

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7130 of 2020

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Kashish Developers Limited Registered office at- 87 Old AG Colony, Kadru, Ranchi, Jharkhand- 834002, Local Address at- 201, Kamla Sadan Apartment, Punai Chak, District- Patna, through its Director Mukesh Kumar, aged about 45 years, Gender- Male, Son of Sri Mukut Prasad Rao, Resident of 171, Mushahari, Bijbaniya, P.S.- Lauriya West Champaran, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary cum Commissioner, Building Construction Department, Government of Bihar, Patna.
2. The Engineer in Chief cum Additional Commissioner cum Special Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Chief Engineer (South), Building Construction Department, Government of Bihar, Patna.
4. The Executive Engineer, Building Division Gaya, Building Construction Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K.Sahi, Sr. Adv. Mr. Ranjeet Kumar, Adv.
For the Respondent/s	:	Mr. Amit Prakash, GA-13

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 07-08-2020

The present writ petition has been filed seeking the following reliefs:-

“(i). For setting aside the office order contained in Memo No. 1279 dated 26.06.2020 issued under the signature of Executive Engineer, Building Division Gaya,



Building Construction Department, Bihar, Patna whereby and whereunder respondent authority rescinded the agreement bearing Agreement No. 13 SBD 2015/16 for “construction of Administrative Training Institute and Bihar Rural Development Institute at Gaya including electrification” in terms of SBD conditions without issuing any show cause notice before rescindment inspite of the fact that the respondent authorities himself granted time till 18.06.2020 to complete the most part of the work but in the meantime due to outbreak of Covid 19 Pandemic the Government of India as well as Government of Bihar declared complete lockdown since 23rd March, 2020 till 5th June, 2020 and as such no work could be carried out during the lockdown period and even after lockdown it took some time to resume the work smoothly.

(ii) The petitioner further prays that after setting aside the aforementioned order of



termination of agreement, the respondent authorities be directed to grant 6 months time to complete the balance work as the whatever delay occurred in execution of the work in question was beyond the control of the petitioner or due to lapses / latches on the part of respondents itself and the last four months time expired in the shut down due to Covid 19 Pandemic.”

2. The brief facts of the case, according to the petitioner, are that a fresh NIT bearing No. 17 / 2014-15 was published on 26.03.2015 by the respondent department for “Construction of remaining work of Administrative Training Institute and Bihar Rural Development Institute at Gaya including electrification”, which was finally awarded to the petitioner company. A letter of acceptance was granted vide Memo No. 685 dated 04.06.2015, an agreement in this regard was executed on 09.06.2015, in between Kashish Developers Limited (petitioner) and the Executive Engineer, Building Division Gaya, Building



Construction Department, vide Agreement No. SBD 13 of 2015-16 and on the same day a work order was issued vide letter no. 713 dated 09.06.2015. The petitioner was then directed to proceed with the work vide Letter No. 719 dated 10.06.2015. The petitioner company had then vide its letter dated 13.06.2015, requested the respondents executive engineer to provide certain documents. It is the case of the petitioner that even after termination of the ex-agency from the work in question and the same being awarded to the petitioner, the representatives of ex-agency were present at the construction site and had tried their level best to create hindrance and ensure that the work could not be started by the petitioner. The ex-agency is stated to have also refused to remove its plant and machinery, construction materials and the security guards from the construction site. The petitioner is stated to have requested the Executive Engineer, Building Construction Division Gaya, for resolution of these problems and to make the construction site free from hindrances, vide



letters dated 13.06.2015, 13.06.2015 and 20.06.2015. In spite of all the hindrances, the work of cleaning and construction of structures were started by the petitioner but suddenly on 02.07.2015, an office order dated 2.7.2015 was served upon the petitioner by the Executive Engineer, Building Construction Division Gaya, directing the petitioner to stop the construction work, in compliance of the order dated 29.4.2015, passed by the Hon'ble Patna High Court in CWJC No. 6745 of 2015, in the case of M/s Remky Infrastructures Limited Vs. The State of Bihar and others. The petitioner company is stated to have not at all been aware about pendency of the aforementioned writ petition bearing CWJC No. 6745 of 2015, and therefore, had already arranged adequate quantity of construction material, plant and equipment, manpower etc. at the construction site, thus it sustained additional financial burden because of the sudden stay. A letter in this regard is stated to have been written by the petitioner to the Principal Secretary, Building Construction



