

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10710 of 2016

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M/s Ankuj Construction through it's Proprietor Sri Amit Kumar, S/O Late Beshlal Chaudhary office cum residence at Village and PO - Koath and PS -Dawath District - Rohtash.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Urban Development & Housing Department.
2. District Magistrate Sasaram cum Chair Person District Urban Development Agency DUDA Sasaram at Rohtash.
3. Executive Engineer District Urban Development Agency [DUDA] Sasaram at Rohtas.
4. Assistant Engineer District Urban Development Agency [DUDA] Sasaram at Rohtas.
5. Junior Engineer District Urban Development Agency [DUDA] Sasaram at Rohtas.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Diwakar Prasad Singh, Advocate
For the Resp. 3 to 5	:	Mr. Shambhu Nath, Advocate
For the State	:	Mr. Madanjeet Kumar, G.P. 20
		Mr. Rajeev Ranjan, A.C. to G.P. 20

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 13-09-2019

Heard learned counsel for the petitioner and learned counsel representing the State as also the District Urban Development Agency (DUDA), Sasaram.

Petitioner in the present case is seeking a writ in the nature of mandamus commanding the respondents to pay the admitted dues of the petitioner for which the petitioner was served with work order under different NIT



published by the respondent regarding the Scheme known as Mukhyamantri Nagar Vikas Yojana.

It is the case of the petitioner that the agreement for the work in question was entered into between the petitioner and the then Executive Engineer, District Urban Development Agency [in short 'DUDA'] Sasaram at Rohtas and thereafter the work was completed by the petitioner. In this regard, he has relied upon a letter no. 822 dated 12.12.2015 issued under the signature of Executive Engineer, DUDA.

It is further case of the petitioner that he has been paid almost 90% payment of the value of agreement no. 17/2013-14, agreement no. 3/2014-15 & agreement no. 6/2014-15, but for the other three agreements namely agreement no. 64/2014-15, agreement no. 59/2014-15 & agreement no. 52/2014-15, the petitioner has been paid only 50% of the contract amount and the rest of the payments are not being released. The petitioner has prayed for a direction to the respondents to pay the security deposit lying with the respondents in respect of



the completed work.

Learned counsel for the petitioner submits that all these works were allotted to the petitioner pursuant to the NITs published on 03.01.2014, 19.03.2014 & 17.10.2014 in which the petitioner participated and through E-Auction process the technical and financial bids of the petitioner were considered and then the petitioner was declared successful. He was issued work order and then the agreements were executed. The description of work orders and the agreements are duly provided in various paragraphs of the writ application. The petitioner has brought on record letter no. 822 dated 12.12.2015 issued under the signature of respondent no. 3. He has shown to this court from Annexure '2' to the writ application that serial no. 1, 27, 28, 59, 60 & 61 are the works which were awarded to the petitioner and it will appear from the description provided in Annexure '2' that all those works have been completed by the petitioner. Annexure '2' is a document which has been signed by the four officers of DUDA, Rohtas, Sasaram and two Junior



Engineer, Assistant Engineer and Executive Engineer. It is submitted that the fact that the petitioner has completed the work has not been denied by the respondents in their counter affidavit.

A counter affidavit has been filed on behalf of the Executive Engineer, DUDA, Sasaram in which he has admitted that some work orders under the Mukhyamantri Nagar Vikas Yojana were issued in favour of the petitioner by the then respondent no. 3 i.e. the Executive Engineer.

It is further stated that after getting knowledge of the issuance of fake tenders by the then Executive Engineer, DUDA, the District Magistrate, Rohtas wrote a letter no. 432 dated 06.11.2015 to the Executive Engineer, DUDA, this was done pursuant to the letter dated 05.10.2015 issued by the Principal Secretary, Urban Development and Housing Department, Government of Bihar to conduct an inquiry regarding tenders published during last three years under the DUDA, Sasaram.

