

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3963 of 2020

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M/s Khushee Construction through its Power of Attorney Holder, namely Shree Rajeev Kumar, aged about 32 years, (Male), Son of Virendra Singh, Resident of Village- Rampur Dumra, P.S. Maranchi, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief Cum Special Secretary Public Health Engineering Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Design Public Health Engineering Department, Govt. of Bihar, Patna.
5. The Chief Engineer (Zonal), Public Health Engineering Zone, Purnea, Bihar.
6. The Chief Engineer (Nationality), Public Health Engineering Department, Govt. of Bihar, Patna.
7. The Superintending Engineer, Public Health Engineering Circle, Saharsa, Bihar.
8. The Executive Engineer, Public Health Engineering Division, Saharsa, Bihar.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 4020 of 2020

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M/s Khushee Construction through its Power of Attorney Holder, namely Shree Rajeev Kumar, aged about 32 years, (Male), Son of Virendra Singh, Resident of Village- Rampur Dumra, P.S.- Maranchi, District- Patna.

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Versus

1. The State of Bihar through the Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief Cum Special Secretary Public Health Engineering Department, Govt. of Bihar, Patna
4. The Chief Engineer Design, Public Health Engineering Department, Govt. of Bihar, Patna
5. The Chief Engineer (Zonal) Public Health Engineering, Zone, Purnea, Bihar.
6. The Superintending Engineer Public Health Engineering, Circle, Purnia, Bihar.
7. The Executive Engineer Public Health Engineering Division, Purnia, Bihar.



... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 3963 of 2020)

For the Petitioner/s : Mr.P.K.Shahi, Sr. Adv with Mr.Vikas Kumar, Adv

For the Respondent/s : Mr.Anjani Kumar, Sr.Adv and A.A.G.

(In Civil Writ Jurisdiction Case No. 4020 of 2020)

For the Petitioner/s : Mr.P.K.Shahi, Sr. Adv with Mr.Vikas Kumar, Adv

For the Respondent/s : Mr.Anjani Kumar, Sr.Adv and A.A.G.

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAVJUDGMENT**

Date : 03-09-2020

Since both the writ applications, under Article 226 of the Constitution of India, have been brought by the same petitioner raising same questions of law to be adjudicated and the respondents have defended the impugned orders on common grounds, hence, both have been heard together and are being disposed off by this common judgment.

Facts of CWJC No.3963 of 2020.

2. The petitioner is a partnership firm engaged in the business of Govt. contract, registered as Class-I contractor. Respondent No.8, the Executive Engineer, PHED, Saharsa Division floated tenders on 15.06.2019. The technical bids of tenders were opened on 16.08.2019 and financial bid in July-August, 2019. Since the petitioner was the lowest bidder, its bid was accepted by the respondent No.8 and work order was issued in favour of the petitioner in between 19.09.2019 to 18.12.2019 for execution of different contracts, total 118 signed between the



parties. A list of contract between the parties are at Annexure-4 series.

3. The petitioner had submitted earnest money in the form of certificate of deposits in the post-office which was adjusted against the 2% performance security submitted at the time of agreements. In pursuance of the agreements aforesaid, the petitioner started execution of the work. Thereafter, the papers of post-office deposit were sent for verification and it was reported that the same were not genuine. The respondent No.8 informed to the petitioner about that and the petitioner submitted papers of fixed deposits in the IDBI Bank and substituted the same with the postal securities and respondent No.8 returned the postal securities to the petitioner and kept the deposits of IDBI Bank as part of the performance security money. The respondent No.8 got the Bank papers verified and the same were found genuine.

4. Thereafter, show cause notice was issued to the petitioner on 28.12.2019 and the reminder on 04.01.2020. In compliance of the aforesaid show cause, the petitioner submitted its reply on 07.01.2020. Thereafter, all the abovementioned 118 contracts were cancelled by the impugned order dated 21.01.2020 vide order No.4 contained in Memo No.221 dated 21.01.2020 at Annexure-1.



5. The contracts were cancelled by the respondent No.8 mainly on the ground that the petitioner had obtained the contract by producing false papers of postal deposits which was against the provisions contained in the scheme of tender and affidavit of the petitioner.