Department, Bihar, Patna on 21.09.2015. Subsequently, the petitioner had filed an interlocutory application bearing I.A. No. 6184 of 2015 in the aforesaid writ petition bearing CWJC No. 6745 of 2015 for its impleadment as party respondent, which was allowed. The said writ application filed by M/s Remky Infrastructure Ltd. was allowed vide judgment dated 07.10.2015, passed by the Hon'ble Patna High Court and the order of termination of contract along with other penal action, qua M/s Remky Infrastructure Ltd. was set aside, apart from the agreement entered into with the petitioner company being declared a nullity. The State of Bihar and the petitioner herein had then challenged the aforesaid judgment dated 07.10.2015 by filing an appeal bearing L.P.A. No. 1192 of 2016 and L.P.A. No. 550 of 2016 respectively, which were heard by the Ld. Division Bench of this Court and the Hon'ble Court vide order dated 01.12.2016 had granted stay of the impugned judgment dated 07.10.2015 as also had granted liberty to the State to proceed with the



contract awarded to the petitioner herein. The aforesaid appeals bearing L.P.A. No. 1192 of 2016 and L.P.A. No. 550 of 2016 were disposed of vide order dated 04.12.2017, passed by the Ld. Division Bench, with a direction to the competent authority to release funds in favour of the petitioner herein so that the contract is executed and the institution becomes functional at the shortest possible time. Nonetheless, the respondent authorities delayed payment of several crore of rupees of the petitioner company. The petitioner had then written a request letter dated 07.12.2016 to the Chief Engineer (South), Building Construction Department, Bihar to allow it to commence the work. Thereafter, the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Building Construction Department, Bihar, vide letter no. 12581 (Hk) dated 28.12.2016, had directed the Executive Engineer, Building Division, Gaya, to issue a letter to the petitioner to start the Construction work, whereafter the Executive Engineer, Building Division Gaya, vide letter no. 01



dated 02.01.2017, allowed the petitioner company to start the work. It has been stated by the petitioner that the expenses incurred for making available the preliminary construction materials, plant and machinery and deployment of human resources at the site to commence the said construction work was around Rs. 4.00 crores approx..

3. It is the further case of the petitioner that despite several reminders issued to the previous contractor vide letters dated 09.06.2015, 13.12.2016 and 22.12.2016, the site was not vacated up to 1st March, 2017. In fact, the previous contractor had also failed to clear the electricity bills resulting in delay in the petitioner firm getting a new electricity connection. Moreover, funds were belatedly made available to the petitioner firm after five months of the commencement of work and the first running bill was paid only on 30.05.2017, resulting in the petitioner company utilizing its own fund for executing the contract in question. The respondents had also delayed in



release of the mobilizing advance and the same was made available after a delay of about 12 months from the date of the commencement of the work. The petitioner has also alleged that undue delay has been made in making payment of the outstanding dues of the petitioner firm for the work completed by it. The respondent authorities, without considering the facts stated by the petitioner in its letter regarding delay being caused in execution of the contract in question and without taking into account the fact that a sum of Rs. 15.00 crore approximately was outstanding for payment, had issued a show cause notice dated 27.11.2018 to the petitioner company regarding debarment, whereafter the petitioner had submitted a detailed reply dated 29.11.2018, highlighting the aforesaid facts, nonetheless, the Executive Engineer, Building Division, Building Construction Department, Bihar, Patna, by an order dated 17.12.2018, had debarred the petitioner from participating in future contracts, which was then challenged by the petitioner by filing a writ



petition before this Court bearing C.W.J.C. No. 318 of 2019 and this Court, by an order dated 11.01.2019 passed in the aforesaid writ petition, had set aside the order of debarment and had further observed as follows:-

