

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8564 of 2020

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M/s Laxman Kumar through its Proprietor Laxman Kumar Prasad, S/O- Sri Harihar Sah, R/O- Mohalla- Ashiana Nagar, Sector- 4, Ramnagri, P.S.- Rajiv Nagar, P.O.- Ashiyana Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Patna.
2. The Secretary, Rural Works Department, Govt. of Bihar at Patna.
3. The Engineer-in- Chief, Rural Works Department, Govt. of Bihar, Patna.
4. The Chief Engineer- 3, Rural Works Department, Govt. of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Works Circle, Darbhanga- 2 at Darbhanga, District- Darbhanga.
6. The Nodal Officer, (PMGSY, BRADA), Rural Works Department, Bihar, Patna.
7. The Executive Engineer, R.W.D, Works Division, Jhanjharpur at Jhanjharpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y V Giri, Senior Advocate with Dr. Anshuman, Advocate
For the Respondent/s	:	Mr. Ajay, GA 5 with Mr. Krishna Chandra, AC to GA 5

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 08-12-2020

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

2. Heard Mr. Y V Giri, learned senior counsel along with Dr. Anshuman, learned counsel for the petitioner and Mr. Ajay, learned GA 5 along with Mr. Krishna Chandra, learned AC to learned GA 5, for the State.



3. The matter has been taken up out of turn on motion moved by learned counsel for petitioner yesterday, which was allowed.

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

- I. For setting aside the letter no. 1239 and 1240 dated 15.09.2020 issued by the Respondent No. 7 to cancel the agreements No. 04 SBD/2018/19 and 05 SBD/2018/19 both dated 10-04-2018 for construction of road and CD work, under PMGSY Package No. BR-21R-646, L-035 and PMGSY Package No. BR21R-237 respectively and forfeit the security deposit, and for recommendation for blacklisting the petitioner, as they have been issued without given the petitioner any opportunity of hearing and in complete violation of National Justice and therefore fit to be set aside.*
- II. For setting aside the letter no. 1264 and 1265 dated 21-09-2020 issued by Respondent No. 7 directing the petitioner to present for final measurement on 07-10-2010, as they have been issued without given him any opportunity of hearing and in complete violation of Natural Justice and therefore fit to be set aside.*
- III. For directing the respondents to dispose of the representations dated 21-09-2020 and 25-09-2020 on which no decision have been taken by the respondent till date and different letters mentioned in relief I & II have been issued in gross violation of Natural Justice.*
- IV For granting any other relief or reliefs for which the petitioner is entitled in the present facts and circumstances of this case.”*



5. Learned counsel for the petitioner submitted that the basic grievance of the petitioner is that such drastic action has been taken against him without following the mandatory requirement of the principles of natural justice, as no show cause was asked for and, thus, he could not represent before the authorities the reason why he could not complete the work within time, which was beyond his control and there were justifiable reasons. Learned counsel submitted that he is ready to complete the entire work which remains, as per the agreement, within fifteen days and the Court may consider the same.

6. Yesterday, the Court had asked learned counsel for the State to get a response from the authorities as to whether they were agreeable to the same for, in the tentative view of the Court, it was in public interest if the petitioner completed the entire work, as per the stand taken on behalf of him, within fifteen days, as it would not entail any escalation of cost and most importantly, would not require any fresh tendering, which would further complicate matters as there would be controversy with regard to how much work the petitioner had done and payment to be made to him and what work the fresh Contractor would be required to do.

7. Today, learned counsel for the State submitted that



he has taken instructions from the Department and in view of the sentiments expressed by the Court, it has been communicated to him that he may take stand on behalf of the State that the petitioner may make a representation before the Secretary of the Department i.e., Rural Works Department (respondent no. 2), as provided for, under Rule 11E of the Bihar Registration of Contractors Rules (RWD), 2007. It was submitted that the Department has communicated that they would consider the matter sympathetically taking into consideration the sentiments of the Court and the larger public interest, within three days from the date the petitioner files his representation. Learned counsel for the petitioner submitted that he would be making such representation within one week from today.

8. Having considered the facts and circumstances and submissions of learned counsel for the parties, as the respondents have agreed for considering the matter and the petitioner is also agreeable to move before the authority, the writ petition stands disposed off with a direction to the petitioner to file such representation before the respondent no. 2 within one week from today. Upon doing so, the respondent no. 2 shall give personal hearing to the petitioner/his representative and consider



the matter, including all aspects with regard to the reason why he could not complete the work in time etc. Further, he would also consider the larger public interest, more so in the background of the petitioner's commitment that he is ready to complete the entire work, as per the agreement, within fifteen days. If the Secretary is inclined to accede to such request, the Court expects that all *bona fide* and genuine problems faced by the petitioner in completing the work, especially with regard to the law-and-order situation and security of the personnel involved and equipments used shall be addressed by instructing the local administration to give all necessary support to the petitioner in completing the work. He would also communicate to the Superintendent of Police, Madhubani, with regard to providing the petitioner with all necessary support, which, even otherwise, in law, he is entitled to, especially while executing the work of the State.

9. Further, the respondent no. 2 may also take any undertaking from the petitioner to ensure that he fulfills his commitment as has been undertaken on his behalf before the Court and which has persuaded the Court to pass the present order.

10. Before parting, the Court records its appreciation



of the stand taken by the authorities, which indicates fairness on their part.

(Ahsanuddin Amanullah, J)

J. Alam/-

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