

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6357 of 2016

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M/s Kalika Swachchhanda Joint Venture Private Limited, having its Head Office address C/o- Swachchhanda Nirman Sewa Pvt. Ltd., P.O. Box- 4097, Syuchatar, Nagarjun Municipality-12, Kathmandu, Nepal & Local Office address- C/o Gauri Shankar Prasad, Ram Padarth Nagar, Chak Mahila, Ward No-1, P.O.- Chak Mahila, Sitamarhi, District- Sitamarhi (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Rural Works Department, Govt. of Bihar, Vishweshwaraiya Bhawan, 5th Floor, Bailey Road, Patna. null null
3. The Engineer-in-Chief, Rural Works Department, Govt. of Bihar, Vishweshwaraiya Bhawan, 5th Floor, Bailey Road, Patna.
4. The Superintending Engineer, Rural Works Department, Circle Office, Shankar Chowk, Dumra, Sitamarhi.
5. The Executive Engineer, Sheohar (Sheohar, Division-I), Rural Works Department, Bihar.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 9157 of 2016

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M/s Kalika Swachchhanda Joint Venture Private Limited, having its Head Office address-C/o Swachchhanda Nirman Sewa Pvt. Ltd., P.O.- Box- 40997, Syuchatar, Nagarjun Municipality-12, Kathmandu, Nepal & Local office address- C/o Gauri Shankar Prasad, Ram Padarth Nagar, Chak Mahila, Ward No.-1, P.O.- Chak Mahila District- Sitamarhi (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar, through its Secretary, Rural Works Department, Vishweshwaraiya Bhawan, 5th Floor, Bailey Road, Patna.
2. The Bihar Rural Road Development Agency under PMGSY, 3rd Floor, Land Development Bank Building, Budha Marg, Patna-1.
3. The Engineer-in-chief-cum-Secretary, Bihar Rural Road Development Agency, Govt. of Bihar, Vishweshwaraiya Bhawan, 5th Floor, Bailey Road, Patna.
4. The Superintending Engineer, Rural Works Department, Circle Office, Shankar Chowk, Dumra, Sitamarhi.
5. The Executive Engineer, Belsand, (Division-II), Rural Works Department, Works Department, Sheohar.
6. The Empowered Standing Committee, represented through the Engineer-in-Chief-cum-Secretary, BRRDA.

.... Respondent/s

Appearance :

(In CWJC No.6357 of 2016)

For the Petitioner/s : Mr. Prakash Srivastava, Adv.

For the Respondent/s : Mr. Rakesh Kumar Srivastava, AC to GP-15

(In CWJC No.9157 of 2016)



For the Petitioner/s : Mr. Jyoti Shankar, Adv.
For the Respondent/s : Mr. Subhash Pd. Singh, GA7

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 17-03-2017

The prayer of the petitioners in both the writ applications
reads as follows:-

C.W.J.C. No. 6357 of 2016

- "I. To issue a writ in the nature of mandamus commanding the Respondents to act strictly at part with the clause 24 of the I.T.B. (Annexure-8), because despite of the order dated 05.11.2015 (Annexure-1) passed by this Hon'ble Court in C.W.J.C. No. 6389 of 2014, the Respondent No.1 & 2 failed to constitute the Empowered Standing Committee, resulting thereof, the petitioner is not in a position to execute the work.
- II. To issue a writ in the nature of mandamus commanding the Respondents to act strictly at par with the clause 24 of the I.T.B. (Annexure-8), because despite of the order dated 05.11.2015 (Annexure-1) passed by this Hon'ble Court in C.W.J.C. No. 6389 of 2014, the Respondent No.1 & 2 failed to constitute the Empowered Standing Committee, resulting thereof, unwarranted steps are being taken against the petitioner for revocation of bank guarantee No. 001GUAPB09-0037 dated 03.03.2009 (Annexure-5) and the bank guarantee No. 001GUAPB09-0138 dated 02.07.2009 (Annexure- 5/A).
- III. To issue a writ in the nature of mandamus commanding the Respondents to act strictly at part with the clause 24 of the I.T.B. (Annexure-8), because despite of the order dated 05.11.2015 (Annexure-1)



passed by this Hon'ble Court in C.W.J.C. No. 6389 of 2014, the Respondent No.1 & 2 failed to constitute the Empowered Standing Committee, the order of termination of the agreement bearing SBD/PMGSY/1 of 09-010 dated 16.05.2009 under Package No. BR-32R/Sheohar-1 affected the overall functioning of the petitioner.

