

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4086 of 2016

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

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna
2. The Chief Engineer, Water Resources Department, Dehri, District Sasaram, Bihar
3. The Superintending Engineer, Water Ways Circle, Bhabhua, District Sasaram, Bihar
4. The Executive Engineer, Sone High Level Canal Division, Bhabhua, District Sasaram, Bihar

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Prabhat Ranjan, Advocate

For the State : Mr. Mithilesh Kumar Pathak, SC-7 with
Mr. Anuj Kumar and
Mr. Arun Kumar Prasad, ACs. to SC-7

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 28-03-2016

Heard learned counsel for the parties.

The present writ application has been filed for quashing
the order contained in Letter No. 255 dated 15.02.2016 issued by the

respondent no. 4 rescinding the Agreement No. 01-SBD-2014-15 dated 01.07.2014.

Learned counsel for the petitioner submits that he was allotted the work in question and was doing it as per the requirement, but due to certain ground realities which were not contemplated earlier, the work could not be completed in time and communication to the authorities was made asking them to make the condition conducive and also for revising the contract as work which was not contemplated earlier had to be done. In the alternative, it was also requested that for whatever work had been done, the measurement may be done and payment made and the agreement be concluded. It is submitted that despite the same, the respondents have gone ahead with rescinding the agreement itself which is not justified on facts and further prior to the same, there has been no show cause/notice with regard to the contemplated penal action. It is submitted that the authorities not having given the petitioner a notice with regard to the proposed action, cannot have issued the impugned order. It is submitted that as per the State Government decision, rescinding of the agreement would have the repercussion as the person so affected shall be debarred from getting any other contract in any other department under the State Government and shall stand blacklisted for a period of 15 years. Learned counsel submits that the letter dated

04.09.2015 itself cannot be considered to be show cause and even if the same can be taken as show cause, still the reply given by the petitioner has not been considered.

Learned counsel for the State files counter affidavit and submits that the work done by the petitioner admittedly has not been completed in time and during visits by the authorities, it was found that besides the work not having been done in right earnest, it was also found that no work was being done in the peak season when it was required and there was nobody present on behalf of the petitioner at the site. It is submitted that repeatedly prior to the time allotted for completion of the work, letters were sent but no progress was made and ultimately the work was also not completed and the authorities were forced to give notice to the petitioner on 04.09.2015 and thereafter the impugned order has been passed. It is submitted that the petitioner at no point of time had raised any objection with regard to the ground condition not being conducive and/or extension of time required for completion/any further work and only when notice dated 04.09.2015 was served, he has given a reply raising the issue for the first time and even reference to the initial letter dated 10.06.2015 is fictitious as no such letter was received in the office. It is thus submitted that the petitioner having completed less than 1/3rd of the work required to be completed by him in the time fixed,



cannot claim that it was beyond his capacity to complete the entire work and throw the blame on the State authorities and also during the validity of the period, no such issue was raised. It is further submitted that the higher officials had visited the site and had also found that besides the work not being completed, there was no work being done at the site and in fact no person on behalf of the petitioner was present. Learned counsel submits that the notice clearly indicates that the petitioner was called upon to explain as to why action be not taken with regard to termination of his agreement and thus the notice is clearly a show cause notice and it is not for the petitioner to decide the wording or tenor of the notice and there is no fixed format for any such show cause. He submits that the entire reading of the notice dated 04.09.2015 clearly indicates that it was a show cause notice and further with regard to the contention raised by him in his reply, the same has also been considered in the sense that he has only tried to raise the issue with regard to why he had not completed the work and further with regard to granting him extension which he had not done for the entire period of the validity of the work contract and even after lapse of three months and only when a notice was issued to him, he has become wiser and also tired to raise the issue so as to create a defence for his failure.

The Court finds substance in the contention of learned



counsel for the State that reading of the notice dated 04.09.2015 clearly indicates that it was a show cause and thus no adverse inference can be drawn. Further, the Court also finds substance in the contention of learned counsel for the State that the reply given by the petitioner to the notice dated 04.09.2015 being on facts which were never brought to the notice of the authorities earlier, by not dealing with them specifically, no illegality has been caused and the order impugned can be sustained otherwise also.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is of the opinion that the petitioner, having undertaken the work and got into the agreement with the State, is expected to be aware of the ground realities and terms and conditions of such agreement. Further, he has waited till the period being over and not having taken any initiative to either get the time extended or to explain the delay, and for the first time raising the issue in his reply to the notice cannot be held to be a valid or justifiable ground for the petitioner not to have completed the work, even from the facts of the case where the petitioner has completed only about 1/3rd of the work in question, the act of the respondents cannot be said to be arbitrary or beyond jurisdiction. It is incumbent upon the petitioner to have kept posted the Department with regard to the progress of the work and also any

difficulty he was facing and also to seek any indulgence or extension. The petitioner seems to have kept quiet and only responded when the State authorities pointed out his shortcomings and even after the period by which the contract was to be completed i.e., 30th June, 2015 having elapsed, he waited for the notice dated 04.09.2015 to reply and to raise various issues also indicates that his intentions were not fair.

Accordingly, the Court does not find any error or arbitrariness on the part of the respondents in having proceeded against the petitioner and taken action which is impugned in the present writ application.

For the reasons aforesaid, the Court does not find any merit in the writ application and the same stands dismissed. The interim order dated 29.02.2016 stands vacated.

(Ahsanuddin Amanullah, J)

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