

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14416 of 2015

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Ajit Kumar, S/o Sri Jagdish Yadav, resident of Village- Laruie, P.S.- Haweli
Kharagpur, District- Munger.

.... Petitioner/s

Versus

1. The State of Bihar, through its Commissioner cum Special Secretary,
Department of Minor Irrigation, Government of Bihar, Patna.
2. The Chief Engineer, Minor Irrigation, Bhagalpur.
3. The Superintending Engineer, Minor Irrigation, Bhagalpur.
4. The Executive Engineer, Minor Irrigation, Munger.
5. The Superintending Engineer (Head Quarter) Vigilance, Minor Irrigation,
Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shri Prakash Srivastava Mr. Rao Kundan Kumar Karmvir Ms. Anu Priyadarshni
For the Respondent/s	:	Mr. Partha Sarthy, GA-11 Mr. Utsav Kumar, AC to GA-11.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-06-2016

Heard Mr. Shri Prakash Srivastava, learned counsel
appearing for the petitioner and Mr. Partha Sarthy, learned
Government Advocate No.11 for the State.

With the consent of the parties, this matter has been
taken up with a view to its final disposal at the stage of admission
itself.

The petitioner is aggrieved by the order dated 2.9.2015
of the Superintending Engineer (Headquarter), Monitoring, Minor
Irrigation, Government of Bihar, Patna, the respondent no.5
impugned at Annexure-8, whereby a recommendation has been
made to the respondent no.3 for cancellation of the contract granted



in favour of the petitioner and for initiating fresh selection process. While the writ petition was pending that the contract awarded to the petitioner has been cancelled by the Executive Engineer vide order passed on 31.12.2015 and which has been brought on record vide Annexure-9 to I.A. No.1616 of 2016. A prayer has been made seeking permission to question the order of cancellation which is inter alia in continuation of the order impugned in the writ petition.

Having heard learned counsel for the parties the prayer is allowed and petitioner is permitted to question the cancellation order dated 31.12.2015 impugned at Annexure-9 to I.A. No.1616 of 2016 which is accordingly allowed.

Facts of the case briefly stated is that a tender notice was issued by the Water Resources Department, Minor Irrigation Division, Munger, inviting applications for award of contract relating to development of Ganauri Pokhar, a copy of which is placed at Annexure-1. Four applicants participated in the tender and who succeeded in the technical bid. The matter proceeded for a decision on the financial bid offered and considering the rates offered by them it was decided to finalise the contract on the basis of lottery to be held on 19.6.2015 as is manifest from the letter of the Chief Engineer dated 17.6.2015 a copy of which is enclosed at Annexure-2. In the lottery held on 19.6.2015 the petitioner succeeded and was awarded contract vide order passed on



19.6.2015 by the Chief Engineer, Minor Irrigation Department, Bhagalpur present at Annexure-3. By a subsequent order passed on 25.6.2015 the Executive Engineer directed the petitioner to enter into an agreement and which was executed on 29.6.2015 a copy of which is present at Annexure-5. Thereafter a work order has been issued on 30.6.2015 requiring the petitioner to complete the work by 28.3.2016, a copy of which is present at Annexure-6. Annexure-7 is the report of the Junior Engineer reporting 20% completion of work within three months of its initiation on 3.9.2015 as manifest from the report. Now even when the work was being executed by the petitioner at satisfactory pace that vide communication of the Superintending Engineer dated 2.9.2015 impugned at Annexure-8 the contract has been cancelled and which is followed by the orders of the Executive Engineer impugned at Annexure-9. The petitioner being aggrieved is before this Court.

While it is the argument of Mr. Srivastava, learned counsel appearing for the petitioner that the cancellation order besides being unsustainable on merits, also violates the principles of *Natural Justice* for no notice was issued to the petitioner. On the other hand the impugned action is defended by Mr. Partha Sarthy, learned Government Advocate No.11 in reference to a complaint filed by one of the participants to the lottery, namely, Mala Devi who questioned the award of contract inter alia on ground that it is



she who succeeded in the lottery and not the petitioner and thus the award of contract is marred with irregularity. The complaint dated 29.6.2015 placed at Annexure-A to the counter affidavit of the respondent was acted upon and the matter was handed over to the Flying Squad whose report is placed at Annexure 'C' and which reports certain irregularities that has taken place in the award of contract but even while recording such opinion the report also mentions that there is complete absence of evidence as regarding the claim of the complainant regarding succeeding in the lottery.

I have heard learned counsel for the parties and I have perused the records. The allotment of tender is a matter of record and the documents accompanying the writ petition does not reflect any deviation to a fair selection process. In fact the reason assigned by the Chief Engineer for deciding the financial bid by way of lottery present at Annexure-2 which requires the participants to be present on 19.6.2015 has not been objected by any of the party. The lottery took place on 19.6.2015 in which the petitioner succeeded leading to the award of contract under the orders of the Chief Engineer dated 19.6.2015 vide Annexure-3. The process adopted as well as its outcome has not been questioned by any one. In fact it is only after the completion of process that a complaint has been filed by one of the participants claiming success in the lottery and that also in the second round exercise. Interestingly even when the said



complainant has founded her claim on a second round exercise, the report of the Flying-Squad enclosed with Annexure 'C' mentions that no evidence of a second round exercise was found available. Although allegation of suppression as well as tampering with compact disc is made by the Flying-Squad but considering that the matter has been reduced to an FIR which is pending for adjudication until such time the allegations are established, it would remain mere allegation and not sufficient enough to interfere with the award of contract.

Another peculiarity of the matter is that even when the Flying-Squad accepts that the petitioner succeeded in the first round exercise, a doubt is being created to its fairness inter alia, on grounds that the size of the slips containing the names were not the same. It is not the allegation of the complainant that her name did not figure in the list nor is there any allegation that the lottery was done in surreptitious manner rather it is only the size of the slips as well as on grounds that the clerk of the office was asked by the Chief Engineer to pick up the slips, that a doubt was raised on the fairness of the exercise which led to the success of the petitioner. In my opinion, the reasons assigned to disbelieve the first round exercise which admittedly went in favour of the petitioner is founded on absurdity and based on conjectures. There is no allegation of nepotism or bias on the part of the Chief Engineer in

the matter of award of contract nor the allegation is supported by evidence. Conformingly the concerned respondents in the Minor Irrigation Department of the Government of Bihar are clearly guilty of generating litigation and impeding the completion of the contract work for even when there are no evidence to support the complaint nor the contract being executed by the petitioner is found wanting on its quality yet the impugned action is taken on a non-issue raised by the interested party. Besides the above, the cancellation is also hit by the violation of the principles of *Natural Justice*.

For the reasons so discussed above, the orders impugned at Annexures 8 and 9 of the writ petition cannot be upheld and are accordingly set aside.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

NAFR	
CAV DATE	
Uploading Date	11-07-2016
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