

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1153 of 2017

Arising out of

C.W.J.C. 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

... .. Appellant/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 Appellant/s : Mr. Prabhat Ranjan, Advocate
Mr. Chandan Kumar, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-10-2017

Seeking exception to an order dated 28.03.2016 passed by the learned Writ Court in C.W.J.C. No. 4086 of 2016, this appeal has been filed under Clause 10 of the Letters Patent.

Vide letter dated 15.02.2016 a contract granted to the appellant vide Agreement dated 01.07.2014 was rescinded with and as a consequence thereof, appellant black-listed for a period of 15 years. Challenging the



rescinding/termination of the contract, on the ground that it has been done without notice to the appellant, without hearing the appellant, the writ petition in question was filed and the Writ Court having dismissed the writ petition, this appeal.

Having heard learned counsel for the parties at length and on a perusal of the materials available on record, we find that before terminating the contract of the appellant vide Annexure-6 dated 15.02.2016 no show-cause notice, opportunity of hearing or explanation was given to the appellant. On the contrary, after issuing a show-cause notice to the appellant on 04.09.2015 vide Annexure-7 asking the appellant as to why action should not be taken against the appellant, the competent authority vide Annexure10 on 21.09.2015 exercised the powers available under Clause 2 of the agreement and imposed compensation for delay. After having done so on 21.09.2015 without any notice to the appellant and without granting any opportunity of hearing all of a sudden, the Executive Engineer on 15.02.2016 took the impugned action.

While hearing the matter, this Court on 18.09.2017 directed the respondents to file an affidavit and to bring on record the entire proceeding initiated against the



appellant for terminating the contract, as at that point of time, we were of the considered view that without issuing any show-cause notice and without hearing the appellant the impugned action was taken. Today, a supplementary counter affidavit has been filed by the departmental authorities which is dated 06.10.2017 and on going through the supplementary counter affidavit and the documents produced, we find that a show-cause notice Annexure-7 was issued to the appellant on 04.09.2015. Appellant submitted reply to the show-cause vide Annexure-8 on 19.09.2015 and thereafter on 21.09.2015 the Superintending Engineer in pursuance to the show-cause issued on 04.09.2015, exercising power under Clause 2 of the agreement, for the delay, imposed damages at the rate of 2 per cent per month and thereafter there is no document available on record as to which show-cause was issued and based on which notice the impugned order was passed. On the contrary, Clause 3 of the agreement which pertains to termination of contract contemplates that subject to the provisions of the agreement by notice in writing the contract can be determined in the cases detailed therein but seven days' notice in writing is to be given by the Engineer incharge. Even if the said provision of the agreement is ignored, the law laid down by the Supreme Court



in the case of **Gorkha Security Services Vs. Government (NCT of Delhi) and others- (2014) 9 SCC 105** contemplates that even in administrative action the rules of natural justice are to be followed. Any action taken which has adverse effect on the person concerned or the establishment concerned is to be taken, the same has to be preceded by issuing a show-cause notice and grant of opportunity of hearing. In this case even if it is assumed that Annexure-7 was the show-cause which culminated in taking the impugned action, we find that in the impugned order Annexure-6 dated 15.02.2016 there is no reference to the show-cause notice dated 04.09.2015 or any explanation submitted by the appellant.

That being so, it is a case where behind the back of the appellant, without hearing the appellant, and in total violation to and disregard to the principles of natural justice the impugned action is taken and as the learned Writ Court has totally ignored all these vital aspects while dismissing the writ petition, it is a fit case where the appeal should be allowed and the impugned action quashed.

Accordingly, we allow the appeal, quash the order dated 28.03.2016 passed by the Writ Court in C.W.J.C. No. 4086 of 2016 and the order Annexure-6 dated 15.02.2016.



All consequential action taken in pursuance to the order dated 15.02.2016 shall also stand quashed, when liberty shall be available to the department to proceed afresh in accordance with law.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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