

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15855 of 2016

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Anand Consultant through its Proprietor Mr. Rupesh Kumar Srivastava son of Late Anand Bihari Srivastava Resident of Mohalla- Patliputra Colont, House No. 157/C (Near Tennis Court), P.O.+P.S.- Patliputra, District- Patna-13.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna-15.
2. The Engineer-in-Chief, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna-15.
3. The Chief Engineer-3, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna-15.
4. The Superintending Engineer, Rural Works Department, Works Circle, Darbhanga.
5. The Executive Engineer, Rural Works Department, Works Division, Phulparas.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Manish Sahay, Advocate Mr. Anil Kumar Sinha, Advocate
For the State	:	Mr. Ajay- GA-5 Mr. Ashish Kumar Lal, AC to GA-5

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

3 05-10-2016 Heard learned counsel for the petitioner and learned Government Advocate No. 5 for the State.

The petitioner seeks quashing of the order dated 9.5.2016 issued by the Executive Engineer, Rural Works Department, Works Division, Phulparas and for consequential reliefs.

The petitioner after being successful in the tender process for construction of road from Persa to Gorgama under



Head No. 4515 MNP Yojana, Tender Id No. 23076 for the year 2014-15, was allotted the work and agreement dated 18.9.2014 was entered into between the parties. The work was to be completed by 17.9.2016 but according to the respondents the progress of the work was slow and accordingly a large number of letters and reminders were issued to the petitioner to speed up the work. It is alleged that the petitioner had taken no heed to the same. Ultimately the impugned order dated 9.5.2016 was passed by the Executive Engineer rescinding the contract under Clause 14 of the agreement.

Learned counsel for the petitioner makes two principal submissions in support of his case. The first submission is that the order of the Executive Engineer is bad as under Clause 14 of the agreement the power to pass such an order is not vested in the Executive Engineer but on the higher authorities.

The second leg of submission of learned counsel for the petitioner is that before issuing the said order which has serious civil consequences for the petitioner, no show cause notice was issued and thus there has been violation of the principles of natural justice.

So far as the first ground is concerned, learned counsel for the State has brought on record in the counter



affidavit the corrigendum letter dated 4.6.2016 issued by the Executive Engineer stating that the contract has been terminated by inadvertently referring to Clause 14 of the SBD, whereas it was under Clause 3 and, accordingly, it was clarified that letter dated 9.5.2016 should be read as termination of contract under Clause 3 of the SBD.

Learned counsel for the petitioner assails the said letter on the ground that it was never communicated to the petitioner, which also appears from the annexures brought on the record, apart from stating that it has been subsequently created and fabricated as there is another letter dated 9.6.2016 issued by the same office of the Executive Engineer bearing letter No. 512 but the letter dated 4.6.2016 is being shown as letter no. 596.

It is evident from looking into the above two letters that the letter dated 4.6.2016 does not appear to have been issued on the date it is said to have been issued and is clearly back-dated as the serial No. of the letter would have of course been earlier than the letter of 9th June and not later in number. However, a copy of email message sent by the office of the Executive Engineer to the email address of the petitioner has been produced in Court showing that the message was sent on 16.9.2016 in which the said letter has been annexed as an



attachment.

In the aforesaid view of the matter, considering the fact that the Executive Engineer has power to rescind the contract under Clause 3 of the agreement and accordingly that corrigendum has been issued even though subsequent to 4.6.2016 and communicated to the petitioner, this Court may consider it as termination order under Clause 3 of the SBD which the Executive Engineer is entitled to do.

However, an action under Clause 3 of the agreement entails forfeiture of security deposit as also of the Bank Guarantee, etc. involving serious civil consequences upon the petitioner, apart from the fact that the remaining part of the work would be liable to be re-tendered at the cost of the petitioner and as a matter of fact, the re-tender of the remaining part of the work of the petitioner has already been issued on 17.9.2016 in which the technical bid is to be opened on 8th October, 2016.

In the above circumstances, no such termination can be directed even under Clause 3 of the agreement unless a show cause notice is issued to the petitioner and upon consideration of the reply, if any, filed thereon by the petitioner. That, according to the petitioner, has not been done.

Learned Government Advocate No. 5, on the



other hand, has sought to rely upon a letter dated 10.12.2015 and submits that it be treated as a show cause. In no way, the said letter can be considered as a show cause notice as it merely states that no progress of work has been made for the last three months and direction has been given to immediately start the work otherwise action shall be taken for liquid (sic) damage. The letter taken on its own could only have been a step prior to issuing the show cause notice to the petitioner and cannot be treated as show cause notice by itself.

In the above circumstances, the writ application is allowed. The impugned order dated 9.5.2016 is quashed and so also the fresh tender notice issued on 17.9.2016.

It shall be open to the respondents to proceed afresh in the matter, if so advised, by issuing a show cause notice for termination of the contract of ` the petitioner and pass a fresh speaking order after considering the reply, if any, to be filed by the petitioner.

(Ramesh Kumar Datta, J)

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