Facts of CWJC No.4020 of 2020.

6. The same petitioner had entered into 26 agreements, being the lowest bidder, with respondent No.7-the Executive Engineer, PHED, Purnea Division. Copies of the agreements are at Annexure-3 series. In this case also, the petitioner had deposited earnest money in the form of deposits in the same post-office at Mithapur Branch, Patna. Here also, the documents of postal deposit were not found genuine and the petitioner substituted the same with the term deposits document in the IDBI Bank which are at Annexure-4 series and the respondents accepted the substitution of the document before issuance of show cause notice to the petitioner on 10.01.2020. On consideration that the documents of the earnest money in the form of deposit in the post-office were not genuine, by the impugned order dated 22.01.2020 contained in Order No.9 and Memo No.398 dated 22.01.2020 at Annexure-1. All the Twenty Six agreements were cancelled by the respondent No.7.



7. Mr. P.K. Shahi, learned senior counsel for the petitioner submits that both the impugned orders have been passed in a mechanical manner without assigning any reason. As such, the impugned orders are bad in law. Learned senior counsel submits that the reasons cannot be supplanted by counter affidavit or supplementary counter affidavit. Moreover, the impugned orders would reveal that the same have been passed on the dictate of superior authority. As such, the same are not based on personal satisfaction of the competent authority and for this reason also, the impugned orders are not sustainable in law. Reliance have been placed on the case of **Mohinder Singh Gill and Anr. Vs. The Chief Election Commissioner, New Delhi and Ors.** , reported in **AIR 1978 SC 851** as well as **Commissioner of Police, Bombay Vs. Gordhandas Bhanji**, reported in **AIR 1952 SC 16**.

Learned senior counsel for the petitioner next contends that once the respondent authority allowed the petitioner to substitute the postal papers with the Bank papers and the Bank papers were sent by the respondent authorities for verification and were found genuine documents then the principle of estoppel by conduct was applicable against the respondents and the impugned orders have been passed in an arbitrary and caprice manner. According to learned senior counsel even if any lapse was there on



the part of the petitioner, the same was condoned by acceptance of subsequent document of security much prior to the issuance of show cause notice to the petitioner or cancellation of the contract.

Submission is that the substitution of the security papers were allowed by the respondent authority considering the bonafide of the petitioner wherein the petitioner stated that he had paid money to the postal agent-Mr. Ravi Kumar to get the same deposited in the post-office and to provide deposit receipt of the same. In fact Mr. Ravi Kumar played foul and caused loss to the petitioner. Hence, the petitioner was compelled to file Complaint Case No.120 of 2020 against Mr. Ravi Kumar. Petitioner had further submitted before the authority that the petitioner firm is a responsible and a reputed firm doing Govt. contract work since years having no complaint in the past.

8. Learned Additional Advocate General for the respondents contends that it is not necessary that the impugned orders should contain minutes detail of the show cause of the petitioner. The only requirement of law is that it must reveal that the same was passed after application of mind supported by material on the record. Therefore, on mere technicality, the impugned order cannot be faulted with.



His next contention is that it is not disputed that the papers of earnest money produced by the petitioner were not genuine. Hence, the contract was obtained by the petitioner by playing fraud and it is well settled that fraud vitiates every solemn act and as soon as the fraud was detected, the contracts were cancelled by the competent authorities in pursuance of the mandate of the Rules of tender. Once it is established that the fraud was played in obtaining the contract loss or no loss to the respondents or anyone is immaterial when wrongful gain to the petitioner is well established because if the forged documents of earnest money would not have been produced the tender in favour of the petitioner would have been declined.

Further contention is that jurisdiction of the Court under Article 226 of the Constitution of India, in the matter of contracts, is only to see whether there is any violation of natural justice. Learned A.A.G. placed reliance on the judgment in **Union of India and Ors. Vs. M. Bhaskaran**, reported in **1995 Supplementary (4) SCC 100**, **A. V. Papayya Sastry Vs. Govt. of A.P.**, reported in **2007 (2) PLJR (SC) 201** and on the Division Bench Judgment of this Court in **CWJC No.15799 of 2013** disposed off on 29.05.2020, **Manoj Kumar Vs. The Union of India and Ors.**



9. Thus the questions before the Court are:

(a) Whether the impugned orders suffer from non-assignment of reasons and as such are not sustainable in law?

