

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7085 of 2020

Hitech Sweet Water Technologies Pvt. Ltd. having its registered Office At 229, 230 Turning Point, Ghod Dod Road, Surat, Gujarat, represented through its Vice President namely Sri Sunil KUMar Singh, aged about 50 years (Male), Son of Late Balram Singh, resident of Mohalla-Text Book Colony, Keshri Nagar, P.O. and P.S.-Shastri Nagar, District-Patna, Office Address- Aprajita, Sri Krishna Puri, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. The Principal 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 (Regional), Public Health Engineering Department, Government of Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Department, Circle Bhagalpur.
6. The Executive Engineer, P.H. Division, Bhagalpur West
7. The Executive Engineer, P.H. Division, Munger,
8. The Executive Engineer, P.H. Division, Shiekhpora.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv.

For the Respondent/s : Mr. Arvind Ujjwal, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

5 05-10-2020 Heard Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioner and Mr. Arvind Ujjwal, learned counsel appearing on behalf of the State.

2. Petitioner has filed the present writ application challenging the decision of respondents, Annexure-28 dated 29.5.2020 issued by the Chief Engineer cum Special Secretary



whereby the respondents have decided to terminate the contract awarded to the petitioner and for the consequential relief.

3. The brief facts for the purpose of deciding the present application are as follows:

4. A tender was invited by the PHE department vide Annexure-1 to provide drinking water in the fluoride affected area. The petitioner company participated in the tender and an agreement was reached between the petitioner and the PHE Department on 24.4.2017. The period of completion was 12 months in all division.

5. Learned counsel appearing on behalf of the petitioner submits that there are many formalities required to be completed not only by the petitioner but the respondents as well, as the completion of work would depended upon the mutual understanding and cooperation.

6. learned counsel for the petitioner submits that various stages due to non cooperation on the part of the respondents the work was not carried out in full strength whereas the counsel appearing on behalf of the State would submit that there was inaction on the part of the petitioner right from very inception and at every stage, the petitioner was cautioned by the respondents but the petitioner failed to



execution of the work as he has to complete the work as per time schedule.

7. There are various documents with regard to correspondence between the petitioner and the State but that is not relevant for the purpose of deciding the present application as the Court wishes to determine at this stage whether the notice under clause 14 of the agreement is directory or mandatory.

8. Learned senior counsel for the petitioner Mr. Y.V. Giri submits that the notice before terminating the contract was mandatory as there is grave consequences attached and in case where the consequences are attached, the procedural requirement of law is mandatory.

9. On behalf of the State counter affidavit were filed and two supplementary affidavit was also filed but filing of one or other supplementary affidavit was uncalled for in view of the admitted position which emerges from the stand taken by the respondents in the counter affidavit para-55, therefore, the Court is not required to go into the subsequent development which has been highlighted by the respondents in the first and second supplementary counter affidavit.

10. It is stated in para-55 of the counter affidavit that requirement was directory. For ready reference para-55 of the



counter affidavit is quoted below:-

“That the contention of the petitioner that there is a prerequisite condition that seven days’ notice in writing is mandatory in terms of Clause-14(1)(i)(ii)(iii), it is humbly submitted that the aforesaid clauses are directory in nature and not mandatory.”

11. The law in this regard is well settled that if the consequences are attached, the requirement or compliance of notice is mandatory.

12. Admittedly, in the present case notice for determination as required under clause 14 of the agreement was not adhered to the entire action of the respondents, cannot sustain.

13. The issue whether the petitioner was at fault and there was lapse on the part of the respondents is left open which is not adjudicated in the present proceeding as the writ petition is decided on the short point of notice under clause 14.

14. In view of the fact that notice under clause 14 of the agreement was not issued before taking action of termination of the contract Annexure-28 dated 29.5.2020 is unsustainable, it is accordingly quashed on the ground of non



compliance of mandatory requirement of notice under clause 14 of the agreement, however, the respondents are at liberty to take fresh decision in accordance with law after providing opportunity of hearing. The respondents are required to provide opportunity of hearing within a period of one month from the date of receipt/production of a copy of this order and pass fresh reasoned order after compliance of principle of natural justice.

15.The consequential action of the respondents shall abide by fresh order taken by the respondents after opportunity of hearing to the petitioner.

16. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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