

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6378 of 2020

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Bharti Waters Pvt. Ltd. having its registered office at M-4 B, Aradhana Bhawan, Azadpur Commercial Complex, P.S. - Adarsh Nagar, District – Delhi – 110033, through its General Manager namely Kunal Kumar, aged about 30 years, (Male), Son of Shri B. D. Sharma

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Vikash Kumar, Advocate
For the Respondent	:	Mr. Sunil Kumar Mandal, SC-3

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

04. 24.08.2020

Heard Mr. P. K. Shahi, learned senior Advocate



for the petitioner and Mr. Sunil Kumar Mandal, learned Standing Counsel No. 3.

The agreement with the petitioner / company for execution and carrying out of Water Supply Schemes under the Mukhya Mantri Nishchay Yojana under the Public Health Division, Katihar has been cancelled and security money has been forfeited by order dated 15.04.2020 by the order of Executive Engineer, Public Health Division, Katihar on the ground of work not having been completed within the specified time despite two extensions of time having been given to the petitioner. The prayer is to set aside the order and allow the petitioner to complete the work under the agreement and make payments to him for the work done.

Pursuant to an advertisement issued on 05.02.2018 by the Public Health Division, Katihar for the aforesaid work, the petitioner / company applied for the same for group nos. 1 to 75 and was declared successful. The work order also was issued on



31.07.2018 stipulating that the work ought to be completed within a period of nine months.

Mr. Shahi contends that because of the hindrance in the execution of work in the nature of non-cooperation from public functionaries, intervening parliamentary election, rainy season etc., it was not feasible to complete the work within the stipulated period. As such, a representation was made to the concerned authority by the petitioner / company for extending the time limit for concluding the work.

It was also urged on behalf of the petitioner / company that even all the sites where the work had to be executed, were not handed over. On these grounds, an extension of time was sought which was granted also till 30th of December, 2019. However, while granting such extension of time, it was clarified that for the sites which were made available to the company, such extension would be with liquidated damages and there shall not be any liquidated damage in case of such sites



which were not provided to the petitioner / company. A second extension also was granted on the asking of the petitioner / company up to 15th of February, 2020.

The learned senior counsel for the petitioner has brought on record the dates, on which sites were allotted to the petitioner / company.

In the meantime, there was an outbreak of Covid-19 and in view of the pandemic worldwide, there was a complete lockdown from 22nd of March, 2020. A further request for time was therefore made but that was not heeded to.

It has then been argued that without noticing the petitioner regarding termination / rescission of the contract, the same was done by the order impugned.

It has also been urged on behalf of the petitioner / company that before doing so, no measurement of the work done by the petitioner / company was made and in that event, it was absolutely improper for the authorities to have directed for



forfeiture of the security money of the petitioner / company.

As opposed to the aforesaid contentions raised on behalf of the petitioner / company, Mr. Sunil Kumar Mandal, learned Standing Counsel No. 3 has stated that the completion date for the work allotted to the petitioner was 30th of April, 2019. Except for four sites, all other sites were provided to the petitioner, of course on different dates.

It has been submitted that notwithstanding the fact that the part of the responsibility which had to be undertaken by the respondents had been fulfilled, the petitioner kept on making frivolous excuses for non-completion of the work on time and kept on insisting for extension after extension.

It has also been submitted that when the first extension was granted to the petitioner with the condition of liquidated damages for the sites which had already been provided to the petitioner, the same was



accepted by them without any caveat. The assessment of the respondents was that the work progress was almost negligible and therefore the agreement had been rescinded.

The aforesaid contentions of Mr. Mandal has been sought to be negated by Mr. Shahi through his rejoinder petition in which he has stated that in many communications between the petitioner and the respondents, the aspect of the hindrance about which reference has been made in the writ petition, stood accepted by the respondent authorities.