(b) Whether the petitioner has obtained the contracts by playing fraud on respondent Nos.8 and 7 of respective writ petitions?

(c) Whether the principle of promissory estoppel by conduct is applicable in the facts and circumstances of this case against the respondents and the act of the respondent Nos.8 and 7 respectively suffers from arbitrariness?

10. Question No.(a):-It is well settled that when a public authority makes an order affecting the right and interest of others, the aggrieved person must have reasonable opportunity of hearing before the order is passed. Likewise the impugned order must reflect application of mind by the authority and brief reasons in support of the orders supported by material on the record. If the aggrieved party has raised certain issues for consideration before the authority concerned and the issues raised were likely to affect the consideration, the authorities were duty bound to consider those issues while passing the orders. In **Commissioner of Police,**



Bombay Vs. Gordhandas Bhanji, reported in **AIR 1952 SC 16**,

the Hon'ble Supreme Court observed in para-9 and 10 as follows:

9. *“An attempt was made by referring to the Commissioner’s affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”*

10. *“.....Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.”*

11. The aforesaid view was reiterated in **Mohinder Singh Gill and Anr. Vs. The Chief Election Commissioner, New Delhi and Ors.** , reported in **AIR 1978 SC 851**, para-8 whereof is being reproduced below:-

8. *“The second equally relevant matter is that when a statutory functionary makes an order based on*



certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought ,out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18):

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in Ms mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

12. English translation of the relevant portion of the impugned order which is subject matter of CWJC No.3963 of 2020 reads as follows:

“Office of the Executive Engineer

Public Health Division, Saharsa.

Office order No.4/Saharsa dated 21.01.2020.

**M/s Khushee Construction Village and Post-Rampur
Dumra, P.S.-Maranchi, Patna had deposited earnest money in**



respect of different tenders concerning different agreements. These passbooks were verified vide letter No.4519 dated 26.12.2019 from the concerned post office. These passbooks were verified by the office as well as departmental Head Office and were found not genuine. As such, it was found that the same was violation of the conditions of agreement bearing G.C.C.-Clause-14(vi). As such for cancelling the agreements and impounding the earnest money, the firm was show caused vide office letter No.4539 dated 28.12.2019. The firm submitted its reply vide letter No.0 dated 07.01.2020 which was examined and rejected and the matter was referred to the departmental Head Office, Patna for direction/guidelines for further action.

In the light of requests made to the Head Office by aforesaid letter, by letter No.95 dated 13.01.2020 and its corrigendum vide memo No.97 dated 13.01.2020, the Head Office directed for cancellation of the agreements and taking legal action. As a result in the light of directions in the letter of the Head office, the following agreements with M/s Khushee Construction Village and Post-Rampur Dumra, P.S.- Maranchi, Patna stands cancelled.”



English translation of the impugned order which is subject matter of CWJC No.4020 of 2020 reads as follows:

“Office of the Executive Engineer

Public Head Division, Purnea.

Office order No.09 dated 22.01.2020.

M/s Khushee Construction Village and Post-Rampur Dumra, P.S.-Maranchi, Patna had deposited different passbooks as earnest money in connection with different tenders relating to different agreements. The passbooks were verified vide office letter No.17 dated 04.01.2020 from the concerned post office and it was found that the same were not genuine. In that view of the matter, show cause notice was issued to the firm vide office letter No.148 dated 10.01.2020 informing that there is violation of the provisions of GCC-Clause-14 (vi). As such agreements are fit to be cancelled and the earnest money fit to be impounded. For submitting reply, three days time was allowed. However, till date of order dated 22.01.2020, the firm did not place his stand/explanation.

Departmental letter No.95 dated 13.01.2020 and corrigendum letter vide memo No.97 dated 13.01.2020 directed for cancellation of the agreements and for legal action. As a result in view of the direction contained in the



aforesaid letter, the following agreements with M/s Khushee Construction Village and Post-Rampur Dumra, P.S.- Maranchi, Patna stands cancelled.”

