

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5671 of 2020

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Rajesh Kumar, (Male) aged about 48 years Son of Sri Narendra Kumar Pandey, Resident of Gupta Market, Near Alpana Market, Patliputra Colony, P.S.- Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. The Engineer in Chief Public Health Engineering Department, Government of Bihar, Patna.
3. The Chief Engineer (Design), Public Health Engineering Department, Government of Bihar, Patna.
4. The Regional Chief Engineer Public Health Engineering Department, Government of Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle, Motihari.
6. The Executive Engineer Public Health Engineering Division, Bettiah.
7. Dureka Developers Private Limited through its Managing Director, having its office at 5 Tulshi Charan Mitra Garden Lane, P.S.- Shibpur, Howrah (West Bengal).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shekhar Singh, Advocate
For the State : Mr. Gyan Prakash Ojha, GA 7

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 01-07-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.



2. Heard Mr. Shekhar Singh, learned counsel for the petitioner and Mr. Gyan Prakash Ojha, learned GA 7 for the State.

3. The petitioner has moved the Court for the following reliefs:

“a) For quashing of the office order contained in Memo no. 105 dated 24.03.2020 issued under the signature of the Executive Engineer, Public Health Engineering Division, Bettiah communicated through email dated 12.05.2020 whereby the contract relating to Tender/Agreement bearing no. SBD-04/2016-17 relating to “Harsari Village Water Supply Scheme” has been rescinded.

b) For quashing and cancellation of entire Tender Process relating to Very Short E-Retender NIT-26/2019-20 so far it relates to group no. 5 of it issued on 04.03.2020 which has been issued to finish the work which was subject matter of SBD-04/2016-17.

c) Alternatively the petitioner prays for a direction to the concerned respondents to refund/return of the security deposits made by the petitioner in relation to Agreement bearing no. SBD-04/2016-17 and other financial benefits.

d) For any other relief/reliefs for which the petitioner is entitled.”

4. On 20.05.2020, the Court while granting time to the State had directed for a specific reply in the following terms which is recorded in paragraph no. 4 of the order:

“4. Upon hearing learned counsel for the parties, the Court would require learned counsel for the State to respond, inter alia, to the petitioner’s specific contention that despite the contract/agreement in favour of the petitioner being rescinded only on 24.03.2020, how with regard to part of the work, which was the subject-matter of



the agreement with the petitioner, fresh tender was issued by the authority on 04.03.2020 itself.”

5. Thereafter, when the matter was taken up on 17.06.2020, the Court, under the circumstances, had recorded the following:

“3. At the outset, learned GA 7 submitted that he has filed counter affidavit in terms of the earlier order dated 20.05.2020 today.

4. Learned counsel for the petitioner submitted that he be granted time to file reply. However, according to him, specific query of the Court, as contained in paragraph no. 4 of the order dated 20.05.2020, has not been answered.

5. Learned counsel for the State submitted that the query of the Court has been answered. Learned counsel further submitted that the respondent no. 7 has been served through respondent no. 6. However, the Court does not find any representation on its behalf.”

6. Today, when the matter was taken up, the Court called upon learned counsel for the State to show the portion of the counter affidavit filed on behalf of the authorities where the specific query of the Court had been answered, he was unable to do so.

7. At this juncture, when the Court put a specific query to learned counsel for the State as to whether the fresh tender notice issued by the authorities on 04.03.2020, included part of the work which was given to the petitioner, he submitted that the same was correct.



8. Learned counsel for the State submitted that the petitioner had not performed his obligation under the contract/agreement as he had not completed the work within time and further that he was raising frivolous issues.

9. Learned counsel for the petitioner submitted that the contract/agreement in his favour was rescinded only on 24.03.2020, whereas tender notice had already been issued twenty days prior to that, on 04.03.2020 itself.

10. The aforesaid facts being admitted, the Court finds that the authorities have acted in an arbitrary manner in issuing fresh tender notice, for part of the work which was allotted to the petitioner.

11. At this stage, learned counsel for the petitioner drew the attention of the Court to the alternate relief claimed i.e., of return of his security deposit lying with the authorities amounting to Rs. 6,04,304/-. It was submitted that the same would be by way of full and final settlement of the claim of the petitioner and the authorities may proceed with getting the work done from any other person.

12. On a response sought by the Court from learned counsel for the State with regard to such offer, upon instructions, he submitted that the authorities would be amenable to return of



such amount of the petitioner lying with them in the larger public interest and for finally concluding the issue between the parties.

13. Having regard to the aforesaid, the Court is not required to go into the merits of the matter. When the petitioner is pressing his alternative prayer and the State is agreeable to the same being granted, the writ petition stands disposed off with a direction to the respondent no. 6 to ensure that the amount of Rs. Rs. 6,04,304/-, lying with them by way of NAC and cash, be returned to the petitioner within three weeks from the date of the petitioner appearing before the respondent no. 6.

14. The Court would observe that now, no further claim of the petitioner remaining with regard to the contract/agreement in question, matters between the parties stand concluded and the authorities are free to move ahead with getting the remaining work done, in accordance with law.

(Ahsanuddin Amanullah, J.)

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