“It is not in dispute that the reply dated 29.11.2018 (Annexure-28) was submitted by the petitioner with the respondent authorities on 30.11.2018 but the same has not been considered as is apparent from the debarment order (Annexure-1). In the opinion of this Court, non-consideration of the reply of the petitioner alone is a sufficient ground to hold and declare that Annexure-‘1’ suffers from an inherent defect and is in violation of principles of natural justice. Annexure-‘1’ is, the petitioner, consider the same with the materials available on record and take an appropriate decision afresh thereon. This Court has been informed that the petitioner has already completed 70% of



the work and is ready to complete the entire work by 31.05.2019 subject to the respondents making available the drawings which are yet not made available to the petitioner and consideration of the running bills and payment thereof which are still pending. The Court thinks it just and proper to observe that the offer made by the petitioner is required to be considered by the authority concerned in the light of materials available and a decision in that respect be also taken at the earliest so that in case the petitioner company is given an opportunity by extending the time they can complete the ongoing work."

Thereafter, the respondents had again passed a fresh order dated 21.02.2019, again debarring the petitioner company without considering the reply of the petitioner company dated 29.11.2018, hence, the same was again challenged by the petitioner company by filing a writ petition bearing



C.W.J.C. No. 3568 of 2019 and this Court had granted stay of the said debarment order vide order dated 22.02.2019 passed in the aforesaid writ petition.

4. In nutshell, the case of the petitioner is that an agreement was executed on 09.06.2015, whereafter vide memo dated 10.06.2015, the petitioner was directed to proceed with the work and the completion period of the work in question was fixed as 24 months, however, in the meantime, a writ petition bearing C.W.J.C. No. 6745 of 2015 was filed by the earlier contractor and in compliance of the order of this Court dated 29.04.2015, the respondent department had directed the petitioner to stop execution of the work vide letter dated 02.07.2015 and the said litigation had travelled up to the appellate court whereafter, finally on 02.01.2017, fresh work order was issued to the petitioner and it was directed to proceed with the work as per the agreement, consequently the work was required to be completed on or before 02.01.2019. Since the time



period for completion of work was going to expire, the petitioner had written to the respondents to clear the outstanding dues of the petitioner herein so that the work can be completed in a smooth manner and had also requested the respondents to grant extension of time for completion of the work in question in terms of Clause 5 of the Standard Bidding Documents (hereinafter referred to as the "SBD"), whereafter, though the respondents had failed to grant extension of time, despite the fact that delay had occurred in completion of the work on account of laches on the part of the respondent authorities and / or reasons beyond the control of the petitioner herein, they continued to pressurise the petitioner to complete the work, even after expiry of the stipulated time period prescribed for completion of the work and had further engaged in making 10% deduction from the running bills under the head of "time extension", which further prejudiced the right and interest of the petitioner as also hampered the progress of the work.

5. The Ld. Counsel for the petitioner has further



submitted that the petitioner had submitted bills totalling to a sum of Rs. 3.26 crore approximately for the extra work carried out by it, however, the same is still pending for payment. It is also submitted that though the agreement value is 1,01,82,03,079/- out of which the petitioner has executed work, totalling to a sum of Rs. 73.34 crore approximately, it has only received a sum of Rs. 58.25 crore approximately and the balance sum of Rs. 15.90 crore approximately is outstanding for payment by the respondents, as such work worth Rs. 28.48 crore is only remaining to be executed. In fact the respondent department had called a meeting to review the progress of work on 03.03.2020, whereafter the petitioner was asked to submit a progress report, which it had done vide letter dated 05.03.2020. The petitioner company had also requested the respondents vide applications dated 01.05.2020, 14.05.2020 and 27.05.2020 to clear all the outstanding dues in order to enable the petitioner to complete the work expeditiously, but nothing was done by the



respondents resulting in the petitioner again approaching this Court by filing a writ petition bearing C.W.J.C. No. 6243 of 2020, which was heard and disposed of by an Order dated 24.06.2020, however, on account of order of a different case being pronounced in the case of the petitioner herein, the case of the petitioner bearing C.W.J.C. No. 6243 of 2020 was again taken up on 30.06.2020 and a fresh order was passed granting liberty to the petitioner to file a detailed representation before the concerned respondent/ appropriate authority regarding payment of money, which was directed to be looked into by the concerned respondent and an order was directed to be passed within a period of six weeks, thereafter.