It was also brought to the notice of the Court that under the terms of agreement, a procedure was delineated for rescinding the contract which mandated that in case of unsatisfactory work, the petitioner would be put to notice and would be asked to complete the work or reconstruct the work and if it were not done within seven days of such notice, the agreement shall be rescinded. Even otherwise, the aforesaid clause under



the agreement specified that before termination / rescission of the contract / agreement, the petitioner ought to have been told the reasons for the same and his explanations, if at all offered, was mandatorily to be considered.

The learned senior counsel for the petitioner submits that through e-mail, the petitioner was made to know that process is afoot for initiation of a fresh tender and that the petitioner was made to understand that some representative should make himself available for the measurement. This decision for taking measurement was actually arrived at after a decision for rescission of contract with the petitioner / company.

On point of law, the learned senior counsel for the petitioner harps on the requirement of notice before rescission of contract and conversely, Mr. Mandal insists that in such kind of repudiatory clauses in the agreement, mere procedural formalities should not be insisted upon when the quantum of work done by the



petitioner is almost negligible, causing delays in the conclusion of the work.

In any view of the matter, the filtrate of the arguments indicate that the petitioner / company has not been put to notice for the causes of delay and non-completion of the work within the stipulated period.

Mr. Shahi has informed this Court that with respect to work under the same advertisement in the same Division, i.e., Katihar Division, the petitioner was subjected to same kind of order of rescission of contract, which was challenged before this Court vide C.W.J.C. No. 6668 of 2020. In the aforesaid case, the documents could not be uploaded, and therefore while adjourning the matter to a later date, the concerned Bench directed that if at all a process of initiating a fresh tender for the left over work is initiated, the process may go on but before the selection of any company for carrying out the unfinished work, permission of the Court be obtained.

As a sequel to the aforesaid order, Mr. Shahi



contends and is ready to swear an affidavit to that effect that there has not been any finalization of contract with any third party for completing the unfinished work of the petitioner / company.

Under such circumstances, this Court is of the view that the petitioner ought to have been noticed and his explanations evaluated for taking a final decision; more so when a decision has been taken to forfeit the security deposit. Merely because an extension of time was accepted by the petitioner with the liquidated damages clause without any caveat, that does not necessarily mean that the requirement of notice for final termination / rescission of the contract has been waived by the petitioner / company.

At this stage, Mr. Shahi submits that even with respect to liquidated damages at the time of extension, a protest was registered by the petitioner.

In the absence of proper measurement of work for whatever reason, any assessment of the respondents



of the quantum of work left unfinished by the petitioner / company would be based on practically no empirical fact.

Those factors coalesce into a situation where a contract under which work was started by the petitioner was made to remain inchoate / incomplete and the agreement has been rescinded.

It would only be fair if the petitioner be given an opportunity of explaining his cause for non-completion of the work within the stipulated time (extended time) and evaluating such explanation for taking a final decision in the matter. While observing this, the Court has taken note of the fact that the process of finalizing the tender with a third party for unfinished work has not yet been concluded.

The Court also takes note of the submission raised on behalf of the petitioner / company that the petitioner, if allowed to continue with the unfinished work, would finish the work within the time which would be stipulated by the respondents.



In that event, this alternative course would incur lesser expenses on the Exchequer.

The petitioner therefore is directed to submit his explanation afresh to the Executive Engineer, Public Health Division, Katihar within a period of three weeks, which shall be received by the concerned respondent (Respondent No. 8), who shall evaluate such explanation in proper perspective and shall pass an order in speaking terms, which shall be communicated to the petitioner. This exercise shall be completed within a period of two weeks from the date of receipt of such explanation by the petitioner. It is expected that before the same is done, the process of finalizing the contract / agreement with any third party for the unfinished work shall not be taken. Any further delay on the part of the petitioner to furnish his explanation or on the part of the concerned respondent in passing a final order on such explanation shall be viewed adversely as it would affect the timely completion of a public work which would otherwise



benefit the people of this State.

With the aforesaid direction / observation, the
writ petition stands disposed off.

(Ashutosh Kumar, J)

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