13. Thus it is evident that none of the aforesaid orders are speaking order giving reasons for the conclusion. Moreover, the impugned order which is subject matter of CWJC No.4020 of 2020 evidently shows that no reasonable opportunity of hearing (only 3 days time was given) was allowed to the petitioner before passing the impugned order. The record does not reveal that the show cause notice was ever served on the petitioner before due date. Therefore, the impugned order in CWJC No.4020 of 2020 was passed in violation of the principles of audi alteram partem .

In CWJC No.3963 of 2020, the petitioner had filed his reply dated 07.01.2020 to the show cause. A copy of the same is at Annexure-7. The following portion of Annexure-7 are worth noticing.

1. “ *That I am well reputed person and all my partners of the firm namely M/s Khushee Construction are also well reputed persons. That there is/was no such allegations against my firm on any early occasion. My firm has clean antecedent and only due to the reason, my firm has been selected for the present work.*



2. That my firm and its partners used to invest money in the post office and various other banking institutions. In the post office we used to invest money through a recognized and registered agent of post office namely Ravi Kumar. All such term deposits have been invested through the recognized agent of the post office who used to collect money from our office at Patna and used to provide certificates. He is very much supportive and punctual in his work and acquired faith in our mind and heard.

3. That as soon as the firm has got information about such foul play on the part of the agent namely Ravi Kumar, as a result which, our entire work, experience and prestige are at stake, I have immediately filed a criminal case against him of cheating, criminal breach of trust, fraud etc on 03.01.2020, as court opened in Jan.2020 after winter vacation. The case No. has been numbered as Cr.Case Complaint No. (P)120/2020 (Khushee Construction Vs Ravi Kumar & Others) U/Ss 420,406,409,467,120B,504 of I.P.C.

The photocopy of the acknowledgment receipt granted by the Court of learned C.J.M., Patna is being annexed herewith this letter.

5. That it is further mentioned that just after getting knowledge of foul play committed with my firm by the postal agent, the firm has deposited the fresh Security Deposit and performance guarantee in the form of fixed deposits issued by Industrial &



Development Bank of India (hereinafter called as IDBI). It has further been mentioned that the said fixed deposits of IDBI were duly accepted by the respective Executive Engineers and acknowledged by the department also.

6. That the action on my firm has been done in a situation where works are going on towards all the agreement at war footing due to the reason that the entire works have to be completed within six months only, as all the assigned works allotted to me are under the “Mukhyamantri Nischay Yojna(quality effected)” Scheme, the dream project of the Govt. of Bihar.

8. That the present situation has arisen not due to the action of the firm rather only due to fraud and foul play done on the part of recognized agent of postal department against whom the firm has already sued in the process of law by way of instituting criminal case against him.”

14. Evidently, the petitioner had raised before the authority, who passed the impugned order, that the foul was played by the postal agent Mr.Ravi Kumar without knowledge of the petitioner and soon after detection of the foul, the petitioner replaced the postal papers with fresh security deposits, which was accepted by the authority, who passed the impugned order. Petitioner had further stated about his clean reputation of past 11 years working with the same respondent. In the aforesaid circumstance, the



authority, who passed the impugned order, was bound to consider and assign reasons that even after acceptance of subsequent security deposit and return of non-genuine postal papers to the petitioner, the agreements were cancelled when the work was on the half way.

15. The impugned order does not show that the authority had passed the impugned order on application of its own mind rather the impugned order was passed on the dictate of the superior authority. Hence, the impugned orders are not sustainable in law for the aforesaid reasons.

16. Question No.(b):-Learned senior counsel for the respondent contends that Clause 33.1 of “Standard Bidding Document” stipulates that the employer will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practice in competing for the contract in question. A copy of the relevant portion of the “Standard Bidding Document” is annexed with the supplementary counter affidavit filed in CWJC No.3963 of 2020.