6. It has also been submitted by the learned senior counsel for the petitioner that the respondents had thereafter, all of a sudden, vide office order dated 26.06.2020, rescinded the agreement of the petitioner without issuing any show cause notice. It is submitted that the



impugned order dated 26.06.2020 would itself show that the petitioner company had submitted an amended work programme vide letter dated 18.01.2020, according to which the petitioner had to complete the work by the month of June, 2020, however the respondents had rescinded the agreement of the petitioner company by an office order dated 26.06.2020. Thus, it is submitted that the entire action of the respondents is mala fide and even prior to the stipulated time period of completion of the work i.e the month of June, 2020, the agreement in question has been terminated vide memo dated 26.06.2020.

7. The learned senior counsel for the petitioner has submitted that admittedly, the impugned order has been passed without issuing a show cause notice or granting an opportunity of hearing to the petitioner herein, as is apparent from the impugned order dated 26.6.2020 itself. In this regard, the learned senior counsel for the petitioner has referred to Clause 14 of the Contract, which is reproduced herein below:-



Clause-14

“Cancellation of contract in full or part

If the contractor:

- (i) At time makes default in proceeding with the works or any part of the work with due diligence and continues to do so after a notice in writing of 7 days from the Executive-incharge; or*
- (ii) Commits default to comply with any of the terms and conditions of the contract and does not remedy of or take effective steps to remedy it within 7 days after a notice in writing is given to him in that behalf by the Engineer-in-Charge; or*
- (iii) Fails to complete the works or items of work with individual dates of completion, on or before the date(s) of completion; and does not complete them within the period specified in a notice given in writing in that behalf by the Engineer-in-Charge; or*
- (iv) Shall offer or give or agree to give to any person in Government service or to any other person on his behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or*



forborne to do any act in

- (v) Shall enter into a contract with Government in connection with which commission has been paid or agreed to be paid by him or to his knowledge, unless the particulars of any such commission and the terms of payment there of have previously disclosed in writing to the Accepting Authority /Engineer-in-Charge; or*
- (vi) Shall obtain a contract with Government as a result or wrong tendering or other non-bonafide methods of competitive tendering; or*
- (vii) Being an individual, or if a firm, any partner thereof shall at any time be adjudged insolvent or have a receiving order or order for administration of his estate made against him or shall take any proceedings for liquidation or composition (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) under any a voluntary liquidation for the purpose of amalgamation or reconstruction) under any insolvency Act for the time being in force or make any conveyance or assignment of his*



effects or composition or arrangement for the benefit of his creditors or purport so to do; or if any application be made under any Insolvency Act for the time being in force for the sequestration of his estate or if a trust deed be executed by him for benefit of his creditors; or

(viii) Being a company, shall pass a resolution or the Court shall make an order for the winding up of the company, or a receiver or manager on behalf of the debenture holders or otherwise shall be appointed or circumstances shall arise which entitle the Court or debenture holders to appoint receiver or manager; or

(ix) Shall suffer an execution being levied on his goods and allow it to be continued for a period of 21 days; or

(x) Assigns, transfers, sublets (engagement of labour on a piece-work basis or of labour with materials not to be incorporated in the work, shall not be deemed to be subletting) or otherwise parts with or attempts to assign, transfer sublet or otherwise parts with the entire works or any



portion thereof without the prior written approval of the Competent Authority;

The Competent Authority may, without prejudice to any other right or remedy which shall have accrued or shall accrue hereafter to Government, by a notice in writing to cancel the contract as a whole or only such items of work in default from the Contract."

