

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10082 of 2021

=====

Hari Mohan Bishwas, a Proprietorship firm through its Proprietor Hari Mohan Bishwas, aged about 45 Yrs, (Male), Son of Sri Sagam Lal Bishwas, Resident of Village- Bharra, Post Office- Kalsar, P.S.- Dandkhora, Anchal-Hasanganj, Distt.- Katihar- 854337.

... .. Petitioner/s

Versus

1. Bihar State Educational Infrastructure Development Corporation Ltd. A Govt. of Bihar Undertaking (B.S.E.I.D.C) office at Shiksha Bhawan, Bihar Rastrabhasa Prishad Campur, Acharya Shivpujan Sahay Path, Saidpur, Patna- 800004, through its Managing Director, Sri Sanjay Kumar Singh.
2. The Managing Director B.S.E.I.D.C at Patna.
3. The Chief Engineer B.S.E.I.D.C at Patna.
4. The Executive Engineer B.S.E.I.D.C, Purnia.
5. The Junior Engineer B.S.E.I.D.C, Purnia.
6. Manoj Kumar Pandey The then Executive Engineer, B.S.E.I.D.C, Purnia.
7. Mukesh Kumar The then Junior Engineer B.S.E.I.D.C, Purnia.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Chiranjiva Ranjan, Advocate
Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. Girijish Kumar, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-01-2022



Petitioner has prayed for the following relief/s :-

- i) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus holding and declaring that the action of the Respondents for rescinding the Contract (USSS-194C) of the petitioner vide notice memo letter no. BSIEDC/ TECH / 135 / 2019 – 997 dated 12.2.2021 (as contained in Annexure-4) without giving any opportunity of hearing to the petitioner, is in violation of Articles 14, 16 and 19(1)(g) of the Constitution of India and be pleased to quash and set- aside the rescinding order as well as forfeiture of performance security issue vide letter no. BSIEDC/ TECH / 289 / 2019-Vol -I -1499 dated 05.03.2021 (as contained in Annexure-6).
- ii) to issue a writ of prohibition in favour of the petitioner, prohibiting the Respondents from taking any coercive action against the petitioner company without following the due process of law and without adhering to the principles of natural justice.
- iii) Pending admission, hearing and/or final disposal of this petition, this Hon'ble Court be pleased to stay the execution, operation and implementation of the rescinding notice issue vide memo letter no. BSIEDC/ TECH / 135 / 2019 – 997 dated 12.2.2021 issued by the Respondent No.3.
- iv) Pending admission, hearing and/or final disposal of this petition, this Hon'ble Court may be pleased to direct the respondent from taking any coercive action against the petitioner from rescinding / terminating the contract of the petitioner without following the due process of law or without following the principles of natural justice.
- v) Such other and further relief as this Hon'ble Court may deem just, fit and expedient be granted in favour of the petitioner.



From the paper book it is quite apparent that the impugned order/communication dated 05.03.2021 was passed/issued prior to the time stipulated in the notice to show cause issued by the authority to the petitioner. Annexure 4 is the notice to show cause dated 12th of February, 2021 asking the petitioner to show cause as to why proceedings under Clause 3 of the contract be not initiated. However, as is evident from the postal receipt (page 38), the said notice was received only on 27th of February, 2021.

Whether petitioner was having sufficient time to respond thereto or not, without going into this issue, we are of the considered view that the interest of justice would lie asking the authority to pass a fresh order, after affording opportunity to the petitioner to place on record material in support of his defence and pass a fresh order after hearing all concerned.

As such, we dispose of present petition on the following mutual agreeable terms :

(a) Impugned order/communication dated 5th of March, 2021, (Annexure 6 at page 41) is quashed and set aside;

(b) Petitioner shall appear before the appropriate authority on 12th of January, 2022 on which date petitioner shall place on record entire material in support of his defence;



(c) Petitioner shall fully co-operate and not take any unnecessary adjournment;

(d) Appropriate authority will consider and decide all questions of fact and law expeditiously and positively within a period of four weeks thereafter;

(e) All questions of fact of law are left open; and

(f) Liberty reserved to the petitioner to seek appropriate remedy before the appropriate forum, if need so arises subsequently.

Since the amount of security deposit already stands forfeited, till such time a decision is taken, the same shall not be refunded to the petitioner.

Interlocutory application(s), if any, also stand disposed of.

(Sanjay Karol, CJ)

(Sanjeev Prakash Sharma, J)

Ashwini/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	06.01.2022
Transmission Date	