It is pointed out that Three Men Committee



was constituted by the District Magistrate for verification of the work done in last three years by DUDA. It appears that simultaneously with the constitution of the Committee the District Magistrate directed for lodging of an F.I.R. against the then Executive Engineer and further payment against those works were stopped by the District Magistrate.

Learned counsel for the petitioner has contested the statement of the respondents that it was a fake tender. The petitioner has brought on record the tender document which were floated on the website www.eproc.bihar.gov.in as Annexure '5' and '9' to the reply of the petitioner. It is the submission of learned counsel for the petitioner that the word 'fake tender' has been used only ornamentally and to make out a case against the petitioner for denial of his legitimate claim.

It is submitted that there is no statement in the counter affidavit that the petitioner has not completed the work. No grievance whatsoever has been raised with regard to the quality of work and as such only by showing



that the then Executive Engineer had issued fake tenders the petitioner cannot be deprived of his outstanding payment.

It further appears that a supplementary counter affidavit has also been filed on behalf of the respondent no. 3 to 5. In the said counter affidavit also much emphasis has been given on the facts which are already taken note of hereinabove. The supplementary counter affidavit has brought on record a letter dated 05.10.2015 written by the Principal Secretary, Urban Development Department to the District Magistrate, Rohtas in which it is stated that the Information and Public Relation Department has submitted a report that the tenders issued were fake and the then Executive Engineer was involved in the matter.

It is submitted that a perusal of the letter as contained in Annexure 'F' to the supplementary counter affidavit would show that it nowhere refers the NITs with reference to which the work were allotted to this petitioner. It is a general kind of letter advising the



District Magistrate to get examined the tenders which have been published by DUDA, Rohtas during the last three years.

After the directions issued by this court, a counter affidavit has been filed on behalf of the DUDA through it's Executive Engineer. In it's counter affidavit once again the aforesaid facts have been repeated and the fact that F.I.R. has been lodged against the then Executive Engineer has been highlighted. It is submitted by learned counsel for the petitioner that this affidavit also nowhere discloses that the NIT under which the work were allotted to the petitioner have been specifically verified and have been found to be forged.

After imposition of a cost of Rs. 2000/- the State Urban Development Department has filed a counter affidavit. The counter affidavit of the department is no better than but have been stated in the counter affidavit of the aforesaid respondents. The departmental affidavit takes note of the Three Men Committee constituted by the District Magistrate vide letter no. 432 dated 06.11.2015.



The affidavit is although silent about the report of the Three Men Committee, but learned counsel for the DUDA has brought to the notice of this court letter bearing no. 613 dated 30th April, 2015 written by the Executive Engineer, DUDA Rohtas to Deputy Development Commissioner, Rohtas in which he has doubted the manner in which the E-Tender were sanctioned by the then Executive Engineer. He has also brought to the notice of this court the Three Men Committee's report as contained in Annexure '2' to the supplementary counter affidavit. The Three Men Committee in his report has submitted that they were not made available the documents relating to 62 schemes which included the scheme in which tenders were allegedly floated by the then Executive Engineer under the financial year 2013-14.

Learned counsel for the DUDA as well as the State has submitted before this court that in the nature of controversy it would only be just and proper that the matter be considered after looking into various materials



and evidences by the arbitration tribunal constituted under the Bihar Public Works Contract Arbitration Tribunal Act, 2008, in fact a stand to this effect has been taken in their counter affidavit that the writ application be not entertained and the petitioner be relegated to the alternative remedy of arbitration.

In the given facts and circumstances of the case after noticing the facts and the kind of controversy which have been raised before this court, the court deems it just and proper not to entertain the writ application and leave it open for the petitioner to seek his remedy, if so advised, before the Arbitration Tribunal constituted under the Bihar Public Works Contract Arbitration Tribunal Act, 2008.

The Writ Application stands disposed of with the aforesaid liberty to the petitioner.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.09.2019
Transmission Date	

