

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19162 of 2019

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M/s Vishal Buildtech (India) Pvt. Ltd. A Company incorporated under the Indian Companies Act, 1956 having its Registered office at LG-1 and 2, Majestic Plaza, West Boring Canal Road, Patna-1, through its Director Sri Kartik Kumar, resident of Majestic Plaza, West Boring Canal Road, Patna-1.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Road Construction Department, Govt. of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna.
2. The Principal Secretary Road Construction Department, Govt. of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna.
3. The Additional Secretary-cum- Internal Financial Advisor Road Construction Department, Govt. of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna.
4. The Deputy Secretary-cum- Internal Financial Advisor Road Construction Department, Govt. of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna.
5. The Engineer-in- Chief Road Construction Department, Govt. of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna.
6. The Chief Engineer (Traffic) North Bihar Wing, Road Construction Department, Government of Bihar, Patna.
7. The Chief Engineer Simanchal Wing, Road Construction Department, Government of Bihar, Patna.
8. The Executive Engineer Road Construction Department, Road Division, Saharsa.
9. The District Magistrate-cum- Collector Saharsa.
10. The Additional Collector Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Kishore Prasad, Advocate
For the Respondent/s	:	Mr. Syed Iqbal Ahmad (SC 20)
		Mr. Mahendra Prasad Verma, AC to SC-20

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-12-2022

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 Certiorari for quashing the decision taken by the Departmental Tender Committee in its' meeting dated 24.07.2019 and issued by the respondent Engineer-in-Chief vide his Memo No.5746(E) dated 24.07.2019 (as contained in Annexure-6), whereby and where under the benefit of Price Escalation Clause as provided in Clause-10 CC of the Agreement No. 04 SBD/2011-12, which is in the format of Standard Bidding Document (in short 'SBD'), has not been given to the petitioner.

II. To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus directing the respondents to make payment of Price Escalation amount calculated as per Clause-10 CC of the Agreement, as the petitioner has successfully completed the work to the satisfaction of the respondent authorities under Agreement No. 04 SBD/2011-12 within the stipulated period or extended period of completion of the work and the official respondents themselves have taken decision to grant extension of time to the petitioner and further to direct the respondents to make entire payments of price escalation along with reasonable interest upon the said amount of price escalation to be calculated by the respondents from due date of payment till actual date of payment.

III. To issue an appropriate writ(s), order(s),



direction(s) in the nature of writ of Mandamus directing the respondents to grant benefit of Clause-10 CC of the Agreement, as the actual period of completion of the work in question was more than 18 months as the Departmental Tender Committee in its' meeting dated 03.02.2018 has taken decision to grant time extension to the petitioner up to 26.05.2015, which is the actual date of completion of the work under the agreement.

IV. To issue any other writ(s), order(s), direction(s), as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”

After the matter was heard for some time, finding the Bench not to be in favour of the submissions made across the Bar, learned counsel for the petitioner, under instructions, seeks permission to withdraw the present petition reserving liberty to approach Respondent No. 2, namely, the Principal Secretary, Road Construction Department, Government of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna for redressal of the grievance(s).

Learned counsel for the respondents states that as and when any such request is received from the petitioner, the same shall be considered and disposed of expeditiously and preferably within a period of three months thereafter, in full compliance of the principles of natural justice.



Statement accepted and taken on record.

The Hon'ble Supreme Court in *D. N. Jeevaraj Vs.*

Chief Secretary, Government of Karnataka & Ors, (2016) 2

SCC 653, paragraphs 34 to 38 observed as under:-

“34. The learned counsel for the parties addressed us on the question of the bona fides of Nagalaxmi Bai in filing a public interest litigation. We leave this question open and do not express any opinion on the correctness or otherwise of the decision of the High Court in this regard.

35. However, we note that generally speaking, procedural technicalities ought to take a back seat in public interest litigation. This Court held in *Rural Litigation and Entitlement Kendra v. State of U.P.* [*Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504] to this effect as follows: (SCC p. 515, para 16)

“16. The writ petitions before us are not inter parties disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court.”

36. A considerable amount has been said about public interest litigation in *R&M Trust* [*R&M Trust v. Koramangala Residents Vigilance Group*, (2005) 3 SCC 91] and it is not necessary for us to dwell any further on this except to say that in issues pertaining to good governance, the courts ought to be somewhat more liberal in entertaining public interest litigation. However, in matters that may not be of moment or a litigation essentially directed against one organisation or individual (such as the present litigation which was directed only against Sadananda Gowda and later Jeevaraj was impleaded) ought not to be entertained or should be rarely entertained. Other remedies are also



available to public spirited litigants and they should be encouraged to avail of such remedies.

37. In such cases, that might not strictly fall in the category of public interest litigation and for which other remedies are available, insofar as the issuance of a writ of mandamus is concerned, this Court held in *Union of India v. S.B. Vohra* [*Union of India v. S.B. Vohra*, (2004) 2 SCC 150: 2004 SCC (L&S) 363] that: (SCC p. 160, paras 12-13)

“**12.** Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

13. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”

38. A salutary principle or a well-recognised rule that needs to be kept in mind before issuing a writ of mandamus was stated in *Saraswati Industrial Syndicate Ltd. v. Union of India* [*Saraswati Industrial Syndicate Ltd. v. Union of India*, (1974) 2 SCC 630] in the following words: (SCC pp. 641-42, paras 24-25)

“**24.** ... The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in *Halsbury's*



Laws of England (3rd Edn.), Vol. 11, p. 106:

‘198. Demand for performance must precede application.—As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.’

25. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution.”

As such, petition stands disposed of as withdrawn with the following liberty/direction/observation:-

(a) Petitioner shall approach the authority concerned **i.e.** Respondent No. 2, namely, the Principal Secretary, Road Construction Department, Government of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna for redressal of the grievance(s);

(b) The said authority shall consider and dispose of the representation of the petitioner expeditiously by passing a reasoned and speaking order preferably within a period of three months from the date of its filing along with a copy of this order;

(c) The order assigning reasons shall be communicated to the petitioner;



(d) Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(e) Also, opportunity to place on record all relevant materials/documents shall be granted to the parties;

(f) Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(h) Also, liberty reserved to the petitioner to approach the Court, should the need so arise subsequently on the same and subsequent cause of action;

(i) We have not expressed any opinion on merits. All issues are left open;

The petition stands disposed of as withdrawn in the aforesaid terms.



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

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Bibhash/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.12.2022
Transmission Date	

