

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20840 of 2018

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Krishna Kumar Thakur S/o Late Bindeshwari Prasad Thakur, R/o Holding No. 106/518, Pandey Sadan, Khabra Road, P.S.- Khabra, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Public Health Engineering Department, Government of Bihar, Vishwesharaiya Bhawan, Patna
3. The Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department, Government of Vishwesharaiya Bhawan, Patna
4. The Project Director, Nir Nirmal Project, Bihar State Water and Sanitation Mission, Bihar, Patna, Bishweshwaraiya Bhawan, Patna
5. The Chief Engineer, Public Health Engineering Department, Muzaffarpur Range, Muzaffarpur.
6. The Superintending Engineer, Public Health Engineering Circle, Muzaffarpur.
7. The Executive Engineer-cum-District Project Manager, District Project Management Unit, Public Health Division, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bishnu Kant Dubey
For the Respondent/s : Mr.Arvind Ujjwal, SC-4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 01-11-2018 The present writ petition has been filed for quashing the letter dated 28.08.2018 issued by the Executive Engineer-cum-District Project Manager, District Project Management Unit, Public Health Division, Muzaffarpur, whereby and where under the Agreement bearing No. RWSS-LIS/DTMU/Muzaffarpur/BIH/W-9 of 2016-17 dated 05.07.2016, has been cancelled and the security amount has been forfeited.

The brief facts of the case, according to the petitioner



is that the petitioner was allotted the tender and an agreement dated 05.07.2016 was executed in between the petitioner and the respondent, relating to design and building of all system components of Lohsari Single Gram Panchayat (SGS) Piped Water Supply Scheme including operation and maintenance for five years after commissioning of the scheme including billing and for providing intermittent water supply. It is the case of the petitioner that though the work order was handed over to the petitioner on 02.08.2016 but the site of the scheme was not being made available to the petitioner, hence the petitioner had filed a representation before the Executive Engineer-cum-District Project Manager, District Project Management Unit, Muzaffarpur, however, to no avail. Subsequently, the petitioner is stated to have enter into various communication with the Executive Engineer-cum-District Project Manager, District Project Management Unit, Muzaffarpur with regard to the difficulties in starting the work at the site whereafter the approved design and drawing was made available to the petitioner vide letter dated 27.11.2017 and the petitioner was directed to commence the work, however, the petitioner is said to have raised the issue of escalation in price and enhancement of the value of the agreement. Such type of correspondences as



also the correspondences for extending the period of completion of the work was made by the petitioner with the respondents resulting in certain disputes having arisen and ultimately the aforesaid Executive Engineer by the impugned letter dated 28.08.2018 had cancelled the agreement entered into between the petitioner and the respondents and had also forfeited the security deposit on the ground that despite the petitioner being told on several occasions to complete the work, as per the agreement, the petitioner had failed to execute the agreement as per the contract.

Per contra, the learned counsel for the respondents has submitted that the present writ petition involves disputed question of facts which cannot be adjudicated in a writ jurisdiction under Article 226 of the Constitution of India.

I have heard the learned counsel for the parties and I find that the petitioner has not even bothered to bring on record a copy of the agreement/contract, infringement whereof is being complained of and the same has also not been produced at the time of hearing of this case, hence on this ground alone, the writ petition is fit to be dismissed on account of non-production of the most vital document, in absence of which this Court is handicapped in proceeding with the present case.



Another issue is that since the present writ petition contains disputed question of facts i.e. as to whether there has been lapse on the part of the petitioner or on the part of the Executive Engineer-cum-District Project Manager, District Project Management Unit, Public Health Division, Muzaffarpur, resulting in termination/cancellation of the agreement and forfeiture of the security deposit, such disputed question of facts, cannot be decided in the present proceedings. It is a well settled law that the High Court in a writ jurisdiction under Article 226 of the Constitution of India is precluded from entertaining petitions filed for enforcement of contractual rights and obligations particularly, where the claim is contested and adjudication of the dispute requires inquiry into facts.

Reference in this regard be had to the judgments reported in (1969) 2 SCC 782 (*Mohammed Hanif v. The State of Assam*), (1972) 4 SCC 781 (*Banchhanidhi Rath v. The State of Orissa & Others*), (1980) 4 SCC 556 (*Smt. Rukmanibai Gupta v. Collector, Jabalpur & Others*), 1993 Supp (3) SCC 635 (*Food Corporation of India & Others v. Jagannath Dutta & Others*), (1999) 4 SCC 43 (*State of H.P. v. Raja Mahendra Pal & Others*), (2002) 1 SCC 216 (*State of Bihar & others vs. Jain Plastics and Chemicals Ltd.*) and (2003) 7 SCC 410 (*National Highways Authority of India vs. Ganga Enterprises and Another*).

Having regard to the facts and circumstances of the case, I find that the present writ petition not only requires enquiry into facts but is also not maintainable in view of the



judgments rendered by the Hon'ble Apex Court, referred to herein above in the preceding paragraph whereby and where under the Writ Courts have been precluded from entertaining writ petitions in matters of enforcement of contractual rights and obligations, hence the writ petition is dismissed but without any order as to costs.

(Mohit Kumar Shah, J)

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