

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2503 of 2014

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Bgates InfoTech System Integrators Private Ltd., a company registered under the provisions of the Companies Act, 1956, having its registered office at 32, Vaibhaw Apartment, Buddha Marg, Patna-1, through its Director Manoj Kumar Saraf, son of Late Laxmi Prasad Saraf, resident of 510, Shanti Vihar Apartment, Fraser road, P.S. kotwali, Town and District Patna

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Information, Technology & Communication, Sanchar Bhawan, New Delhi
2. The Chief General Manager, Bihar Telecom Circle, Sanchar Sadan, Sanchar Parisar, Muddha Marg, Patna 80001
3. The General Manager, Gaya Telecom District, Bharat Sanchar Nigam Limited, Gaya
4. The Area Manager, Gaya Telecom District, Bharat Sanchar Nigam Limited, Gaya
5. The Divisional Engineer, Gaya Telecom District, Bharat Sanchar Nigam Limited, Gaya
6. The Accounts Officer(Cash), Gaya Telecom District, Bharat Sanchar Nigam Limited, Gaya
7. The Divisional Engineer (Planning-I), Gaya Telecom District, Bharat Sanchar Nigam Limited, Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Adv.
For the Respondent-BSNL : Mr. Harendra Prasad Singh, Adv.
Mr. Santosh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-09-2016

Heard Mr. Suraj Samdarshi, learned counsel for the petitioner and learned counsel for the respondents.

The petitioner is aggrieved by the order dated 2.9.2011 of the Chief General Manager, Bihar Telecom Circle, Patna whereby the claim raised by the petitioner for the work executed, has been rejected and instead compensation to the tune of Rs. 40,000/- has been awarded, stated to be the cost towards salary and expenditure that may have been incurred by the petitioner for the work executed by him.



This is a second round exercise by the petitioner, with the first, culminating in the order dated 20.12.2012 passed by a coordinate bench in C.W.J.C.No.15985 of 2004, disposed of with a direction to the Chief General Manager, B.S.N.L, Bihar Circle Patna to consider and dispose of the grievance of the petitioner in accordance with law after due opportunity to him. The claim was considered and modified by an order granting compensation, which has aggrieved the petitioner, who is before this Court.

Mr. Suraj Samdarshi learned counsel appearing for the petitioner has relied upon a work order issued under the signature of the Area Manager dated 7.5.2002 present at Annexure-1 to submit that the petitioner was issued a temporary work order for installation of website server and renovation of Gaya telecom website, which was to be completed by 7th of June, 2002 and which was subject to approval by the General Manager, Telecom District Gaya. He submits that the final work orders was issued on 30.5.2002 placed at Annexure-3 series whereunder the work was to be completed by the petitioner by 7.6.2002 and it is pursuant thereto that the petitioner has executed the work allotted and has accordingly intimated the General Manager, Telecom District Gaya on 4.6.2002 intimating him that the work has been completed on 1.6.2002. He submits that in between some development took place and while, the petitioner was reminded for the completion of work by 8.6.2002 by the General Manager,



Telecom District Gaya vide letter dated 3.6.2002 present at Annexure-4A, an antedated letter was issued under the signature of the District Engineer on 1.6.2002 present at Annexure 4 cancelling the temporary work orders dated 30.5.2002 present at Annexure-3 series. He submits that this order is followed by another order issued by the General Manager, Telecom District Gaya on 5.6.2002 annexed at Annexure-6 cancelling his earlier order dated 3.6.2002 whereunder the petitioner was directed to complete the work by 8.6.2002 present at Annexure 4/A. He submits that it is being aggrieved by such arbitrary orders that the petitioner moved before this Court and the Bench after quashing the orders dated 1.6.2002 and the order dated 5.6.2002 had directed the Chief General Manager to examine the grievance of the petitioner and pass appropriate orders. He submits that even though the Chief General Manager has in substance agreed that work has been discharged by the petitioner to award a compensation at Rs. 40,000/- but has rejected the claim on the technicalities of jurisdiction and on grounds that the required procedure was not followed.

