

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.444 of 2012

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M/s Hriday Bhushan Singh through Sri Yashwant Singh, Son of Late
Hriday Bhushan Singh, Attorney Holder, Registered Office at
Dugdha, Chandrapura Road, Bokaro, Jharkhand

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Road Construction
Department, Bihar, Patna
2. Bihar Rajya Pul Nirman Nigam Ltd. through Managing Director,
7, Sardar Patel Marg, Patna- 800015
3. The Managing Director, Bihar Rajya Pul Nirman Nigam Ltd.,
Road Division, 7, Sardar Patel Marg, Patna-15
4. The Senior Project Engineer, Road Division, Bihar Rajya Pul
Nirman Nigam Ltd., Development Corporation Ltd., 7, Sardar Patel
Marg, Road Division, Daroga Rai Path, Patna-15
5. The Secretary, Road Construction Department, Bihar, Patna
6. The Executive Engineer, Road Construction Department, Road
Division, Supaul, District- Supaul

.... Respondents

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Appearance :

For the Petitioner	: Mr. Shravan Kumar, Sr. Advocate Mr. Satish Kumar Singh Mr. Dinesh Maharaj, Advocates
For the State	: Mr. Bhaskar Shankar, AC to GP16
For the Corporation	: Mr. Lalit Kishore, Sr. Advocate Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 17-05-2016

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

2. The present writ petition has been filed for an
appropriate direction for quashing the order of imposition of



fine to the extent of 0.5% of the contract amount vide letter no. 1352 dated 22.12.2009 (Annexure-F) imposed by the Senior Project Engineer; against the order of debarment of the petitioner from participating in future contracts vide letter no. 13 dated 07.01.2010 (Annexure-H); and with regard to rescinding of the contract vide letter no. 16 dated 29.06.2010 (Annexure-6); and for connected reliefs.

3. Learned senior counsel for the petitioner states that no show cause notice whatsoever was issued to the petitioner prior to the order of imposition of penalty of 0.5% of the amount of the contract value by order dated 22.12.2009, nor before debarment vide letter no. 13 dated 07.01.2010. Significantly, the penalty alleging delay in the execution of work was imposed even before the expiry of the extended time for completion of the work. Similarly, the impugned order dated 29.06.2010 has been passed without any prior show cause notice to the petitioner. It is pointed out that the notice in terms of the letter no. 812 dated 17.05.2010 issued by the Executive Engineer was at best a



recommendation for rescinding the agreement and not a show cause for rescinding the agreement itself. Moreover, such notice could not be treated as a show cause as the same was issued by the Executive Engineer whereas the final impugned order was passed by the Senior Project Engineer. In any event, it if also pointed out that the delay in the work was attributable to the Kosi floods and hence for reasons beyond the petitioner's control. This was not in dispute as the respondents had on this very account granted extension of time for completion of work. Apart from the flood situation which prevented transportation of materials to the site, delay occurred also on account of the initiation of process for the 2009 General Elections. It is thus submitted that the action taken against the petitioner as above is wholly arbitrary and unsustainable in law.

4. Learned counsel for the respondents, on the other hand, vehemently opposes the writ petition. With regard to the imposition of fine, he invites attention to Clause 2 of the Standard Bidding Document (Annexure-I) providing



for imposition of a total amount of compensation of upto 5% of the amount of the contract value for delay. The repeated reminders from the respondents clearly demonstrate delay on the part of the petitioner, for which a relatively nominal amount of only 0.5% of the contract value has been imposed.

5. He submits that as far as the order of debarment is concerned, the same was operative only up till the next tender. As such, the order of debarment is no longer operational and the prayer in the writ petition in this regard has become infructuous.

6. Learned counsel for the respondents further submits that as far as concerns rescinding of the agreement, the petitioner was given adequate notice of the respondents' intention in that behalf. Apart from the aforesaid letter dated 17.05.2010 issued by the Executive Engineer, a further notice vide letter no. 608 dated 29.05.2010 had been issued by the Senior Project Engineer. It was specifically mentioned therein that by reason of the petitioner having not completed the work, the progress of work being extremely slow, and the



work having been completely stopped since a week, a recommendation to the higher authority would be made for rescinding the agreement. It is, therefore, submitted that the said letter dated 29.05.2010 constituted a valid show cause to the petitioner issued by the Senior Project Engineer, who subsequently passed the impugned order dated 29.06.2010. It is stated that at no point of time did the petitioner reply to any of the letters issued by the authorities. In fact, prior to this, the petitioner had himself filed an affidavit (Annexure-B) with an undertaking that the work would be completed by 15.02.2010. Subsequently by letter dated 09.03.2010, he gave a fresh undertaking that he would complete the work by 31.03.2010. In spite of opportunities having been granted to the petitioner by extension of time upto 10.06.2010, progress of work was not to the satisfaction of the authorities, which led to issuance of the aforesaid notice dated 29.05.2010 barely a fortnight prior to expiry of the extended period for completion of the work.

7. Having heard the parties and on careful

consideration of the materials available on record, this Court finds merit in the submissions made on behalf of the petitioner.

8. The order of debarment as contained in letter no. 13 dated 07.01.2010 (Annexure-H) and so also the imposition of fine of 0.5% of the amount of contract value by order dated 22.12.2009 (Annexure-F) do not appear to have been preceded by any show cause notice. Each of such actions has been taken to the detriment to the petitioner and the petitioner ought to have been put on notice prior to such action. In other words, the petitioner has been visited with adverse consequences without having had a reasonable opportunity of being heard in the matter, which renders the impugned action of the respondents in violation of the principles of natural justice.

9. On the issue of rescission of the contract, the stand of the respondents that the impugned letters dated 17.05.2010 and 29.05.2010 constituted show cause notices cannot be accepted, as these letters merely communicated the





fact of delay in progress of work and expressed an intention to take action against the petitioner by recommending for rescinding the agreement. Besides, the letter dated 17.05.2010 had been issued by the Executive Engineer who was not the authority who passed the final order and hence, the same cannot be treated to be a valid show cause notice. As far as the letter dated 29.05.2010 is concerned, the same did not specifically put the petitioner on notice eliciting a reply as to why the agreement be not rescinded, and at best, it merely informed the petitioner that a recommendation for rescinding the contract would be made in view of the slow progress of work. The notice only required the petitioner to expedite the completion of work but nowhere in the said letter had the petitioner been required to file any show cause by informing him that the agreement was proposed to be rescinded.

10. In the above view of the matter, therefore, the impugned order dated 22.12.2009 imposing penalty, the order of debarment dated 07.01.2010, and the order dated

29.06.2010 rescinding the agreement of the petitioner coupled with the directive for forfeiture of the security deposit, are hereby set aside. It is made clear that the respondents shall be at liberty to take a fresh decision in the matter in accordance with law, if so advised, after granting an opportunity of hearing to the petitioner.

11. The writ petition stands allowed.

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.05.2016
Transmission Date	N/A