

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7933 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 the 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 Building Construction Department, Government of Bihar, Patna.
4. The Superintending Engineer Building Division Katihar, Building Construction Department, Bihar, Patna.
5. The Executive Engineer Building Division Katihar, Building Construction Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K.Shahi, Sr. Advocate Mr.Ranjeet Kumar, Advocate
For the State	:	Mr. Mahendra Pd. Verma, AC to SC 20

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 16-03-2021

Heard learned counsel for the petitioner and learned counsel for the respondents. Learned counsel for the petitioner has filed an undertaking to remove all the defects pointed out by the Stamp Reporter as and when required. It is accordingly directed that all defects pointed out by the Stamp Reporter be removed within one month hereof.

2. The following reliefs as formulated by the petitioner



have been claimed in the writ petition--

*“(i) For setting aside the office order contained in Letter No. 556 dated 17.07.2020 issued under the signature of Executive Engineer, Building Division Katihar, Building Construction Department, Bihar, Patna whereby and whereunder respondent authority rescinded the agreement bearing Agreement No. 05 SBD 2016/17 for **“Construction of Katihar Engineering College, Katihar”** in terms of SBD conditions in one line without issuing any show cause notice before rescindment and further fixed the date for final measurement inspite of the fact that 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.

(iii) For any other relief for which the petitioner may be deemed entitled to.”

3. Mr. P.K.Shahi, learned Senior Counsel appearing on behalf of the petitioner makes a short submission to assail the impugned order rescinding the contract, to the effect that no prior show cause notice was issued which was mandatorily required in terms of Clause 14 of the contract. Specific stand in this regard has been taken in paragraph 41 and 43 of the writ petition. He further relies on the judgment dated 07.08.2020 passed by this Court in CWJC No. 7130 of 2020 in petitioner's own case (Annexure-28), wherein after a detailed consideration of the matter it has been observed as follows--

“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."*

4. It has further been stated that orders to the above effect have also been passed in CWJC No. 7234 of 2020 as well as CWJC No.7240 of 2020.

5. Learned counsel for the respondents appears and has



been heard. However, the contention of the petitioner has not been disputed and nothing in this regard has been pointed out from the counter affidavit filed on behalf of the respondents.

6. Having regard to the stand of the petitioner which remains uncontroverted, this Court is of the view that the impugned order cannot be sustained for want of prior show cause notice being issued. The impugned order dated 17.07.2020 (Annexure-25) is accordingly set aside with liberty to the respondents to issue a show cause notice for rescinding the contract, if so advised.

7. The writ petition stands disposed of with the above observations.

8. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the petitioner within the stipulated time provided in para 1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	-
Uploading Date	18.03.2021
Transmission Date	-

