

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7048 of 2015

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Amulya Traders & Engineers Pvt. Ltd through its Director Mrs. Leena Kameshwar @Leena, D/o Sri Kameshwar Narayan Singh, B-303, Ganesh Tower, Amarnath Mandir to Bypass Road, Kumharar, Patna - 800026.

.... Petitioner

Versus

1. The State of Bihar, through Principal Secretary, Health Department, Govt. of Bihar, Patna.
2. The Managing Director, Bihar Medical Services & Infrastructure Corporation Limited, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna - 800001.
3. The Chief General Manager (Project), Bihar Medical Services & Infrastructure Corporation Limited, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna - 800001.
4. The General Manager (Project & Design), Bihar Medical Services & Infrastructure Corporation Limited, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna - 800001.
5. The Deputy General Manager (Project), Bihar Medical Services & Infrastructure Corporation Limited, 5th Floor, Biscomaun Bhawan, Gandhi Maidan, Patna - 800001.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. N.K.Agrawal, Sr. Advocate Mr. Vishal Saurabh, Advocate
For the State	:	Mr. Nalin Kumar, AC to GP-20
For BMSICL	:	Mr. Lalit Kishore, Sr. Advocate Mr. Prabhat Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

7 27-09-2016 Heard learned counsel for the petitioner and

learned counsels for the respondent- State and for the Bihar

Medical Services and Infrastructure Corporation Limited.

The petitioner seeks quashing of the letter dated

23.3.2015 issued by the Bihar Medical Services and

Infrastructure Corporation Limited (BMSICL) by which the



contract/ agreement of the petitioner has been terminated.

The petitioner was awarded a contract for three years for construction supervision and quality control consultant (CSQC) category-C by agreement dated 18.7.2014. The petitioner claims that it has completed the work with all seriousness and its engineers and technical consultants used to visit the different spots with respect to the work which was allotted to it, including Medical Hospital, Koilwar, for construction of hospital with material as also construction of intensive care unit, operation theater, OPD in PMCH, Patna and reported about the deficiencies in the work, etc. It is alleged by the petitioner that the contractors had threatened the petitioner for getting the petitioner removed from the Consultant's work on account of the complaints made by the petitioner.

By letter dated 13.3.2015 issued by the respondent, a prayer was made with regard to unsatisfactory supervision made by the petitioner and not submitting the different running account bills in time for which the petitioner was required to submit his show cause within seven days as to why the payment made for mental hospital, Koilwar should not be deducted from the bills. The petitioner filed a detailed reply to the same by his letter dated 19.3.2015. However, by the letter



dated 23.3.2015 stating that the reply was not satisfactory, the agreement dated 18.7.2014 with the petitioner was terminated with immediate effect and it was relieved from all works.

Learned counsel for the petitioner submits that the impugned order suffers from several serious defects. Firstly, it is submitted that there has been no application of mind to the consideration of the reply to the show cause filed by the petitioner and by a one line statement that its work has not been found to be satisfactory, the same has been rejected which is clear violation of the principles of natural justice.

It is further submitted by learned counsel for the petitioner that under Clause 9 of the agreement, the agreement would be terminated if any party commits breach of any of its obligations under the agreement and the breach has not been remedied within 14 days or such longer period as the notifying party may allow of the intimation to the party in breach requiring to be remedied. It is contended that there was no such notice issued for remedy of any alleged breach before terminating the agreement.

It is also submitted by learned counsel that penalty has been provided for poor performance/laxity upto 10% of the fee and different types of deficiencies have been specified



in Clause 6.2 and thus at best it could have been a case of deduction from the fee. It is urged that as a matter of fact, the impugned show cause dated 13.3.2015 itself is one under Clause 6.2 of the agreement and could not have been used for the purpose of terminating the agreement.

It is also submitted by learned counsel that in view of the aforesaid facts, there was not even a show cause notice issued for termination apart from the requirement of Clause 9 and if it was issued as a show cause for realization of penalty from the fee, the termination could not have been ordered.

Learned senior counsel for the BMSICL submits that the action has been taken after issuing a show cause notice to the petitioner which has also been replied in detail by the petitioner and thus it cannot be said that there has been non-compliance of the principles of natural justice. However, learned counsel accepts that the show cause cannot be considered as one for termination nor can it be called a notice under Clause 9 of the agreement.

On a consideration of submissions of learned counsels for the parties, it is evident that the respondents have acted in the manner by terminating the contract without



complying with the principles of natural justice, apart from other terms of the Contract which this Court in its writ jurisdiction may not enforce.; but the question remains that if the contract had been terminated by an authority which is State under Article 12 of the Constitution, then the action cannot be arbitrary and discriminatory. If at all the contract with the petitioner was to be terminated then it ought to have been preceded by a proper show cause notice and upon receipt of the reply thereon, there ought to have been a consideration of the said reply and not a mere one line statement that the reply is not satisfactory.

Thus, on account of non-issuance of proper show cause notice and non-consideration of the reply, the impugned letter dated 23.3.2015 is found to be arbitrary and fit to be quashed. It is, accordingly, quashed.

The writ application is thus allowed.

It goes without saying that it shall be open to the respondents to proceed afresh in the matter in accordance with law.

(Ramesh Kumar Datta, J)

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