

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 2797 of 2021

Kashish Developers Limited, Registered office at- 87 Old AG Colony,
Kadru, Ranchi, Jharkhand- 834002, Local address at- 201, Kamla Sadru
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

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 (South), Building Construction Department,
Government of Bihar, Patna.
4. The Superintending Engineer Building Division, Buxar, Building
Construction Department, Bihar, Patna.
5. The Superintending Engineer, Building Construction Department,
Building Circle, Ara, Patna
6. The Executive Engineer, Building Construction Department, Bihar,
Patna, Building Division Buxar

... .. Respondent/s



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Appearance :

For the Petitioner : Mr. P.K. Shahi, Sr. Adv.
Mr. Ranjeet Kumar, Adv.
For the State : Mr. Manoj Kumar Ambastha, SC-26

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 01-09-2021

The only relief prayed for and pressed by the Ld. Sr. Counsel for the petitioner in the present case is for setting aside the office order dated 24.11.2020 whereby and whereunder the agreement bearing agreement no. 1 SBD 2019/20, entered into between the petitioner and the Respondent-Executive Engineer, Building Construction Department, Building Division, Buxar, has been rescinded.

2. The brief facts of the case are that a NIT was published by the Building Construction Department, Bihar, for construction of Government Engineering College at Dumraon, Buxar, in pursuance whereof, the petitioner and two others



had submitted their tender and ultimately, the petitioner was declared as the successful bidder and a work order dated 27.7.2017 was issued by the Executive Engineer, Building Division, Buxar, in favour of the petitioner, whereafter an agreement was executed and 18 months time was fixed for completion of the work. It has been contended by the petitioner that since the construction site could not be made available to the petitioner, a fresh work order dated 14.8.2019 was issued in favour of the petitioner and the stipulated time frame for completion of work was fixed as 18 months, whereafter an agreement was executed on 01.10.2019. It is a matter of record that on account of disturbance on the site, there being no proper road to reach the site, structural drawing of the project being not handed over to the petitioner in time and on account of the lockdown due to outbreak of Covid-19 Pandemic, the project in question could not be completed within time. Nonetheless, the Chief Engineer (South), Building



Construction Department, Bihar, Patna, vide letter dated 6.11.2020, had directed the Executive Engineer, Building Division, Buxar, to cancel the agreement of the petitioner, whereafter the Executive Engineer, Building Division, Buxar, by the impugned order dated 24.11.2020, has rescinded the agreement.

3. The short point raised by the learned Senior Counsel, Sri P.K. Shahi, is that a bare perusal of the impugned order dated 24.11.2020 would show that the Executive Engineer, Building Division, Buxar, has cancelled the agreement in question on the direction of the Chief Engineer (South), Building Construction Department, Bihar, Patna, as contained in letter dated 6.11.2020. It is submitted that Clause 1 of the general conditions of contract provides for execution of an agreement between the competent authority on behalf of the Governor of Bihar and the Contractor. Clause 2(iv) thereof defines the Engineer-in-Charge to be the



Engineer Officer, who shall supervise and be the in-charge of the work and who shall sign the contract on behalf of the Governor of Bihar. Clause 3 and Clause 14 of the "Conditions of Contract" stipulates the situation under which the contract can be determined.

4. The learned Senior Counsel for the petitioner has further submitted that the agreement in question has been entered into between the petitioner and the Executive Engineer, Building Division, Buxar, hence, the competent authority to rescind / terminate the contract in question was / is the Executive Engineer, Building Division, Buxar, nonetheless, the competent authority under the contract, who is authorized to terminate the contract in question, has not applied his mind and has not decided for himself, by exercising his independent mind and unfettered judgment as to whether the contract is required to be terminated or not inasmuch as he has acted in compliance of



the direction of the Chief Engineer (South), Building Construction Department, Bihar, Patna, as contained in letter dated 6.11.2020, thus, on this ground alone, the impugned order dated 24.11.2020 is fit to be set aside. In this connection, the learned Senior Counsel for the petitioner has referred to a judgment, reported in AIR 1952 SC 16 (***Commissioner of Police vs. Gordhandas Bhanji***), paragraphs no. 44 to 46 whereof are reproduced herein below:-

"44. We have held that the Commissioner did not in fact exercise his discretion in this case and did not cancel the license he granted. He merely forwarded to the respondent an order of cancellation which another authority had purported to pass. It is evident from these facts that the Commissioner had before him objections which called for the exercise of the discretion regarding cancellation specifically vested in him by Rule 250. He was therefore bound to exercise it and bring to bear on the matter his own independent and unfettered judgment and decide for himself whether to cancel the license or reject the objections.



That duty he can now be ordered to perform under section 45.

45. It was objected as to this that there is no specific law which compels him to exercise the discretion. Rule 250 merely vests a discretion in him but does not require him to exercise it. That is easily met by the observations of Earl Cairns L.C. in the House of Lords in *Julius v. Lord Bishop of Oxford* [5 App. Cas. 214 at 222, 223.], observations which have our full and respectful concurrence:—

“There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.”

46. The discretion vested in the Commissioner of Police under Rule 250 has been conferred upon him for public reasons



involving the convenience, safety, morality & welfare of the public at large. An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor can it be evaded; performance of it can be compelled under section 45."

5. *Per contra*, the learned counsel for the State, Sri Manoj Kumar Ambastha (SC-26), has referred to the counter affidavit and submitted that several letters were sent to the petitioner to speed up the construction work and give away its go slow attitude and complete the work in question expeditiously, however, the petitioner did not pay any heed to the several requests / warning given by the respondents, resulting in termination of the agreement in question by the impugned order dated 24.11.2020.

6. I have heard the learned counsel for the parties and gone through the materials on record



and this Court finds that it has not been disputed by the Respondents that the impugned order dated 24.11.2020 has been passed in compliance of the directions of the Chief Engineer (South), Building Construction Department, Bihar, Patna, as contained in letter dated 6.11.2020 whereby and whereunder the competent authority under the agreement i.e. the Executive Engineer, Building Division, Buxar, was directed to rescind the agreement. Thus, this Court is of the opinion that the Executive Engineer, Building Division, Buxar, who is the competent authority under the contract to terminate the contract in question, has not applied his mind and has not decided for himself, by exercising his independent mind and unfettered judgment, as to whether the contract is required to be terminated or not inasmuch as he has acted in light of the departmental direction issued to him by the Chief Engineer (South), Building Construction Department, Bihar, Patna, directing him to terminate the agreement in question,



hence, on this ground alone, the impugned order dated 24.11.2020 stands vitiated in the eyes of law, thus, is fit to be set aside, more so being squarely covered by the law laid down by the Hon'ble Apex Court in the aforesaid decision, rendered in the case of **Gordhandas Bhanji** (supra).

7. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the impugned order dated 24.11.2020, issued by the Executive Engineer, Building Division, Buxar, is unsustainable in the eyes of law, hence is set aside.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR / NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2021
Transmission Date	NA

