

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9251 of 2019

M/s Dhanpat Prasad through its one of the Partner Mr. Sanjay Kumar aged about 51 years (Male), Son of Late Binda Prasad, Resident of Mohalla-Line Par, P.S. Nawada, P.O. Nawada, Dist.-Nawada, Pin-805110, State-Bihar

... .. Petitioner

Versus

1. Bihar Medical Service infrastructure Corporation Ltd. through its Chief Managing Director, 4th Floor, Bihar State Building Construction Corporation Ltd., Hospital Road, Shastri Nagar, Patna-800023
2. The Chief Managing Director, Bihar Medical Services Infrastructure Corporation Ltd., 4th Floor, Bihar State Building Construction Corporation Ltd., Hospital Road, Shastri Nagar, Patna-800023
3. The Managing Director, Bihar Medical Services Infrastructure Corporation Ltd., 4th Floor, Bihar State Building Construction Corporation Ltd., Hospital Road, Shastri Nagar, Patna-800023
4. The General Manager, Bihar Medical Services Infrastructure Corporation Ltd., 4th Floor, Bihar State Building Construction Corporation Ltd., Hospital Road, Shastri Nagar, Patna-800023
5. The Dy. General Manager (Projects), Bihar Medical Services Infrastructure Corporation Ltd., 4th Floor, Bihar State Building Construction Corporation Ltd., Hospital Road, Shastri Nagar, Patna-800023
6. The State of Bihar through the Principal Secretary, Health Department, Vikash Bhawan Govt. of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manish Sahay, Advocate Mr. Alok Ranjan, Advocate Mr. Anil Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Manoj Kumar Yadav AC to GA 10
For the BMSICL	:	Mr. Vikash Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 05-08-2019 Heard learned counsel for the petitioner and learned counsel representing the Bihar Medical Services Infrastructure Corporation Ltd. (hereinafter referred to as the 'Corporation').

The petitioner in the present case is seeking a writ of Mandamus commanding the respondents to refund the original



performance Bank Guarantee No. 04987117000010 dated 10.02.2017 (i.e. for Rs. 1,24,56,100/-) to the petitioner and further prayer has been made to direct the respondents to pay Rs. 3,77,256/- only to the petitioner which is said to have been charged by the Bank on account of commission of said Bank Guarantee.

It is the case of the petitioner that after the work was awarded in his favour the site for the work could not be made available, ultimately the respondents decided to close the contract in terms of Clause 13 of the Contract document. Annexure 'P-8' to the writ application is letter cancelling the contract and it is not in dispute that the petitioner challenged the said cancellation order in C.W.J.C. No. 11678 of 2018 which was ultimately withdrawn by him vide Annexure 'P-9' to the writ application. Neither any liberty was sought for nor any liberty was granted to the petitioner to agitate the issue with regard to cancellation of contract before any other forum. Thus, admittedly, so far as Annexure 'P-8' is concerned, it has attained finality.

Clause 13 of the Contract reads as under:

“CLAUSE 13

If at any time after acceptance of the Rate Offer B.M.S.I.C.LTD. shall decide to abandon or reduce the scope of the works for any reason whatsoever and hence not require the whole or any part of the works to be carried out, the Engineer-in-Charge shall give notice in writing to that effect to the



Agency and the Agency shall act accordingly in the matter. The Agency shall have no claim to any payment of compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the works in full but which he did not derive in consequence of the foreclosure of the whole or part of the works. The Agency shall be paid at contract rates full amount for works executed at site only.”

By filing a supplementary affidavit now the petitioner has made a statement that a letter dated 16.04.2019 has been issued under the signature of respondent no. ‘P/15’ whereby the petitioner has been informed that the respondent company had taken a decision that the performance guarantee shall be refunded subject to giving an undertaking that the petitioner shall not made any claim in regard to the closure of work in question. It is the grievance of the petitioner that the respondent department is making unusual pressure upon the petitioner for giving undertaking that he shall not claim any compensation for closure of work in question which is impermissible in law.

Learned counsel for the respondent Corporation has categorically submitted before this Court that the petitioner is bound by the terms and conditions of the contract. In this case closure of contract has been done by the respondents Corporation in terms of Clause ‘13’ and a bare perusal of the said Clause would show that in case of invocation of Clause ‘13’



the agency shall have no claim to payment of any compensation or otherwise whatsoever on account of any profit or advantage which he might have derived from the execution of the works full.

It is submitted that once the petitioner chose to raise his grievance against the cancellation of contract (Annexure 'P-8') by filing a writ application and was unable to persuade this Court to accept his case and the writ application was dismissed as withdrawn without any liberty to the petitioner to raise this issue before any other forum, now it cannot lie in the mouth of the petitioner to say that he would still raise a claim for compensation.

It is submitted that the respondent Corporation has already informed the petitioner to give an undertaking and on submission of the said undertaking the performance guarantee of the petitioner shall be returned.

In the given facts and circumstances of the case, this Court finds substance in the submission of learned counsel for the Corporation. It is evident from the records that the closure of the contract has been done under Clause '13' of the Contract Document and challenge to the closure of the contract at the instance of this very petitioner has failed. Under such



circumstance, the petitioner cannot make a prayer for a writ of Mandamus directing the respondents to make any other payment on account of commission on account of bank charges etc.

It is open for the petitioner to submit an undertaking as required and get back his performance guarantee.

If such an undertaking is furnished by the petitioner, the performance guarantee shall be returned within a period of 15 days from the date of submission of the bank guarantee.

The writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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