

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1566 of 2020

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M/s Dhaneshwar Nath Construction through its Partner, Rajiv Ranjan Singh, Gender-Male, aged about-48 years, Son of Andrika Prasad Singh, Resident of Sanjay Gandhi Nagar, Lalit Niketan Colony, Hanuman Nagar, P.S.-Kankarbagh, District and Town-Patna. Permanent Address-Village-Kistipur, Madhuban Road, Kosut, P.S.-Dhanarua, District and Town-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Vishweshraiya Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief, Rural Works Department, Vishweshraiya Bhawan, Bailey Road, Patna.
3. The Chief Engineer-3, Rural Works Department, Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Work Circle, Chhapra.
5. The Executive Engineer, Rural Works Department, Work Division, Sonapur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lal Babu Singh
For the Respondent/s : Mr. Ajay (GA5)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 18-02-2020

Heard the learned counsel for the petitioner and the State.

The petitioner, a construction company, through one of its partners, has approached this Court for setting aside the order dated 05.12.2019 passed by the Executive Engineer, Rural Works Department, Works Division, Sonapur, whereby the agreement with the petitioner for



construction and maintenance of a patch of road under NH-19 has been rescinded; as also against the order dated 26.12.2019, whereby the petitioner has been directed to deposit a further sum of Rs. 9,46,947/- after adjustment of earnest money and security deposit against 20 % of the amount of remaining work as per one of the clauses of the agreement.

The petitioner has further made a request for directing the concerned respondent to allow him to execute and complete the remaining work within a reasonable period of time after granting extension of time for completion of the project.

The orders impugned have been challenged on the ground that a rigid approach has been taken by the respondents in only referring to the clause of the agreement which has made the time of completion of project the essence of contract. The petitioner has definite reasons for not completing the work on scheduled time as the delay was beyond his control. The work could not be



completed because of water logging, which fact was clearly indicated to the concerned respondent, but such explanation has not at all been adverted to.

It has been submitted on behalf of the petitioner that an exceptionally harsh decision has been taken with respect to the petitioner even though he had commenced the work in right earnest and had tried to complete it within the scheduled time.

From the perusal of the records, it appears that the notice which was given to him was only with respect to the rescission of contract but the orders passed by the concerned Executive Engineer has well exceeded the aforesaid contemplated action in the notice, if the explanation of the petitioner be not considered favourably. In fact, from the orders impugned, it does not get reflected that the explanation of the petitioner has been considered.

The approach of the petitioner *prima facie* appears to be genuine in as much as a request has been made to



allow the petitioner to complete the work within a short period of time.

Since the explanation of the petitioner has not at all been adverted to and in the agreement, there is no clause for forfeiture of earnest money and security deposit or any other compulsory deposit, this Court deems it appropriate to direct for a re-look at the case of the petitioner by the Executive Engineer, Rural Works Department, Works Division, Sonapur (Respondent No. 5). The concerned respondent shall reassess / assay the explanation offered by the petitioner within a period of three weeks from the date of production/receipt of a copy of this order.

Till such time, there shall be no compulsion on the petitioner for depositing the amount of Rs. 9,46,947/-. If at all the claim of the petitioner is found to be tenable, necessary order shall be passed by the Respondent No. 3, extending time to the petitioner for completion of the work.



It is clarified that any such order shall be passed only on the satisfaction that the reason for delayed execution of work was not because of any fault on the part of the petitioner and that it could not have been avoided under any circumstance.

The writ petition stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	19.02.2020
Transmission Date	

