

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9977 of 2016

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Kamladitya Constructions Pvt. Ltd. through its authorized signatory Abhay Kumar Mishra son of Late Chandrama Mishra resident of Shankat Mochan Nagar New Police Line, P.S. Nawada, District Bhojpur, Bihar

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna
2. The Engineer in Chief, (south) water Resources Department, Government of Bihar, Patna
3. The Chief Engineer, Water Resources Department, Dehri, District Rohtas, Bihar.
4. The Superintending Engineer, Durgawati Construction Circle, Dehri, District Rohtas, Bihar
5. The Executive Engineer, Durgawati Right Bank Canal Division, Chenari (Rohtas) District Rohtas, Bihar
6. The Field General Manager, Punjab National Bank, Regional Office, Patna
7. The Branch Manager, Punjab National Bank, Sector 04, Bolaro Steel City, Jharkhand

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan
For the Respondent/s : Mr. S.C.12
For P.N.B. : Kumar Priya Ranjan

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

2 26-09-2016

I.A. No.5753 of 2016

The interlocutory application has been filed for amendment of the relief portion so as to add the relief for quashing the letter dated 17.06.2016 (Annexure-7) issued by the respondent No.5, Executive Engineer, Durgawati Right Bank Canal Division, Chenari, Rohtas communicating the rejection of the proposal of extension of time by the Chief Engineer vide his departmental



letter dated 14.03.2016.

In the facts and circumstances of the case, the prayer for amendment is allowed.

I.A. No.5753 of 2016 is, accordingly, disposed of.

Heard learned counsel for the petitioner and learned counsel for the State.

The writ application has been filed by the petitioner for various reliefs.

However, at the time of argument, learned counsel for the petitioner has confined the writ application to the challenge to the impugned letter dated 17.06.2016, by which the rejection of the proposal for extension of time has been communicated.

The petitioner was awarded a contract for residual earth work of Durgawati Right Bank Canal from 60 M. to 36249.50M., pursuant to a notice inviting tender. The estimated cost of the work was Rs.12,53,07,402/-. The work was to be commenced from 14.02.2015 and was to be completed by 14.11.2015. The petitioner started the work and completed 87% work during the contemplated date of completion of work and according to the petitioner the failure to not complete the remaining work was for the reasons not within the control of the petitioner.

The stand of the petitioner is that the delay was not



attributable to the petitioner, rather it was on account of the conduct of the respondents. The agreement was closed for certain reasons which are not germane to the decision of the case. A proposal for grant of extension of time till 17.01.2016 was also initiated on 15.03.2016 giving reasons that the canal was being used during Kharif for irrigation purpose; there was land acquisition problem at some places and further hindrance was made by local villagers for demand of water structures such as bridges as per their own requirement. The same was duly forwarded to the concerned Engineer up to the level of the Superintending Engineer. Thereafter, by the impugned order dated 17.06.2016 the petitioner was communicated the decision of the Chief Engineer, Irrigation Creation, Water Resources Department dated 31.05.2016 rejecting the proposal for extension of time on the ground that it was not in accord with the departmental letter dated 14.03.2016.

Learned counsel for the petitioner submits that the departmental letter dated 14.03.2016 provides for a detailed procedure to be followed with regard to compensation for delay (Liquidated Damage) & Time and Extension for delay in terms of clause 2 and 5 of Section 3 of General Conditions of Contract of S.B.D. It is further submitted that the said detailed procedure



could be followed only after the said departmental circular has been issued. The entire period of agreement till 17.01.2016 was much prior to the said departmental letter dated 14.03.2016 and thus the requirement of maintaining detailed records as provided in the said departmental letter dated 14.03.2016 should not at all have been applied to the case of the petitioner.

It is thus submitted by learned counsel for the petitioner that the rejection order issued by the Chief Engineer shows a complete non-application of mind to the proposal for extension of time which will have financial implication.

It is further submitted that there was no fault on the part of the petitioner in completing the entire contract work, rather it was for reasons beyond the control of the petitioner and for which it is the respondents who are themselves responsible.

Learned counsel for the State, on the other hand, has sought to support the impugned order on the basis of the procedure laid down by the departmental letter dated 14.03.2016.

It is evident that a proposal for extension of time would have serious financial implication so far as the petitioner is concerned, and to insist on a procedure which was not being followed by the Department at the relevant time when the agreement was in operation, amounts to a clear lack of application



of mind while considering the proposal for the extension of time by the Chief Engineer.

From a perusal of the departmental letter dated 14.03.2016, it is evident that a detailed procedure is prescribed therein for grant of extension of time. Apart from many other details which are required to be followed, the same were not being maintained in terms of the previous practice. Thus reliance placed upon the said departmental letter dated 14.03.2016 for rejecting the recommendation for extension of time appears to be a clear misdirection on the part of the Chief Engineer.

For the aforesaid reasons, the impugned order dated 31.05.2016 of the Chief Engineer communicated through letter dated 17.06.2016 of the Executive Engineer is quashed and the matter is remanded to the Chief Engineer to consider the proposal for extension of time in the light of the practice as was prevailing at the time when the contract was in operation.

The writ application is, accordingly, allowed with the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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