, 932 and 933 (wrongly addressed to J.S.R. Construction



Pvt. Ltd.) issued by the respondent Executive Engineer, Rural Works Department, Work Division, Chapra-I wherein the various contracts earlier awarded to the petitioner i.e. package no. BR 09R 47, BR 09R 41, BR 09R 42, BR 09R 56, BR 09R 55, BR 09R 44, BR 09R 45, BR 09R 46, BR 09R 50, BR 09R 48, BR 09R 51 and BR 09R 53 respectively has been rescinded in exercise of power under clause 52-2(a) of S.B.D. and further the security deposit has been forfeited and recommended for blacklisting of the petitioner (Annexure-29 Series).

1 (xi) 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 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 prayers, I.A. No. 3562 of 2012 and I.A. No. 361 of 2013 are allowed and the petitioner is permitted to make appropriate amendments in the writ petition in course of the day.

C.W.J.C. No. 8921 of 2012.

3. The present writ petition has been filed being aggrieved by the failure on the part of the respondents on various counts in fulfilling the reciprocal promises and non-adherence to the conditions of the contract such as non-payment of mobilization and equipment advance, non-payment of bills within the stipulated time, illegal deductions made from the bill etc. in connection with contracts in the State of Bihar under the Prime Minister Gramin Sadak Yojna (PMGSY) for the purpose of construction of village roads.

4. Further relief has been sought in terms of the aforesaid interlocutory applications challenging the order dated 09.05.2012 rescinding the petitioner's contract, directing forfeiture of the security deposit and recommending for blacklisting of the petitioner (Annexure-29 Series), as also the order dated 07.12.2012 by which the Empowered Standing Committee has upheld such rescinding of the contract (Annexure-31).

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 letters of award of contract were issued on 01.09.2009 and 05.10.2009, 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 09.05.2012 (Annexure-29 Series) 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 28.12.2010 (Annexure-17) issued by the Executive Engineer by which the petitioner was required to show cause why the security deposit should not be forfeited in view of the petitioner having stopped the work. The petitioner furnished its show cause reply dated 30.12.2010 (Annexure-18). It appears that a newspaper publication was made on 13.11.2011 in connection with as many as 93 contractors including the petitioner at serial no. 49 thereof, directing them to complete the concerned work within time failing which action under Clause 52.2 of the G.C.C would be taken for rescinding the contracts. The petitioner thereafter sought extension of the date of completion by its letter dated 21.03.2011 (Annexure-19) which came to be extended by the Chief Engineer in terms of Memo No. 1489 dated 29.04.2011 (Annexure-23). Surprisingly, soon thereafter

the impugned order dated 09.05.2012 was passed.

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 proper show cause against such forfeiture. It is submitted that the show cause notice dated 28.12.2010 (Annexure-17) issued to the petitioner was never acted upon and must be treated as abandoned in view of extension of the date of completion subsequently allowed to the petitioner. Similarly, the newspaper publication did not contain any show cause nor even a whisper with regard to the proposed action by way of forfeiture of security deposit, merely stating that the petitioner's agreement would be rescinded in case of failure to complete the work within time. It is submitted that such newspaper publication, in any event, did not fulfill the terms of the G.C.C., clause 6.1 whereof clearly stipulated that " All Certificates, Notices or instructions to be given to the Contractor by Employer/Engineer shall be sent on the address or contact details given by the contractor in Section-6 Form of Bid". 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-31). In any event, the letter dated 28.12.2010 (Annexure-17) was in the nature of a show cause notice which clearly contemplated forfeiture of the security deposit in view of the work having been stopped by the petitioner. 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. The respondents have not been able to show from any correspondence shortly prior to the impugned action, that the petitioner was required



to submit its show cause reply with reference to the proposed action of forfeiture of its security deposit. The show cause notice dated 28.12.2010 is too remote in time to be connected with the impugned action of forfeiture of the security deposit of the petitioner in terms of the order dated 09.05.2012, moreso in view of the subsequent letter dated 29.04.2011 granting extension of the date of completion of the work. 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 a fundamental breach of contract. The order of the Empowered Committee dated 07.12.2012 does not also throw any light with regard to the source of power exercised by the authorities in the absence of a show cause notice for the purpose of effecting forfeiture. The observation in paragraphs 50 and 51 of the said order of the Empowered Committee is rather suggestive of non-application of mind in simply making a passing reference to the Management meeting and several letters said to have been issued to the petitioner, none of which however have been shown to contain a show cause notice for 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 liable to be set aside.

10. In the circumstances, the impugned order dated 09.05.2012 (Annexure-29 series), and so also the order dated 07.12.2012 passed by the Empowered Standing Committee (Annexure-31), are hereby set aside insofar as concerns the issue relating to the 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. Before parting with this judgment, it may be noted that the petitioner has not agitated the issue relating to 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	AFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A