

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19073 of 2015

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M/s Saj Infrocon Project India Limited through its Managing Director, Akhilesh Kumar Jaiswal, S/o Late Ram Narayan Lal, R/o - S-401, Udaygiri Apartment, P.S.- Kotwali, Budh Marg, Patna- 800001.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Govt. of Bihar, Bishweshraiya Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief cum Addl. Commissioner cum Special Secretary, Road Construction Department, Govt. of Bihar, Bishweshraiya Bhawan, Bailey Road, Patna.
3. The Superintending Engineer, Road Construction Department, North Bihar Circle, Muzaffarpur at Muzaffarpur.
4. The Executive Engineer, Road Division-1, R.C.D, Muzaffarpur at Muzaffarpur.
5. The Asst. Engineer, Muzaffarpur Road Sub-Division-2, R.C.D., Muzaffarpur.
6. The Branch Manager, State Bank of India, Mithanpura, District Muzaffarpur.
7. M/S Adarsh Construction, Lal Kothi, Main Road, Mairwa, Siwan.

.... Respondents

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Appearance :

For the Petitioner : Mr. Prabhat Ranjan,
Ms. Kumari Rashmi, Advocates
For the Respondents : Mr. S. Raza Ahmad, AAG 5
Mr. Vishwambhar Prasad, AC to AAG 5
For Respondent No. 7 : Mr. P.K. Shahi, Sr. Advocate
Mr. Raju Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 15-11-2017

The present writ petition has been filed for setting aside the order contained in letter nos. 1713, 1714 and 1715 dated 24.08.2015 issued by the respondent no. 4 by which he has terminated Agreement No. MBD 19 and 20/2013-14 under package nos. 08 and 09 and the petitioner has thus forfeited the entire amount of BG & STDR amounting to Rs. 5,81,11,700/-, and for connected reliefs.

2. Learned counsel for the petitioner submits that the impugned order of termination dated 24.08.2015 is wholly arbitrary and illegal, more so as the same has been passed in violation of the



principles of natural justice. A show cause notice was issued on 30.07.2015 (Annexure-20) proposing termination of the agreement in terms of Clause 59 thereof alleging breach of contract, calling for a response within 14 days. Even before expiry of the said 14 days' time, a second show cause notice was issued on 06.08.2015 (Annexure-21) referring to the earlier show cause notice and requiring a reply within 14 days thereof. The petitioner submitted its show cause reply dated 08.08.2015 with reference to the second show cause notice dated 06.08.2015 which was despatched by speed post on 11.08.2015. A third show cause notice was then issued on 12.08.2015 (Annexure-23) wherein the show cause reply of the petitioner dated 08.08.2015 was taken note of. The petitioner, accordingly, filed its second show cause reply dated 14.08.2015 (Annexure-24) which appears to have been received on 17.08.2015 as evident from the endorsement in the margin. Despite the petitioner having duly furnished replies dated 08.08.2015 and 14.08.2015, the same have been ignored and hence the impugned order of termination stands vitiated, having been passed in utter violation of the principles of natural justice.

3. Learned counsel for the petitioner further submits that the respondents have acted in a *mala fide* manner which is evident from the fact that no sooner than the order of termination dated 24.08.2015 was passed, a fresh NIT was issued the very next day on 25.08.2015, clearly for collateral purposes.

4. Learned counsel for the State, on the other hand,



resists the writ petition, submitting that the petitioner is not entitled to any relief as it has suppressed the fact of issuance of the first show cause notice dated 30.07.2015 as evident from paragraph 12 of the writ petition which only speaks of the second show cause notice dated 06.08.2015. The petitioner has tried to make out a case that such show cause notice was issued by the respondents to defend themselves in view of the petitioner's letter dated 05.08.2015 claiming outstanding payments and threatening termination of the agreement on failure of the respondents to make due payment. It is only when the counter affidavit was filed by the State that the details of the first show cause notice dated 30.07.2015 came to light, and the petitioner then had to acknowledge in its supplementary affidavit filed subsequently. It is further submitted that the letters dated 08.08.2015 and 14.08.2015 written by the petitioner do not amount to show cause replies at all. The respondents were thus fully justified in terminating the contract and invoking the bank guarantee.

5. Learned counsel for the private respondent no. 7 appears and submits that pursuant to the fresh NIT, the subject work was awarded to it, the dates of start being 11.08.2016 and 19.10.2016 in respect of Package Nos. 08 and 09 respectively. It is submitted that in respect of Package No. 08, out of the targeted of Rs. 34,60,10,450/-, work has already been completed to the extent of Rs. 21,11,93,605/-. Similarly, in respect of Package No. 09, out of the target amount of Rs. 33,02,82,699/-, work to the extent of Rs. 17,48,04,892/- has already



been completed.

6. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court is not inclined to interfere in the matter. It is a matter of record that the petitioner did not state the fact of issuance of the first show cause notice dated 30.07.2015 in the writ petition as initially filed, and sought to give an impression that the show cause notice dated 06.08.2015 was the first such notice issued defensively by the respondents in view of the petitioner's threat of termination in case of failure of payment of the outstanding amount. A perusal of the show cause notice dated 30.07.2015 shows that the petitioner was called upon to respond as many as 25 points. The petitioner while furnishing its response dated 08.08.2015 only referred to the second show cause notice dated 06.08.2015 and *prima facie*, does not appear to have given point-wise reply to the earlier show cause notice dated 30.07.2015. Various allegations have been raised against the respondents and finally it was requested to recall the show cause notice dated 06.08.2015. The third show cause notice dated 12.08.2015 took note of the petitioner's reply dated 08.08.2015 and specifically called upon the petitioner once again to furnish its point-wise show cause reply in respect of the first show cause notice dated 30.07.2015. The petitioner in its response dated 14.08.2015 however again failed to furnish the point-wise reply to the initial show cause notice dated 30.07.2015, stating as follows—

“...Needless to state that under your instructions, we remained executing the work in good faith and failed to



submit our written and formal reply and upon your assurance to pay the bill immediately, instead of reply to the show cause, we have submitted the bill against work done vide our Letter No. 562 and 563 dated 05.08.2015...”

7. It is therefore clear from the petitioner’s own admission that reply to the show cause notice dated 30.07.2015 was never filed. This Court finds no infirmity in the impugned order which has been passed on the basis that no show cause reply has been filed on behalf of the petitioner in response to the show cause notice dated 30.07.2015 which had required a point-wise reply from the petitioner.

8. In the above view of the matter, the writ petition is devoid of merit and is dismissed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	21.11.2017
Transmission Date	N.A.

