

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17968 of 2015

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M/s Yadav Construction through Proprietor through Mahesh Yadav, R/o Nai Basti, Mahadewa, District Siwan.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Road Construction Department, Govt. of Bihar, Bishweshraiya Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief cum Addl. Dy. Secretary cum Special Secretary, Road Construction Department, Govt. of Bihar, Bishweshraiya Bhawan, Bailey Road, Patna.
3. The Superintending Engineer, RCD, Saran Road Circle at Chapra.
4. The Executive Engineer, Siwan Road Division, R.C.d, Siwan.
5. The Asst. Engineer, Siwan Road Sub-Division, R.C.D, Siwan.

.... Respondents

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Appearance :

For the Petitioner : Mr. Suresh Pd Singh No.1, Advocate

For the Respondents : Mr. Arvind Kumar, AC to GA 9

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 07-02-2018

I.A. No. 149 of 2018

The interlocutory application has been filed with the prayer for amendment of the relevant portion of the prayer in the writ petition by adding the following prayer –

“To direct the respondents to allow foreclosure and close the contract and to refund the security amount as well as any other amount like additional performance guarantee, due amount of bill against the work done along with statutory interest and to Pay final payments on the basis of work done/measurements made, and further to quash the letter no. 5160 (E) dated 11.09.2017 by which the respondent no. 2 has noticed the petitioner seeking explanation making threat as to why not he may take action as per Bihar Contractors’



Registration Rules 2007 for non-completion of the work within time”.

2. Having regard to the nature of the prayer, the interlocutory application is allowed and the same shall be treated as forming part of the writ petition.

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3. The main writ petition has been filed for the following reliefs –

“(i) For issuance of an appropriate writ/writs, order/s, direction/s commanding the respondents to extend period of completion of balance work and further to issue DO letter for lifting the Bitumen for completion of balance work for the length 1.5 out of Km 00 to 15 in Siwan-Mairwa-Guthni Road, which has not been completed due to non-issuance of DO for lifting the bitumen and further to quash the letter no. 698 dated 02.05.2014 issued by the respondent EE, wherein he has rescinded the agreement bearing SBD/03/12-13 under non est grounds, as due to his own fault the rest and balance work in 1.5 Km only is left for SDBC work only which could not be performed unless the DO letter for bitumen be not issued by the respondent no. 4, and when he has issued DO in time earlier more than 13.5 Km road out of total 15 Km has already been fully constructed by the petitioner this may be enough to show his due diligence, and now only the balance work in 1.5 Km is remained pending due to the non-issuance of DO letter for lifting bitumen, thus it is clear that there is no deliberate laches on part of the petitioner and thus if there is no breach on part of the contractor no



agreement could be rescinded by the respondent no. 4, hence the impugned letter dated 02.05.2014 may be quashed.

(ii) For holding the impugned letter/action to be illegal as still the staffs, plant and machineries along with huge construction materials are lying on the work site and the petitioner has never quitted or abandoned the work, rather it is the respondent no. 4 who has himself violated the mandatory clauses of the SBD as well as terms of agreement keeping hold the huge payments of the bills against the work done at one hand and on another hand has not issued the DO letter in time and kept the matter pending till more than one year, thus he has no authority to rescind the agreement nor has jurisdiction to forfeit the performance guarantee/EMD etc. as threatened, thus evidently the breach of contract is attributable against the respondent no. 4 for which the Petitioner may not be allowed to suffer.

(iii) Further restraining the respondent from forfeiting the earnest money, fixed Deposits, security deposits and performance guarantee if forfeited, and if not then restrain them from forfeiting the same, and further to restrain them from allotting the balance work to any other contractor till pendency of this application, as it may not be either in the interest of state exchequer or the Petitioner as if the fresh NIT may be published the fresh rate may be fixed, which may be definitely enhanced to the then the rate quoted by the petitioner, whereas the petitioner still is ready to execute the balance work subject to payment of pending bills, issuance of DO letter for Bitumen, and extension to time of completion, hence they may be directed to issue the DO letter for bitumen



forthwith so that the Petitioner may complete the balance work.

(iv) For directing the respondents to refund the entire amount of earnest money, fixed Deposits, security deposits and performance guarantee if forfeited during pendency of the writ petition along with statutory interest, and further the respondent no. 4 may be directed to allow the Petitioner to continue execution of the balance work.

(v) For declaring whole action of the respondent to be illegal based under extraneous reasons.

(vi) For granting any relief/reliefs for which the petitioner may be found entitled in the eye of law."

4. At the very outset, learned counsel for the petitioner states on instructions that the balance work of 1.5 kilometers of road construction has now been completed by award of work being given to a third party at lower rate as also admitted in paragraph 3 of the counter affidavit. As far as rescinding order is concerned, therefore the same need not be pressed.

5. Learned counsel for the petitioner, however, points out that by the impugned notice dated 11.09.2017 (Annexure-11), the respondents are seeking to take action under the Bihar Contractors' Registration Rule, 2007 against which a show cause has been elicited. The petitioner has accordingly filed a show cause reply on 25.09.2017 which appears to be still pending.

6. Learned counsel for the respondents appears and has



been heard.

7. Having regard to the nature of the grievance of the petitioner, this writ petition is disposed of with a direction to the Engineer-in-Chief cum Additional Deputy Secretary cum Special Secretary, Road Construction Department, Government of Bihar, Patna (respondent no. 2) to consider and dispose of the show cause reply dated 25.09.2017 said to have been filed by the petitioner, if still pending, in accordance with law expeditiously and in any event within a period of six weeks from the date of receipt/production of a copy of this judgment. In case upon disposal of the show cause reply no adverse decision is taken against the petitioner, the amount of security deposit etc. shall be refunded to the petitioner without delay.

8. It is made clear that this Court is not expressing any opinion on the merits of the claim of the petitioner.

B.T/Chandran

(Vikash Jain, J)

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