8. It is thus submitted that the contract itself envisages issuance of a notice in writing to the contractor prior to cancelling the contract. However, in the present case, admittedly, no show cause has been issued to the petitioner by the respondents prior to passing of the impugned order dated 26.06.2020, rescinding the agreement in question. It is submitted that compliance of the principles of natural justice is inherent in Article 14 of the Constitution of India and any deviation or breach thereof would render such decision of the authority illegal and void. The learned senior counsel for the petitioner has further submitted that the petitioner has already completed 70% of the work and undertakes to complete the remaining work within a period of six months from



the date of passing of the judgment in the present case. In this regard, the learned senior counsel for the petitioner has relied on a judgment rendered by a coordinate Bench of this Court dated 18.09.2017, passed in CWJC No. 10091 of 2017 (**Kems Services Pvt. Ltd. Vs. South Bihar Power Distribution Company Ltd. & Ors.**), to buttress the argument to the effect that the writ courts are also empowered to issue directions to the contractors to complete the work within a stipulated time period.

9. Yet another decision, which has been relied on by the learned senior counsel for the petitioner in this regard, is the one reported in **B.K. Enterprises, Dhanpura, Ara v. State of Bihar, 2007 SCC OnLine Pat 44 : (2008) 1 PLJR 473**, paragraphs no. 8 to 10 whereof are reproduced herein below:-

“8. Coming to the cancellation and retender aspect of the matter. I feel that though the authorities cannot be faulted for cancelling the tender because the petitioner failed to execute the same within the extended time,



the authorities can consequently be faulted with re-tendering the balance work. Merely, because there has been a default in completing the work in time, does not give right to the authority to cancel and retender because the consequences thereof has to be kept in mind as the authorities are the custodian of public finance as well. If balance work is re-tendered then apart from work being completed there will be no other benefit which State would get rather to the contrary State would be obliged to pay at the present with current revised rate and as such would incur an extra expenditure over rupees twenty seven lakhs. This would be a waste of public money, the work being the same. On the contrary if the period is further extended with the petitioner himself, which the petitioner has been asking since long and it has also been recommended again and again by the executive engineer even after cancellation of the work, then both the objectives, would be achieved that is the work would be done and no extra expense would incur. This would save substantial public finance. The facts, aforesaid, are not disputed by the State but the stand is that as the petitioner has delayed, they had a right to cancel and pursuant to the said right



to cancel, a decision to cancel has been taken.

9. *To my mind this Court has not questioned either the authority or the right to cancel but the propriety to cancel and its financial consequence. If the petitioner is ready to do the same work at the cost at which he was doing earlier part of the work then the authority instead of cancelling ought to have extended the period rather than re-tendering at a substantial extra spend. That to my mind would have been prudent, fair, equitable and a business like approach rather than cause loss to the public exchequer by paying higher rate which now prevalent in the year 2007.*

10. *In that view of the matter, keeping in view the financial aspect of the matter and in order to save of public money. I direct the authority to reconsider the matter and consider the desirability of granting petitioner further time to complete the work and pass appropriate orders with regard to the dispute, which was pending before the authority."*

10. Thus, it is submitted that keeping in mind the larger public interest i.e. the saving of substantial



public finance, the writ courts are fully empowered to direct for completion of work by the same contractor within a stipulated period.

11. The learned senior counsel for the petitioner has further relied on a judgment rendered by the Hon'ble Apex Court in the case of ***Union of India & Ors. Vs. Tania Construction Pvt. Ltd.***, reported in ***(2011) 5 SCC 697***, paragraphs no. 33 and 34 whereof are reproduced herein below:-

“33. Apart from the above, even on the question of maintainability of the writ petition on account of the arbitration clause included in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has



to be struck down as an anathema to the rule of law and the provisions of the Constitution.