It is worth to mention here that there is no case of indulgence of the petitioner in “corrupt practices” in obtaining the contract. So far allegation of “fraudulent practice” is concerned, the respondent No.7 sworn counter affidavit in CWJC No.4020 of



2020 asserting that since the petitioner submitted term deposit passbook of post-office which was found to be not genuine. Hence, the act of the petitioner was of fraud. However, the respondent No.7 nowhere denied the claim of the petitioner in the writ application that as soon as the fact came to the notice of the petitioner that postal agent has done some mischief in supplying false paper of deposit. The petitioner lodged a criminal case against the postal agent and side by side got the term deposit document of the post-office substituted by fixed deposit receipts of IDBI Bank. The petitioner further asserted that respondent No.7 returned the postal papers to the petitioner while substituting the same with bank deposits and on the date of alleged show cause notice, the postal papers were not with the respondents and in that view of the matter, submission of learned counsel for the petitioner would be that even if there was some lapses on the part of the petitioner, the same was condoned by the respondent authority, who passed the impugned order, by accepting fresh security deposit.

17. In a catena of decisions, it has been settled that fraud vitiates every solemn act. It is also settled that the party pleadings fraud must prove it.



In a leading English case **Derry and Ors. V. Peek (1886-90) All ER Page-1**, it was held that “*fraud*” in public law is not the same as “*fraud*” in private law. Nor can the ingredients which establish “*fraud*” in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in **Khawaja Vs. Secretary of State for Home Department (1983)1 All ER Page-765**, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation of statutory law. “*Fraud*” in relation to statute must be a colourable transaction to evade the provisions of a statute.”

18. The cases relied upon by learned senior counsel for the respondents and referred above pertains to the arena of fraud under administrative law and not in commercial transaction. In **Union of India and Ors. Vs. M. Bhaskaran**, employment in railway service was obtained by producing forged credentials. Likewise in **A. V. Papayya Sastry Vs. Govt. of A.P.** Supra, the fraud was played in obtaining judicial order. Before the Hon’ble Division Bench of the Patna High Court in CWJC No.15799 of 2013 relied upon by learned senior counsel for the respondents, the fact was that the service of the petitioner was terminated allegedly for playing fraud.



19. Ours is a case of commercial contract, which would be governed by the definition of “fraud” in the Contract Act, 1872 and consequences thereof as provided under the Act. Section 17 of the Contract Act, 1872 defines fraud as follows:

17. **“Fraud” defined.**—*“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent1, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:*

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—*Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence, is, in itself, equivalent to speech.”*

20. In **Shrist Dhawan V. Shaw Bros.**, reported in (1992)1 SCC 534, the Hon’ble Apex Court had occasion to consider the



scope and applicability of Section 17 of the Act and held in para-20 of the judgment as follows:

“....Section 17 of the Contract Act defines fraud as an act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false.”

21. Thus the requirement to prove the allegation of fraud is that there must be intention to deceive. Intention cannot be attributed unless there is material to establish that the petitioner had knowledge that the documents produced by him were false documents. Petitioner categorically denied and asserted that it was the postal agent, who had deceived the petitioner by providing false document of term deposit and the petitioner relied upon him because the petitioner was in business term with the said agent since long. However, as soon as the petitioner was noticed he lodged the criminal case against the agent. The aforesaid fact has not been denied by the respondents nor the respondents have pleaded that the petitioner was in connivance with the postal agent in obtaining the false document.



22. Therefore, in my view, the petitioner cannot be alleged to be indulged in fraudulent act. Any such stipulation in any agreement or otherwise contrary to the aforesaid mandates of the Contract Act would be non-est to that extent.

23. Assuming for the argument sake, that the act of the petitioner was fraudulent and misrepresentative. The effect of the nature of the alleged fraud or misrepresentation in the present case would be covered by exception to Section 19 of the Contract Act. Section 19 reads as follows:

19. “ ***Voidability of agreements without free consent.***- when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception —If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party



on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.”

24. In the case of **Shri Krishan Vs. Kurukshetra University**, reported in **AIR 1976 SC 376**, the Hon'ble Apex Court in para-7 of the judgment observed; “it is well settled that when a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It is neither a case of suggestio falsi or suppressio veri.”

