

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19624 of 2019

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1. Sudarshan Kumar S/o Sri Munshi Mahato, Resident of Village-Makhdumpur, Po and PS- Sonapur, Distt.-Chapra (Saran).
 2. Ram Chandra Singh S/o Parma Singh R/o Mushehari, PS.Dariyapur, Distt.-Chapra (Saran).
 3. Smt. Pratima Devi W/o Sri Santosh Kumar, R/o Village-G.S. Bangara, PS.-Jalalpur, Distt.-Chapra (Saran).
 4. Smt. Bandana Kumari W/o Sri Ranjeet KUMar Singh Village-and PO-Gopalpur, PS-Nayagaon, Distt.-Chapra (Saran).
 5. Ram Ayodhya Prasad S/o Late Kalpat Mahto, R/o Village-Pachrour, PS.Taraiya, Distt.-Saran.
 6. Smt. Chanda Devi W/o Rajeev Kumar Singh R/o Village-Purushotampur Harajee, PS.-Awatar Nagar, Distt.-Chapra (Saran).
 7. Vijay Kumar Yadav S/o Srilaldas Rai, R/o Village-Hasilpur, PO and PS-Nayagaon, Distt.-Chapra (Saran).
 8. Bipin KUMar Singh S/o Jitnarayan Singh Resident of Village-Laxmipur Kakaria, P.S. Dighwara Distt. Saran.
 9. Manish Kumar S/o Madan Mohan Prasad Resident of Village-Fakrabad, PS Sonapur, Distt.-Chapra (Saran).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Minor Irrigation, Department, Govt. of Bihar, Patna.
2. The Chief Engineer, (Planning Superintendence and Underground Water), Minor Irrigation Department, Bihar, Patna.
3. The Superintending Engineer (Head Quarter), Superintendence, Secretary, Road, Construction Department, Govt. of Bihar, Minor, Irrigation Department, Bihar, Patna.
4. The Executive Engineer, Minor Irrigation Division, Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Kumari Rashmi, Advocate
For the Respondent/s : Mr. Anirban Kundu (SC 24)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 12-12-2022 Petitioners has prayed for the following relief(s):-



“i. For quashing the letter no. 1127 /Chapra dated 19.06.2019 issued by Respondent No.4 in connection with NIT No. 02/2018-2019 dt.5.2.2019 for renovation of old tube wells, under the reason that initially respondents have invited NIT and executed agreements after more than two months though the period of completion was for only 94 days, taking shelter of imposition of Moral Code of Conduct on the eve of parliamentary elections, and later on, unilaterally changed the provision for payment of bills of work by the Mukhiyas, without any supplementary agreement, and on raising voice against such illegal acts, has rescinded altogether 12 contracts shifting reason of delay on petitioners by a general order without any specific show cause notice and forfeited the Security amount and EMDs unilaterally, leaving aside some of their choice contractors, which is patently illegal and not sustainable in law as firstly he delayed in execution of agreements, not deployed any JE or AE, not provided specific clear site, not supplied attested copy of agreements, and changed the rule unilaterally without any supplementary agreement with Mukhiyas, hence for the fault of his own, he cannot punish the petitioners, as it is settle law that once the game started, no rule of game can be changed, hence the impugned order cannot sustain on any count apart from other merits of the case and may be quashed, holding entire action taken by respondent no.4 as illegal and



arbitrary.

ii. For quashing the impugned order also under the reason that neither in the NIT nor agreements, payment of bills were mentioned by Mukhiyas, and when the agreements were signed all of sudden the respondents have stipulated that all the payments of work may be made by the Mukhiyas, overlooking that neither the Mukhiyas were parties to the agreements nor he could be bound by such payments, even it is settle principle of law that rules of game cannot be changed once the game started, and thus the petitioner raised their objections, as a result the impugned is passed to save skin, which is in fact a case of fraud with the petitioners, which is sufficient to declare the impugned order as bad.

iii. For directing the respondents to either to restore the contract and or alternatively return the EMD of the petitioners as they have no breach of agreement making assurance of payments by the department and not by Mukhiyas and for granting any relief/reliefs for which the petitioners be found in the eye of law.”

After the matter was heard for some time, learned counsel for the petitioners fairly states that petitioner shall invoke Clause 23 of the agreement (Annexure-2).

The said clause reads as under:-

“Clause 23:- In case any dispute or difference shall arise between the parties or either of there upon



any question relating to the meaning of the specifications, designs, drawings and instructions here before mentioned or as to the quality of workmanship or materials used on the work or as to the construction of any of the conditions or any clause or thing there in contained or as to any question, claim, rights of the parties, or any matter, or things whatsoever in any way arising out of or relating to the contract designs, drawings specifications, estimates, instruction order of these conditions or otherwise concerning the work or the execution, or failure to execute the same whether arising during the progress of the work of alter the completion or abondment thereof or as the breach of those contract then either party shall forthwith give to the order notice such dispute or difference and such dispute or difference shall be referred to the Superintending Engineer of the circle and his decision there on shall be final, conclusive and binding on all the parties.”

Respondents have no objection to the same.

As and when any such request is received from the petitioner, the authorities concerned shall positively consider and decide the same expeditiously and not later than three months or the period stipulated in the agreement, whichever is later.

Needless to add, the issue as to whether the terms of the agreement could have been modified with the execution of the agreement, as was so sought to be done by the respondent



vide communication dated 19.06. 2019 (Annexure-6, Page 56), shall also be considered by the said authority.

It is contended on behalf of the petitioner that post execution of the agreement, the terms could not have been modified, more so vide Annexure-6, for the agreement was executed not with the Panchayat, as is now sought to be supplanted vide said annexure.

Liberty as prayed for is granted.

The petition stands disposed of with the liberty/observation aforesaid.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

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