34. We endorse the view of the High Court that notwithstanding the provisions relating to the arbitration clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the writ petition filed on behalf of the respondent Company. We, therefore, see no reason to interfere with the views expressed by the High Court on the maintainability of the writ petition and also on its merits."

12. Yet another judgment relied upon by the learned senior counsel for the petitioner is the one rendered in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.,*** reported in ***(1998) 8 SCC 1***, paragraphs no. 14, 15, 20 and 21 whereof are reproduced herein below:-

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court



not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. *Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the*



constitutional law as they still hold the field.

20. *Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.*

21. *That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the “Tribunal”.*”

13. The learned senior counsel for the petitioner has lastly relied on a judgment rendered by the Hon’ble Apex Court in the case of **Popcorn Entertainment & Anr. Vs. City Industrial**



Development Corporation & Anr., reported in ***(2007)9 SCC 593***, paragraphs no. 21, 22, 23 and 47 whereof are reproduced herein below:-

“21. As regards non-maintainability of the writ petition, the appellant relied upon the following decisions of this Court wherein this Court has held that the writ petitions can be held to be maintainable under certain circumstances:

(i) Gunwant Kaur v. Municipal Committee, Bhatinda [(1969) 3 SCC 769]

(ii) Century Spg. and Mfg. Co. Ltd. v. Ulhasnagar Municipal Council [(1970) 1 SCC 582]

(iii) Bal Krishna Agarwal (Dr.) v. State of U.P. [(1995) 1 SCC 614 : 1995 SCC (L&S) 356 : (1995) 29 ATC 163]

(iv) Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1]

(v) Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107]

(vi) Corpn. of the City of Bangalore v. Bangalore Stock Exchange [(2003) 10 SCC 212]

(vii) ABL International Ltd. v. Export Credit



Guarantee Corpn. of India Ltd. [(2004) 3 SCC 553]

(viii) Sanjana M. Wig v. Hindustan Petroleum Corpn. Ltd. [(2005) 8 SCC 242]

22. He invited our attention to Whirlpool Corpn. case [(1998) 8 SCC 1] wherein this Court has held that there are three clear-cut circumstances wherein a writ petition would be maintainable even in a contractual matter. Firstly, if the action of the respondent is illegal and without jurisdiction, secondly, if the principles of natural justice have been violated, and thirdly, if the appellants' fundamental rights have been violated.

23. According to the learned Senior Counsel, all the three principles as laid down in Whirlpool Corpn. [(1998) 8 SCC 1] have been made out in the instant case because the action of CIDCO is wholly without jurisdiction as it is seeking to resile from a concluded contract contrary to the express terms of the contract. Secondly, CIDCO, has violated the principles of natural justice as an order affecting the right of the appellant has been passed without giving an opportunity of hearing to the appellant and thirdly, the appellants' fundamental rights as



guaranteed under Article 14 of the Constitution of India have been violated because similar allotments made without calling for tenders are not sought to be cancelled and the appellant is being singled out by CIDCO while seeking to cancel the allotment in favour of the appellant.

47. *We have given our careful consideration to the rival submissions made by the respective counsel appearing on either side. In our opinion, the High Court has committed a grave mistake by relegating the appellant to the alternative remedy when clearly in terms of the law laid down by this Court, this was a fit case in which the High Court should have exercised its jurisdiction in order to consider and grant relief to the respective parties. In our opinion, in the instant case, 3 of the 4 grounds on which writ petitions can be entertained in contractual matter were made out and hence it was completely wrong of the High Court to dismiss the writ petitions. In the instant case, 3 grounds as referred to in Whirlpool Corpn. [(1998) 8 SCC 1] have been made out and accordingly the writ petition was clearly maintainable and the High Court has committed an error in*



relegating the appellant to the civil court.”

