

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13948 of 2019

BJCL Srinath (JV) having its office at 103, Lane No. 2, Kehar Singh Estate, Saidulajab, New Delhi 110030 through its authorized signatory namely Nitish Agarwal @ Nitish Kumar Agarwal, aged about 42 years, (Male), son of Sri Tulsi Prasad Agarwal, resident of F-217, Antriksha Apartment, Sector 14 Extension, Rohini, P.S. Rohini, District- North West Delhi, 110085 and local resident at Flat No. 304, 3rd Floor, Madhuban Apartment, LBS Shashtri Nagar, P.S. Shashtri Nagar, District Patna.800023.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Food Control and Water Resources, Patna.
4. The Chief Engineer, Floor Control and Drainage, Water Resources Department, Patna.
5. The Superintending Engineer, Kosi Barrage, Birpur Circle, Birpur, Bihar.
6. The Superintending Engineer, Eastern Kosi Embankment, Saharsa, Bihar.
7. The Executive Engineer, Western Embankment Division, Birpur, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate Mr. Chandan Kumar, Advocate
For the Respondent/s	:	Mr. Binay Kumar Pandey, AC to G.A-2

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 16-01-2020

The petitioner has challenged the notice inviting tender (NIT) dated 02.07.2019 issued by the Executive Engineer, Western Embankment Division, Birpur, whereby the work which had already been allotted to the petitioner has been re-tendered without closing the agreement with the petitioner. A further



prayer has been made in the present writ petition for not proceeding in terms with the NIT, referred to above, during the pendency of the present writ petition.

2. Before this petition could be taken up for consideration, the tender was given to a concessionaire, which information has not been provided in the counter affidavit but has only been informed to this Court orally.

3. Learned counsel for the petitioner has submitted that in the absence of such information having been provided to him, he was not in a position to implead the new concessionaire but on that account, his petition ought not to be shut out of consideration.

4. The grounds urged on behalf of the petitioner is that before the work could be completed, the petitioner had apprehension that on the ground of non-completion of the work within the schedule time, he may be put to some serious consequences including encashment of bank guarantee and on that apprehension, the petitioner had approached this Court



with a prayer to hold and declare that the delay in completion of work was not due to the fault of the petitioner but the failure of the authorities in performing their reciprocal promises and that no penal action such as encashment of bank guarantee, risk and cost, termination of debarment etc be passed.

5. The aforesaid request did not find favour with the Court and this Court in C.W.J.C. No. 12998 of 2019 vide order dated 28.06.2019 opined that the issue with respect to the responsibility for the delay in work could not be decided by the writ court and the apprehension of the petitioner could not be taken care of. All that the court observed was that the petitioner would have been well advised to approach the competent court for an arbitration proceeding as it was an arbitral dispute.

6. The apprehension of the petitioner turned into a reality and the petitioner was given a notice for rescission of the contract by the communication dated



27.06.2019 by the Executive Engineer-cum-Nodal Officer, Western Embankment Division, Birpur and by the aforesaid communication, the explanation of the petitioner was sought for. The petitioner appears to have replied in detail to the aforesaid notice by stating that the Additional Chief Secretary of the Department had already decided on 12.06.2019 that the contract of the petitioner be cancelled and work should be started with the liability of risk and cost. After the decision had already been taken, it was urged by the petitioner in his show-cause reply, there was no justification for issuance of any show-cause notice as it would have served no purpose.

7. Thus the substratum of the defence/case of the petitioner is that without concluding the contract with him, the remaining work has been re-tendered.

8. The petitioner further grieves that after the work has been re-tendered, a decision rejecting the show-cause reply of the petitioner has been taken on



04.07.2019 which does not specify any reason nor does it reflect that the defence of the petitioner was ever considered. Thus, it has been argued that not only the respondents have taken an action without providing any opportunity to the petitioner but have also attempted to plug in any wedge/space for the petitioner to agitate against the decision as the reply of the petitioner has now been rejected after the re-tender of the work.

9. The learned counsel for the petitioner therefore terms it as double whammy and submits that even if in the re-tender, the contract has been allotted to a third party, that would not deter the Court from passing any order in favour of the petitioner in case it is found that the rescission of the contract of the petitioner is incorrect and based on faulty reasoning.

10. After having heard the parties and taking into account the information provided by the respondents that pursuant to the aforesaid re-tender, the contract has been allotted to a third party, who has



proceeded with the work and has completed approximately 40 percent of the work (which contention could not be rebutted by the petitioner because of absence of any information to him up-till-now), this Court does not deem it appropriate to turn the hands of the clock back now, keeping in mind that time is the essence of completion of any work and non-completion of such government works not only, in general causes dissatisfaction amongst general populace but also causes other difficulties.

11. However, the contention of the petitioner that against the re-tender, the contract has been allotted to somebody else who has proceeded with the work, at least the petitioner should not be saddled with any risk and cost.

12. This aspect has not been considered by the respondent authorities and which in the estimation of this Court ought to be given a consideration.

13. For the reasons that the petitioner was



asked for a show-cause reply after an effective decision had been taken and his reply so furnished in detail has been rejected by a perfunctory order post the re-tender of the work, this Court deems it appropriate to direct the petitioner to state all these facts in a representation to be filed by him before the Additional Chief Secretary, Water Resources Department, Government of Bihar, Patna (respondent No. 2) within a period of four weeks from today. This Court provides that on the receipt of such representation, the concerned respondent shall look into it objectively and pass a reasoned order in accordance with law over the issue of not saddling the risk and cost to the petitioner in such circumstances. The petitioner shall be communicated the reasons for any decision which shall be taken by the concerned respondent. This exercise shall be completed and intimation given to the petitioner within a period of six weeks of the receipt of such representation.

14. Till such decision is taken, no penal



consequences of debarment or blacklisting etc shall
ensue against the petitioner.

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

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22/01/2020
Transmission Date	N/A

