

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2718 of 2019

M/s Vishal Construction, a partnership firm having its Registered office at Molvi Tola, Ward No. 25, Araria, P.S. and Distt.-Araria through one of its Partner Abdul Haseeb, age 64, Male, son of Late Nizam Uddin, resident of Mohalla- Islam Nagar, P.S. and Distt.-Araria.

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Road Construction Department, Govt. of Bihar, Bailey Road, Patna
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Bailey Road, Patna
3. The Engineer-in-Chief, Road Construction Department, Govt. of Bihar, Bailey Road, Patna
4. The Chief Engineer National Highway Wing, Road Construction Department, Govt. of Bihar, Patna
5. The Superintending Engineer Road Construction Department, National Highway Circle, Purnea
6. The Executive Engineer Road Construction Department, National Highway Division, Madhepura
7. The Union of India through the Director General and Special Secretary, Ministry of Road Transport and Highways, Transport Bhawan, 1-Parliament Street, New Delhi-110001
8. The Regional Officer, Ministry of Road Transport and Highways, Govt. of India, having its Regional Office, at 17, IAS Colony, Kidwaipuri, Patna, (Bihar).

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Raj Kishore Prasad, Advocate
For the Respondent/s : Mr.Uday Shankar Sharan Singh (GP19)

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2. 17-06-2019 Heard learned counsel for the petitioner and learned counsel for the respondents.

Petitioner in the present case is seeking a writ of certiorari to quash and cancel the order passed by the respondent



Regional Officer vide his letter no. 2377 dated 30.03.2018 as contained in Annexure '24' to the writ application by which he has rejected the recommendation of the Committee for extension of time to the petitioner in respect of agreement No. 12 SBD/2010-11.

A short point has been raised on behalf of the petitioner for purpose of setting aside the impugned order. Learned counsel submits that in terms of Standard Bidding Documents (hereinafter referred to as 'SBD'), it is the Engineer-in-Chief who is the competent authority to give fair and reasonable extension of time for completion of work where price escalation is allowed.

Attention of this court has been drawn towards Clause '5' under Schedule 'E' of the proforma of schedules which is part of the Invitation For Bid (in short 'IFB'). It is submitted that in the writ application the petitioner has raised a specific issue in this regard in paragraph '23' of the writ application. According to the petitioner, the application for extension of time was to be considered only after completion of work in question and the same was to be sent along with a valid reason to the competent authority. In this case, the Four Men Technical Evaluation Committee had taken into consideration the facts and



circumstances under which the extension was required and had made a recommendation in this regard vide its report as contained in Annexure '22' to the writ application.

It is submitted that based on the report of the Technical Evaluation Committee, it was the Engineer-in-Chief, Road Construction Department who could have taken the decision which has not been done and the approval has been refused by the Executive Engineer, NFSG, Regional Office, Patna. Learned counsel has relied upon the judgments of the learned coordinate Bench of this court in CWJC No. 5859/2009 and CWJC No. 17167/2016 as contained in Annexure '25' & '26' respectively to the writ application. It is submitted that the order impugned in the present writ application is without jurisdiction.

On the other hand, learned counsel for the respondent nos. 7 & 8 have relied upon the counter affidavit filed on their behalf. According to them the recommendation of the Committee has been disapproved as it was found that the agency was debarred due to slow progress of work, therefore proposal for extension of time was not justified. The respondent Nos. 7 & 8 have also relied upon a circular dated 12.05.2017 as contained in Annexure 'C' to the counter affidavit to submit that for the



purpose of extension of time, as per the circular, the Regional Officer of the Ministry of Road Construction and Highway, is the competent authority to grant extension of time. In this regard, learned counsel for the petitioner has explained that the circular dated 12.05.2017, and even if it is applicable, it would have prospective effect. In the present case, the SBD contains a specific provision and the agreement is binding between the parties hence in the case in question it is only the Engineer-in-Chief who would be the competent authority.

Having heard learned counsel for the petitioner and learned counsel for the respondents as also on perusal of the records, this court is of the considered opinion that in terms of the SBD which binds both the parties of this case, it is the Engineer-in-Chief who will be the competent authority to grant a fair and reasonable extension of time after completion of work. The petitioner has completed the work and thereupon the Four Men Committee has considered his case for grant of extension of time. Reasons have been recorded in the report as contained in Annexure '23' to the writ application for which the extension was recommended. It appears that the recommendations have been made from all levels i.e. the Assistant Engineer, Executive Engineer and the Superintending



Engineer. In such circumstances the Engineer-in-Chief, Road Construction Department would be the competent authority to look into the recommendations of the Committee and take an appropriate decision thereon. The Court agrees with the submission of learned counsel for the petitioner that the Executive Engineer, Regional Office, Patna who has communicated disapproval of the recommendation of the Committee to the Chief Engineer, NH Wing, Road Construction Department, Government of Bihar would not be the competent authority to pass the order of disapproval in this case.

The impugned order dated 30.03.2018 as contained in Annexure '24' is therefore set aside. The matter is remitted to the Engineer-in-Chief (respondent no. 3) to look into the recommendations of the Committee and take an appropriate decision thereon within a period of two months from the date of receipt/production of a copy of this order.

This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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