C.W.J.C. No. 9157 of 2016

- I. *To issue a writ in the nature of certiorari for quashing of the letter dated 09.05.2016 bearing letter No. 288/Belsand (Annexure 46) issued by the Respondent No.5 by which the Respondent No.5 was pleased to rescind the tender & agreement No. ISBD/2009-10 (Annexure 32).*
- II. *For issuance of a writ in the nature of certiorari for quashing of the letter No. 288/Belsand dated 09.05.2016 (Annexure 46) by which the Respondent No.5, in complete defiance of clause 24 of I.T.B. (Annexure 40) and the order passed in C.W.J.C. No. 6186 of 2014 (Annexure 40) rescind the agreement.*
- III. *To issue a writ in the nature of mandamus commanding the Respondent Authorities to accord permission to the petitioners to complete the work pertaining to Agreement No. ISBD/2009-10 dated 25.05.2009, that too, after revision of rate because by any stretch of imagination petitioner can't be held responsible, because despite of all endeavor to provide technical specification & detailed drawing, mobilization amounts & advance payment towards equipment advance were not provided to the petitioner.*
- IV. *For restraining the Respondents from revoking the bank guarantee No. 001GUABB09-137 dated 17.02.2009 amounting to Rs. 36,01,000/-, bank*



guarantee No. 001GUAPB090 dated 03.03.2009 amounting to Rs. 7,00,000/- and bank guarantee No. 005GTEE091830002 dated 02.07.2009 amounting to Rs. 44,00,041/- and bank guarantee No. 005GTEE091830003 of LXB/NEP/INSTR/11188 dated 24.08.2014."

In the present case, the petitioner has made a prayer for issuance of writ of mandamus to the respondents to act strictly as per Clause 24 of the Instruction to Bidders (ITB).

Earlier the present petitioner has moved before this Court in CWJC No. 6389 of 2014 challenging the termination of the agreement bearing SBD/PMGSY/1 of 2009-10 under the Package No. BR-32R/Sheohar-1 by publishing a notice in the daily newspaper "Prabhat Khabar" on 17.11.2013 and for connected reliefs. This Court vide order dated 5.11.2015 in CWJC No. 6389 of 2014 disposed of the matter recording that there is Clause-24 in the agreement which provides an elaborate provision for a Dispute Redressal System through Empowered Standing Committee consisting of three members. Taking into consideration the same, the Court directed the petitioner to approach the Empowered Standing Committee within a period of four weeks from the date of order and the Empowered Standing Committee would proceed to dispose of the matter in accordance with law.

The grievance in the present case has been raised that in terms of Clause 24 of the Agreement, the Empowered Standing Committee has not been constituted but, in the counter affidavit filed by



the Executive Engineer, it has been stated that vide Memo No. 8380 dated 11.07.2016, the Empowered Standing Committee has already been constituted wherein two persons have been appointed as Chairman and a Member and one member has to be nominated by the petitioner from the list of the panel notified in the said letter. It has also been stated in the counter affidavit that the notice has been served upon the petitioner but, he is not giving proper response in the matter of disposal of the dispute.

Be that as it may, let the petitioner should approach to the Committee, nominate the name of any persons mentioned in the letter dated 11.7.2016 and the Empowered Standing Committee will be obliged to adjudicate the dispute in between the parties.

The State would be at liberty to invoke the bank guarantee after disposal of the dispute by the Empowered Standing Committee.

If the petitioner fails to nominate the person and participate in the proceeding, the interim relief, which has been granted to the petitioner, will be treated to have been withdrawn.

With the aforementioned observation and direction, both the writ applications are disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.03.2017
Transmission Date	