14. Thus, the case of the petitioner, in nutshell, as argued by the learned senior counsel for the petitioner is that the agreement in question has been rescinded by the impugned order dated 26.06.2020 in violation of Clause 14 of the contract, which clearly envisages issuance of a show cause notice prior to rescinding / cancellation of the agreement in question, however, the same has not been complied with and admittedly, there is a breach of the principles of natural justice, hence, applying the aforesaid law laid down by the Hon'ble Apex Court, the impugned order dated 26.06.2020 is void and liable to be set aside. The other issue raised by the learned senior counsel for the petitioner in the present case is that since there is a complete lockdown in the country including the State of Bihar with effect from 22.03.2020 on account of the outbreak of the Covid-19 Pandemic and during the said period there has been a complete shutdown, except relaxation only for essential commodities and



services, which has continued till 05.06.2020 and thereafter also the things have not normalized, the respondents could not have rescinded the agreement in question, especially when they had agreed to grant further time to the petitioner to complete the work by the month of June, 2020 in pursuance of the amended work programme submitted by the petitioner company in terms of the minutes of meeting dated 03.03.2020, which was held in between the parties, nonetheless, the agreement in question has been rescinded by the impugned order dated 26.06.2020 not only prior to the lapse of the extended time period but also without considering the lockdown situation prevailing all over the country as also in the State of Bihar and despite there being an order dated 30.04.2020 passed by the Ld. Full bench of this Court, in CWJC No. 5633 of 2020 **(In Re: Functioning of Courts in Bihar during the period of Covid-19, PANDEMIC vs. The State of Bihar & Ors.)** to the following effect:-

“7. As such, clothed by the orders passed by



the Supreme Court (supra), this Court issues further following directions:-

(vi) Considering the prevalent attending circumstances, unless essentially required in public interest, it is expected of the State not to precipitate any action till 17th of May, 2020 so as to compel the citizens to approach the Court for redressal of their grievances."

The Ld. Senior Counsel for the petitioner has further submitted that the aforesaid direction of the Ld. Full Bench of this Court has been extended from time to time vide Orders dated 30.04.2020, 18.05.2020, 19.06.2020 and 09.07.2020 respectively.

15. Thus, it is submitted that considering the bona fide offer of the petitioner company, the petitioner company should be granted an opportunity of completing the balance work in question within a period of six months of passing of the present judgment, after quashing the impugned order dated 26.06.2020, whereby and whereunder the agreement in question has been



rescinded since the said order dated 26.06.2020 is void ab initio being contrary to the principles of natural justice as also contrary to Clause 14 of the Contract in question.

16. Per contra, the learned counsel appearing for the State has submitted that the petitioner was required to complete the work in question by 01.01.2019, however, the progress of work being carried out by the petitioner company was very slow from the very inception and the Chief Engineer (South), Building Construction Department, Patna vide memo dated 08.07.2019 had sought explanation from the petitioner regarding his irresponsible and negligent attitude in execution of the work. On 24.08.2019, a spot verification was carried out by the aforesaid Chief Engineer (South), Building Construction Department and it was found that the requisite number of labours required to be deputed were quite deficient. Again, the respondents had sought for an explanation from the petitioner regarding slow progress of the work vide letter dated



16.11.2019. Again, an explanation was sought by the respondents vide letter dated 26.11.2019 regarding the snail pace of work being done by the petitioner company. On 12.12.2019, the respondents had again issued a show cause notice to the petitioner to file his reply to the specific charge that the work was not being carried out and had become absolutely stagnant, however, no response had come forth from the petitioner herein. Again, the petitioner was issued a show cause notice dated 20.12.2019, but to no avail. Ultimately, the respondent authorities had issued a letter dated 18.01.2020, requesting the petitioner to provide a revised work programme pursuant whereof the petitioner had submitted the revised work programme, assuring that major work would be completed by the month of June, 2020. The respondent authorities had again sought for a revised work programme from the petitioner during the course of meeting held with the representatives of the petitioner company on 03.03.2020, however, the progress of work



remained unsatisfactory and slow as well as there was shortage of labour at the work site continuously. The learned counsel for the State has further referred to the various letters issued by the respondent authorities to the petitioner herein, annexed to the counter affidavit filed on behalf of the Respondent No. 4, to show that the petitioner was regularly warned about suitable action to be taken against him on account of his laches in completing the work according to the Contract, nonetheless, the performance of the writ petitioner had never improved. The learned counsel for the respondent-State has further submitted that all the bills, which have been submitted by the petitioner company, have been cleared. The learned counsel for the respondent-State has further submitted that the present case is not maintainable inasmuch as Clause 25 of the Contract in question provides for settlement of disputes emanating from the contract in question by reference of such disputes to arbitration in accordance with the provisions contained in the Arbitration and Conciliation Act,



1996.

