

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15944 of 2016

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Ran Vijay Kumar Builder Pvt. Ltd. through its Managing Director namely Ran Vijay Kumar, son of Narsingh Prasad resident of Paijuna P.S. Ghoswari District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Water Resources Govt. of Bihar, Patna.
2. The Chief Engineer, Flood Control Division, Anisabad.
3. The Superintendent Engineer Punpun Flood Control Division, Anisabad, Patna.
4. The Executive Engineer Flood Control Division at Bakhtiyarpur, District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv.
Mr. Ram Vinay Pd. Sinha @ Sanjay

For the Respondent/s : Mr. Kunal Kumar, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 04-04-2017

Heard learned counsel for the petitioner and counsel for the State.

In this case, the petitioner, at the first instance, had made a prayer for payment of dues amount but, later on, vide I.A. No. 9079 of 2016, he challenged the order dated 8.11.2016, whereby, the Executive Engineer, Flood Control Division, Bakhtiyarpur directed the petitioner to deposit an amount of Rs. 5,17,890/-, failing which the amount of money will be recovered.

The petitioner is a registered Contractor, has applied for allotment of work of raising and strengthening of Isha Nagar and Sahari Jamindari Bandh and construction of Hume Pipe regulator. The work was for the value of Rs. 1,06,70,599/-. In the present writ



application, the petitioner has claimed that he has completed the work, he was waiting for the payment but, in the counter affidavit, the State has denied the same and stated that the petitioner has completed the work in less than halfway and has left the work. An enquiry was conducted by the Flying Squad, the petitioner was directed to remain present but, he has not responded. In the counter affidavit, it has been stated that the Executive Engineer, Bakhtiyarpur Flood Control requested the petitioner several times to complete the work quickly but, the petitioner failed to comply the request up to 24.05.2009. The petitioner has been paid Rs. 73,26,442/- up to 4th running account bill in which Rs. 4,80,270/- was withheld for want of sanction of time extension. It has further been stated that no material by way of evidence nor entry has been made in the measurement book and, as such, no further payment was given to the petitioner. It has further been submitted that the petitioner has not completed the work and so the final bill of the work could not be prepared, after that, a team of flying squad (internal vigilance) inspected the spot on 06.11.2014, submitted the report and, as per inspection report, there is an average percentage of work done i.e. 34% work has been done with respect to Ishanagar Zamindari Bandh and 27.65% work has been done with respect to Sahari Zamindari Bandh respectively.

The State, vide letter dated 06.10.2016, informed the petitioner on the basis of enquiry report of the Flying Squad, the



petitioner is liable to pay is under challenge. The Department, vide letter no. 125 dated 13.1.2015, informed that final bill is likely to be prepared, he was requested to come and verify the bill and put signature in between 20.10.2016 to 25.10.2016 at the Divisional Office, if he fails to verify the bill and put his signature in the final bill, the Department will be free to take action accordingly and it has been replied by the petitioner that the letter was not received by him and, as such, the question of giving response does not arise.

This Court in the order dated 4.2.2017 has recorded that the petitioner has taken a plea of non-service of notice before passing the order dated 08.11.2016, whereby, the Executive Engineer has directed for recovery of Rs. 5,17,890/-. Supplementary counter affidavit has been filed but, the Department has attached the acknowledgement of the letter of the year 2014. There is nothing on the record to show that before passing the order dated 08.11.2016, the petitioner was ever served any notice. Even presuming that the notice dated 06.10.2016 has been served upon the petitioner, it will not cut much ice as in the letter dated 06.10.2016, there is no whisper about taking punitive action against the petitioner. The rule of fairness and propriety demands if an authority intends to pass an order exercising executive authority, he is required to mention in the notice of the action likely to be taken, non-observance of the same, leads to inference arbitrary action violates to observe the same,



violates Article 14 of the Constitution of India as also the principle of natural justice and, in such circumstances, in view of arbitrary exercise of power and not following the principles of natural justice, the action cannot be said to be justified, fair and legal.

In that view of the matter, the order dated 08.11.2016 is quashed. The matter is remanded back to the Executive Engineer, Flood Control Division, Bakhtiyarpur, Patna who will be at liberty to proceed with the matter and pass a reasoned order within reasonable timeframe but, subject to following the principle of natural justice after giving due notice to the petitioner.

In the result, this writ application is allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.04.2017
Transmission Date	NA

