

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17335 of 2015

=====

M/s Shree Niwas Enterprises, a Proprietorship firm having its registered office at Bhopalka House, East Boring Canal Road, Vishnu Place Lane, Patna- 800001. through its Proprietor namely Sri Mahabir Prasad Agrawal son of Late Manna Lal Agrawal, resident of Bhopalka House, East Boring Canal Road, Vishnu Place Lane, Patna- 800001.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Bihar State Power (Holding) Company Ltd. through its Chairman-cum-Managing Director, Vidyut Bhawan, Bailey Road, Patna- 800001.
3. The Chairman-cum-Managing Director, Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna- 800001.
4. North Bihar Power Distribution Company Ltd. a Government of Bihar undertaking through its Managing Director, Vidyut Bhawan, Bailey Road, Patna- 800001.
5. The Managing Director, North Bihar Power Distribution Company Ltd. a Government of Bihar undertaking, Vidyut Bhawan, Bailey Road, Patna- 800021.
6. The Chief Engineer (S&P), North Bihar Power Distribution Company Ltd. a Government of Bihar undertaking, Vidyut Bhawan, Bailey Road, Patna- 800021.
7. The Electrical Superintending Engineer (S&P), North Bihar Power Distribution Company Ltd. a Government of Bihar undertaking, Vidyut Bhawan, Bailey Road, Patna- 800021.
8. The Senior Manager (F&A), North Bihar Power Distribution Company Ltd. , Vidyut Bhawan, Bailey Road, Patna- 800021.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ashish Giri, Adv.
For the N.B.P.D.C.L. : Mr. Anand Kumar Ojha, Standing Counsel
For the State : Mr. Naman Nayak, S.C. to A.A.G.-X

=====



CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 26-04-2017

Heard learned counsel for the parties.

2. In this case, the petitioner-company has raised very serious allegation against the Superintending Engineer as having demanded the money for granting the positive note in favour of the petitioner-company and on that account the petitioner-company is not in a position to get his bill cleared of goods supplied to the North Bihar Power Distribution Company Limited.

3. The short facts of this case are that the North Bihar Power Distribution Company Limited (for short "*the Power Company*") has invited tender vide NIT No.233/PR/NBPDCL/2013 for supply of M.S. channel, Back Clamp for P.S.C. Pole and Back Clamp Rail Pole. The petitioner-company participated in the tender and selected and accordingly, the petitioner-company has entered into an agreement with the Power Company for supply of the materials. The total value of work order was of Rs.1,59,70,380/-. The Power Company has appointed M/s. RITES Ltd. Kolkata, as inspecting agent to make pre-supply inspection of goods to be supplied and submit report to the Power Company.

4. Before the supply, inspection was made by the M/s.



RITES Ltd. and it was found that goods were according to the specifications and on the basis of the report of the said M/s. RITES Ltd. the petitioner-company supplied the goods. The Store Assistant, Electrical Executive Engineer and Electrical Superintending Engineer also verified the materials before accepting the same and found to be in accordance with the specifications and accordingly Store Receiving and Payment Authorizing Voucher (SRV) were issued.

5. When the new Superintending Engineer has taken charge, as per the claim of the petitioner-company, the scenario changed as for passing the bill he has demanded illegal gratification, whereas the Superintending Engineer has said that when he made inspection, having found that the goods supplied by the petitioner-company are below than the specifications, then the show-cause notice was served upon the petitioner-company for blacklisting, forfeiture, cheating and breach of trust including initiation of proceeding for blacklisting. On receipt of show cause, the petitioner-company filed its explanation, which did not satisfy the Chief Engineer (S&P), passed the order dated 30.03.2015 and rejected the explanation and held that it is a case of forgery.

6. Learned counsel for the petitioner-company submits



that before supply of the goods the agency which was authorized by the Power Company was inspected and goods were found according to the specifications of the NIT inasmuch as three Officers of the Power Company also verified the materials and found to be in accordance with the specifications. But in the counter affidavit, the Power Company emphatically denied that the material supplied by the petitioner-company was according to the specifications inasmuch as allegation has been made that the Superintending Engineer having received the threat from the petitioner-company and he has made a prayer to relieve him from the Job.

7. Serious allegation has been made against the Superintending Engineer *vice versa* against the petitioner-company. To resolve the dispute, this Court directs that supply of materials will be examined and verified by a High Power Committee, which is being constituted by this Court comprising high officials of this State and any payment would be made on the basis of the report submitted by the High Power Committee. Accordingly, this Court appoints the representative of the Divisional Commissioner, Darbhanga, not below the rank of Additional Collector, representative of the Inspector General of Police, Darbhanga, not



below the rank of Deputy Superintendent of Police and representative of the District and Sessions Judge, Darbhanga, not below the rank of A.D.J. and all the three persons would constitute a Committee. The representative of the District Judge will be the convener of the Committee. All the cost of the inspection will be borne by the Power Company. The Committee would visit the Central Store office of the petitioner-company situated at Samastipur as it appears that all types of goods which have been supplied by the petitioner-company are lying in the Samastipur Central Store office. At the time of inspection, the representative of the Power Company as well as representative of the petitioner-company will remain present there to identify the goods supplied by the Company. The Committee will fix the date of inspection, after giving due notice to the Power Company as well as to the petitioner-company will make inspection of goods. The Power Company as well as petitioner-company will be obliged to depute their representatives to remain present at the place and time of inspection. If their representative(s) fail to remain present at the time of inspection, the Committee is at liberty to make inspection and prepare report even without their presence. Samples will be identified by the representative of the petitioner-company as well as the representative of the Power Company at the time of inspection.



All the arrangements of inspection have to be made by the Power company. The Committee would submit the report to the Chairman of the Power Company and the Chairman will take decision in accordance with law.

8. It is made clear that if it is found that the supply is below the standard specified and certain items have been consumed by the Power Company, the Management will make payment of the same at the proportionate reduction. If the Power Company have not consumed or partly consumed and if they decide to return those items, the petitioner-company will not object the return of the goods, but on the contrary, if the Power-Company decides to consume the same, in such circumstances, the payment would be made after making proportionate reduction in the rate. The payments would be made on the basis of the decision of the Chairman of the Power Company.

9. This Court requests all the three Officials to depute their representatives within a period of two weeks from the date of the receipt/production of a copy of this order and thereafter Committee will be formed, which will complete its job of inspection within two months thereafter and submit inspection report before the Chairman in sealed cover. This order has been



passed on the agreement of both the parties.

10. Let this order be communicated to the District Judge, who will communicate the same to the concerned I.G. and Divisional Commissioner.

11. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	12.05.2017
Transmission Date	N/A.