17. At this juncture, this Court had put a query to the learned counsel for the State as to whether any show cause notice has been issued in terms of Clause 14 of the Contract to the petitioner company before rescinding the agreement in question by the impugned order dated 26.06.2020, however no such show cause notice could be shown to this Court and it has been conceded that no show cause notice was issued to the petitioner prior to rescinding of the agreement in question.

18. I have heard the learned counsel for the parties and perused the materials on record. At the outset, it would suffice to state that as far as the issue of maintainability of the writ petition is concerned, this Court finds that admittedly, no show cause notice has been issued to the petitioner herein prior to passing of the impugned order dated 26.06.2020, rescinding the agreement in question, thus, not only Clause 14 of the Contract in question has been violated, but also the impugned order has been passed in violation of



the principles of natural justice, hence, the present case is squarely covered by the law laid down by the Hon'ble Apex Court in the aforesaid decisions rendered in the cases of ***Whirlpool Corporation (Supra) and Popcorn Entertainment & Anr. (Supra)***. Thus, on this ground alone i.e non-compliance of the principles of natural justice and violation of Clause 14 of the Contract, the impugned order dated 26.06.2020 is held to be void and is accordingly quashed, consequently, any subsequent action taken by the respondent authorities are also held to be null and void.

19. Now, coming to the next issue i.e with regard to grant of opportunity to the petitioner company to complete the work within a period of six months of passing of the judgment in the present case, as undertaken by the petitioner company and communicated to this Court during the course of argument being advanced by the learned senior counsel for the petitioner company, this Court finds that though the acts and deeds of the respondents show that the petitioner had been granted time till



the month of June, 2020 to complete the balance work in question, nonetheless, without considering the effect of complete lockdown in the country as also in the State of Bihar on account of the Covid-19 Pandemic and the effect of the Full Bench judgment of this Court rendered in CWJC No. 5633 of 2020 (**In Re: Functioning of Courts in Bihar during the period of Covid-19, PANDEMIC vs. The State of Bihar & Ors.**), the respondent authorities have prematurely rescinded the agreement in question illegally and have also in the process failed to honour the directions of the Ld. Full Bench, as above, thus amounting to complete disregard of the directions of the Ld. Full Bench, which in fact is contemptuous, warranting appropriate action for violation and disobedience thereof. Moreover, this Court is of the view that each and every bit of public money is valuable and if the petitioner company is ready to complete the work on the old rates and old terms and conditions of the agreement in question, lot of public money shall be saved apart from the attending benefit to



the State exchequer. This Court, considering the various Judgments rendered in the case of ***Kems Services Pvt. Ltd. (Supra) and B.K. Enterprises, Dhanpura, Ara (Supra)*** as also with a view to balance out the equities, would grant a further opportunity to the petitioner company to complete the balance outstanding work in question within a period of six months from the date of uploading of the instant Judgment on the web site of this Hon'ble Court. This Court also appreciates the fact that despite the petitioner having not been paid the entire outstanding dues coupled with the impending dispute regarding the issue of GST, it is still ready to honour the agreement and complete the work in question despite various difficulties and constraints. Nevertheless, it is made clear that in case, the petitioner fails to adhere to its undertaking of completing the balance outstanding work within a period of six months, as aforesaid, the respondent authorities shall be free to take appropriate action as per the terms of the agreement / contract in



question and in accordance with law.

20. The writ petition stands allowed on the aforesaid terms.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	17.07.2020
Uploading Date	06.09.2020
Transmission Date	NA