Mr. Samdarshi has referred to the observation of the Chief General Manager present at 12.8(v) to submit that even though the Deputy General Manager, Atul Sinha has accepted the job done by the petitioner but a doubt is being raised as to the date of completion and which is basically the reason for the Chief General Manager to have rejected the claim of the petitioner. The short submission made by Mr.



Samdarshi is that once it is under the direction of the respondents that the petitioner is made to alter his position and execute the job, then whatever be the nature of a procedural lapse, the respondents can discuss it amongst themselves but the petitioner would have to be paid for the job done.

The arguments of Mr. Samdarshi has been contested by learned Central Government Counsel and who has taken this Court through the analysis done by the Chief General Manager who thereafter, has rejected the claim.

It is the submission of Mr. Singh that neither the Area Manager nor the General Manager was competent to award any work order exceeding Rs. 10,000/- and in so far as the present work is concerned, it exceeds Rs. 7 lacs. The second issue raised by Mr. Singh, is in reference to the impugned order to submit that a temporary work order is unknown in Government contracts and even if the correspondence reflected intent on the part of department to execute some kind of work through the petitioner, until such time that the intent was formalized in accordance with the procedure, it did not confer any enforceable right to the petitioner. It is submitted that neither the financial advice was obtained before the award of work order nor the financial rules were followed and the work order in fact was a hasty action by the Area Manager during the period when the General Manager was on leave. Mr. Singh has referred to the



discussion made by the Chief General Manager at paragraph 12.7 to submit that the reasons for the conclusion drawn by the Chief General Manager stands discussed and which are explanatory enough to reject the claim advanced by the petitioner as modified by payment of compensation.

I have heard learned counsel for the parties and perused the records.

It is about 14 years that an exercise initiated is yet to reach its conclusion. The temporary work order was issued on 7.5.2002 under the signature of the Area Manager and which is made conditional on the approval of the General Manager, Telecom District Gaya. It is not in dispute that the work in question was never advertised nor put up on the official website for information to the general public. The work order itself explains its nature for all that the Area Manager mentions in the letter is that the office was actively considering the quotation given by the petitioner as regarding installation of web server and renovation of website, however it remains unexplained why the quotation was given by the petitioner in the first place because no advertisement is on record. The correspondence is in between the Area Manager and the petitioner and which has been made subject to approval of the General Manager Telecom District Gaya. In my opinion, the very initiation of correspondence for allotment of work order, in absence of any public advertisement, is founded on an



illegality and lacks transparency. Another illegality in the exercise is that the nature of allotment is a temporary work order which rightly pointed out by Mr. Singh, is an unknown concept in commercial law. Even if the correspondence/work order present at Annexure-1 and 3 series would reflect an intent but until it is preceded by a public notice inviting tenders, it defies transparency.

Mr. Samdarshi though has relied upon the work orders dated 30.5.2002 present at Annexure-3 series to submit that the offer of the petitioner was acted upon by the department and although it is also the argument of Mr. Samdarshi that the objection raised by the Chief General Manager Telecom regarding the limited pecuniary jurisdiction of the Chief Manager Telecom District is without reference to any statutory rules but in my opinion unless it is proved to the contrary it would be incorrect to doubt the conclusion drawn by the Chief General Manager regarding the pecuniary jurisdiction exercised by the General Manager, for award of work. An award of contract having financial implications has to satisfy the statutory procedures and the discussion made by the Chief General Manager at paragraph 12 of his order is sufficient explanation that there is an apparent default on procedures. The petitioner is a private limited Company and is expected of possessing knowledge regarding the statutory procedure required to be followed for award of contract as well as the statutory character of a temporary work order for being



persuaded to engage himself into an exercise which has involves physical labour and monetary expenditure.

In my opinion, considering the nature of the work orders present at Annexures-1 and 3 series, it is the petitioner himself responsible and has to be blamed for executing a work order even before it is translated into a formal contract. In absence of the essentials to a valid contract, any exercise done by a tenderer is exclusively at his own risk and responsibility. In fact in the nature of the dispute at hand, the Chief General Manager has been rather gracious to award a compensation to the petitioner for the expenditure incurred, in acting upon a temporary work order which has no statutory force.

For reasons discussed above, the writ petition is dismissed.

(Jyoti Saran, J)

Bibhash/-

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CAV DATE	
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Transmission Date	