25. Evidently, the document the postal deposits of earnest money produced by the petitioner alongwith the tender papers were not verified by the respondent authorities before accepting the tender. After acceptance of the tender of the petitioner, several agreements were signed between the parties and the petitioner deposited performance security which included the aforesaid earnest money. The record reveals that the last work agreement was signed between the parties on 14.11.2019 and the petitioner started work in pursuance of the agreements and the respondent did not apply their diligence to verify the documents of performance security money which included the documents of earnest money. The exercise was done when the work was in midway progress. Therefore, in view of the exception to Section 19 of the Contract Act, the contract is not voidable and the



respondents could not have annulled it. Accordingly, it is held that the respondents have failed to prove that the petitioner obtained the contract by practicing fraud or representation of the nature which would justify cancellation of the agreements. As such the act of the respondents has infringed the valuable legal right of the petitioner in illegally loosing the contract work.

26. Question No.(c):- In the case of **Manuelsons Hotels Private Limited Vs. State of Kerala & Ors**, reported in (2016)6 SCC 766, the Hon'ble Apex Court held that “ *it is not the law that there can be no promissory estoppel against the Govt. in exercise of its Sovereign, Governmental, Public and Executive powers. That would be in complete contradiction of the decisions of the Hon'ble Supreme Court.*”

Thus the doctrine of promissory estoppel is applicable against the Government actions as well.

27. Para-19 and 20 of the aforesaid judgment are being noticed below for better appreciation of this question:

19. “ *In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission,*



should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court reported in The Commonwealth of Australia v. Verwayen, 170 C.L.R. 394, by Deane,J. in the following words:

1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.

2. The central principle of the doctrine is that the law will not permit an unconscionable - or, more accurately, unconscientious - departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.



3. *Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.*

4. *The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party:*

(a) has induced the assumption by express or implied representation;

(b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;

(c) has exercised against the other party rights which would exist only if the assumption were correct;

(d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.

Ultimately, however, the question whether departure from the assumption would be unconscionable must



be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories



(e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to



*do justice between the parties should be framed.”
(emphasis supplied)*

20. *“The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference – under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel – one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party.”*

28. It is evident that the estoppel by conduct includes act or omission on the part of one party giving assumption to the other party to act taking the omission as employed acceptance.



29. The facts of this case would reveal that the petitioner submitted unknowingly false document of deposit in the post-office alongwith tender papers as earnest money. The respondents did have verify the genuineness of the postal papers before acceptance of the lowest bid of the petitioner. The inaction/omission on the part of the respondents and issuance of work order by the respondents in pursuance of said tender in favour of the petitioner as well as communication to the petitioner regarding acceptance of tender would amount to conduct of the respondents giving reasonable belief to the petitioner that his papers were in order. After acceptance of the tender, stage of deposit of security money comes in view of the “Standard Bidding Documents”. A copy at Annexure-A to the supplementary counter affidavit. Clause 31.1 provides that within 15 days of receipt of letter of acceptance, the successful bidder shall deliver to the employer a performance security for an amount equivalent to 2% of the contract price including earnest money plus additional security for unbalanced bids in accordance with Clause 29.5 of the ITB and the provisions of Bihar Finance Rules. In pursuance of the aforesaid provision, the petitioner submitted the documents of earnest money and additional security papers as performance security. The respondents did not verify the same at this stage also



rather signed about 144 agreements with the petitioner till November, 2019. Thereafter, the petitioner started work and only on 26.12.2019, the respondents sent the postal papers for verification and on the same day, post-office reported that the documents were false one. The aforesaid facts would be evident from Annexure-R/2 series of the counter affidavit. Then the respondents verbally communicated to the petitioner and petitioner soon thereafter replaced the post-office papers with the fixed deposits in the IDBI Bank and the respondents returned the postal papers to the petitioner before issuance of show cause to the petitioner or before passing the impugned order. The aforesaid conduct of the respondents clearly makes out a case of application of estoppel by conduct against the respondents inasmuch as inaction/omission of the respondents at different stages made the petitioner to assume about correctness of everything and consent of the respondents to proceed with the work. In the aforesaid circumstance, cancellation of the agreements unilaterally by the respondents was arbitrary one affecting the legal right of the petitioner to proceed with the performance of contract.

30. Accordingly, both the impugned orders aforesaid are hereby quashed and the writ applications are allowed.



31. All the referred contracts between the parties shall be treated as valid contract and due execution of the same by the parties shall be ensured according to law.

32. I.A. No.1 of 2020 and I.A. No.02 of 2020 stand disposed off as infructuous after this judgment.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	AFR
CAV DATE	28.08.2020
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