

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10682 of 2015

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D NA Infrastructure Pvt. Ltd. having registered office at B-1 Kalindi Colony, New Delhi-110065 Head Office at G-11 Noida 201301 and Patna Branch office at 'Yash Villa Shanti Neketan Colony, Pharmancy Road , P.S Danapur Cantt. District Patna Bihar, through its Project Manager, Mohan kumar Son of Mr. Shuk Deo Roy R/o Yash Villa, Shanti Niketan Colony, Pharmancy, Road, Post Danapur Cantt. Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Engineer in Chief Cum special Secretary, Public Health Engineering Department, Government of Bihar, Patna.
4. The Superintending Engineer, Public Health Engineering Department, Muzaffarpur Bihar,
5. The Superintending Engineer, Public Health Engineering Department, Saharsa , Bihar.
6. The Superintending Engineer, Public Health Engineering Department, Purnea , Bihar.
7. The Superintending Engineer, Public Health Engineering Department, Motihari, Bihar.
8. The Executive Engineer, Public Health Engineering Department, Samastipur Bihar.
9. The Executive Engineer, Public Health Engineering Department, Darbhanga, Bihar.
10. The Executive Engineer, Public Health Engineering Department, Bettiah, Bihar.
11. The Executive Engineer, Public Health Engineering Department, Madhubani, Bihar.
12. The Executive Engineer, Public Health Engineering Department, Dhaka Bihar.
13. The Regional Chief Engineer, Public Health Engineering Department, Muzaffarpur, Purnea and Bhagalpur.
14. Branch Manager, HDFC Bank Ltd. Plot no. 651, Jamal Road , Patna -800001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate.
Mr. Lakshmi Kant Sharma, Advocate.
Mr. Rajesh Kumar, Advocate.

For the Respondent/s : Mr. Rajiv Roy, G.P. 5
Mr. Arun Kumar, A.C to G.P.-5

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 26-02-2016

Heard learned counsel for the parties.

The petitioner has moved the Court for quashing of the orders of the respondents relating to encashment of his Bank guarantees.

Learned counsel for the petitioner submits that though they had entered into an agreement for completion of the works in question but due to the ground realities, the same could not be so done for which the petitioner sought extension of time, which was allowed and as of now he has completed more than 55% works, but unfortunately payment due to him has been withheld and the respondents have, in fact, encashed over Rs. 25 lacs of bank guarantee. However, the stand today before the Court is that the petitioner be given one more opportunity to complete the work and undertakes to do so within six months. Learned counsel submits that this is in public interest for the reason that the petitioner already doing the work, time would not be lost in getting the remaining work re-tendered and more importantly the petitioner being ready to do it at the same rate, it would also save the State exchequer of any additional financial liability.

On such plea of the petitioner, the Court had sought the stand of the State authorities. Learned counsel for the State, upon instructions received from the authorities, submits that they would be agreeable to such an arrangement, but their experience of the past not having been good, the Court may safeguard public interest and bind

the petitioner to perform as per his stand and commitment before the Court.

Upon hearing the parties at length relating to arrangement and modality of such an arrangement, the writ petition is being disposed off in the following terms:-

The order of blacklisting the firm, as contained in memo no. 2873 dated 08.12.2015 issued by the Executive Engineer (Civil) shall be kept in abeyance. The petitioner shall revalidate the performance bank guarantee as well as the bank guarantee against mobilization advance for an amount as per the agreement minus what may have been realized/encashed by the authorities. The said revalidation would be for a period as per the terms of the agreement. The petitioner, which has a local area office, shall make it operational and inform the respondent no. 3, the Joint Secretary of the Public Health Engineering Department, Government of Bihar, Patna as well as respondents no. 8 to 12 with regard to the full address of the local area office as well as the name of the person and his contact numbers including mobile number.

It is informed by learned counsel for the petitioner that the person shall be Mr. Mohan Kumar through whom the present writ petition has been filed. He shall approach the respondent no. 3 within two weeks from today along with a copy of this order and submit a

detailed work plan with regard to how the petitioner firm proposes to complete the remaining work.

It goes without saying that the respondents shall be entitled to supervise and monitor the progress of the work, both in terms of the agreement as well as to ensure and keep track of the progress on the ground. The work, as per the undertaking given by the petitioner, shall be finally completed and made operational latest by 15th October, 2016. Any other formalities, which are required to be completed, shall be so done by the parties within one week from the petitioner appearing before the respondent no. 3.

The petitioner shall also ensure that the schemes completed by him are made operational and handed over to the respondent authorities by 15th May 2016. The parties shall act strictly in accordance with the terms of agreement. However, the Court would also like to indicate that any work completed by the petitioner and bill submitted by him should be considered expeditiously and in any case, whatever amount is found due, upon proper verification of the bill submitted by the petitioner, shall be paid to him within two weeks from the date of submission of such bill.

The Court makes it clear that such offer has come from the petitioner and on the said undertaking, the matter is being disposed off and any violation of the same, besides leading to other consequences,

shall also amount to contempt of Court. Further, in the event of violation of the undertaking aforesaid, it would be deemed that the writ petition has been dismissed.

The Court would also like to indicate that the order has been passed in the special facts and circumstances of the case with the consent of the parties taking into account the larger public interest and may not be a precedent for future.

(Ahsanuddin Amanullah, J)

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