

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3241 of 2020

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Pankaj Brijesh (JV) having its Registered office at R.K. Handloom, Kachhari Road, Bettiah, District West Champaran through its Authorised Signatory, Brijesh Kumar, aged about 43 Years, Male Son of Ramashray Prasad Chauriya, resident of Dhumnagar, Ward No. 15, P.O. Dhumnagar, P.S. Jagdishpur, District West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Engineer in Chief, (Head Quarters), Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Irrigation Creation, Water Resources Department, Motihari, District Motihari, Bihar.
4. The Executive Engineer, triveni Canal Division, Raxaul, District Mothari, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate Mr. Chandan Kumar, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh (GA-2) Mr. Kunal Tiwary, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

9 21-04-2023 In the instant petition, petitioner has prayed for the following relief(s):-

(i) Quashing of the Letter No. 16 dated 07.01.2020 (Annexure 3) by which, the Agreement No. 02/SBD/2017 18 of the petitioner has been Rescinded under Clause 3 of the Standard Bidding document and it has been further decided to get the remaining work concluded at the risk and cost of the petitioner under Clause 14 of the Standards Bidding Document; and



(ii) Restraining the Respondents from giving effect to the Letter No. 16 dated 07.01.2020 (Annexure 3) during the pendency of the present Writ Application.”

02. Short question for consideration in the present petition is that who is the competent authority to invoke Clause 14 of General Condition of Contract of Standard Bidding Document (SBD), which reads as under:-

“ Clause-14

Cancellation of contract in full or part

If the contractor:

i) at any time makes default in proceeding with the works or any part of the work with due diligence and continues to do so after a notice in writing of 7 days from the Engineer-in-Charge; or

ii) Commits default to comply with any of the terms and conditions of the contract and does not remedy it or take effective steps to remedy it within 7 days after a notice in writing is given to him in that behalf by the Engineer-in-Charge; or

ii) Fails to complete the works or items of work with individual dates of completion, on or before the date(s) of completion, and does not complete them within the period specified in a notice given in writing in that behalf by the Engineer-in-Charge; or

iv) Shall offer or give or agree to give to any person in Government service or to any other person on his behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for



having done or forbome to do any act in relation to the obtaining or execution of this or any other contract for Government; or

v) Shall enter into a contract with Government in connection with which commission has been paid or agreed to be paid by him or to his knowledge, unless the particulars of any such commission and the terms of payment thereof have been previously disclosed in writing to the Accepting Authority/Engineer-in-Charge; or

vi) Shall obtain a contract with Government as a result of wrong tendering or other non-bonafide methods of competitive tendering; or

vii) Being an individual, or if a firm, any partner thereof shall at any time be adjudged insolvent or have a receiving order or order for administration of his estate made against him or shall take any proceedings for liquidation or composition (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or purport so to do, or if any application be made under any Insolvency Act for the time being in force for the sequestration of his estate or if a trust deed be executed by him for benefit of his creditors; or

viii) Being a company, shall pass a resolution or the Court shall make an order for the winding up of the company, or a receiver or manager on behalf of the debenture holders or otherwise shall be appointed or circumstances shall arise which entitle the Court or debenture holders to appoint a receiver or manager; or

ix) Shall suffer an execution being levied on his goods and allow it to be continued



for a period of 21 days; or

x) Assigns, transfers, sublets (engagement of labour on a piece-work basis or of labour with materials not to be incorporated in the work, shall not be deemed to be subletting) or otherwise parts with or attempts to assign, transfer sublet or otherwise parts with the entire works or any portion thereof without the prior written approval of the Competent Authority. The Competent Authority may, without prejudice to any other right or remedy which shall have accrued or shall accrue hereafter to Government, by a notice in writing to cancel the contract as a whole or only such items of work in default from the Contract.

The Competent Authority may, without prejudice to any other right or remedy which shall have accrued or shall accrue hereafter to Government, by a notice in writing to cancel the contract as a whole or only such items of work in default from the Contract.

The Engineer-in-Charge shall on such cancellation by the Competent Authority have powers to:

(a) Take possession of the site and any materials, constructional plant, implements stores, etc., thereon; and/or

(b) Carry out the incomplete work by any means at the risk and cost of the contractor.

On cancellation of the contract in full or in part, the Engineer-in-Charge shall determine what amount, if any, is recoverable from the contractor for completion of the works or part of the works or in case the works or part of the works is not to be completed, the loss of Damage suffered by Government. In determining the amount, credit shall be given to the contractor for the value of the work executed by him up to the time of cancellation, the value of contractor's



materials taken over and incorporated in the work and use of plant and machinery belonging to the contractor. Any excess expenditure incurred or to be incurred by Government in completing the works or part of the works or the excess loss or damages suffered or which may be suffered by Government as aforesaid after allowing such credit shall without prejudice to any other right or remedy available to Government in law be recovered from any moneys due to the contractor on any account, and if such moneys are not sufficient the contractor shall be called upon in writing and shall be liable to pay the same within 31 days.

If the contractor fails to pay the required sum within the aforesaid period of 30 days the Engineer-in-Charge shall have the right to sell any or all of the contractors unused materials, constructional plant, implements, temporary buildings, etc. and apply the proceeds of sale thereof towards the satisfaction of any sums due from the contractor under the contract and if thereafter there be any balance is outstanding from the contractor, it shall be recovered in accordance with the provisions of the contract.

Any sums in excess of the amounts due to Government and unsold materials, constructional plant, etc., shall be returned to the contractor, provided always that if cost or anticipated cost of completion by Government of the works or part of the works is less than the amount which the contractor would have been paid had he completed the works or part of the works, such benefit shall not accrue to the contractor.”

Under line supplied

03. We have to examine Clause-X of the SBD to the



extent that whether is there any compliance to the extent that “the Engineer-in-Charge shall on such cancellation by the competent authority have powers to proceed in cancellation of contract or not?

04. Reading of the aforesaid specific clause, it consisting of two parts namely the competent authority has to cancel the contract and thereafter, the Engineer-in-Charge shall take further steps in the matter.

05. Perusal of the impugned action, it is evident that the Engineer-in-Charge has taken action to cancel the contract in the absence of order of cancellation of contract by the competent authority. Perusal of S.B.D. and G.C.C., there is no definition in identification of competent authority, in other words, who are all the competent authority to invoke Clause 14(X) of GCC.

06. On the other hand, learned counsel for the respondent relied on Clause-3(vii) to apprise this Court that when the contractor has made himself liable for action under any of the cases aforesaid, the Engineer-in-Charge on behalf of the Governor of Bihar shall have powers to contend that there is no infirmity insofar as action taken by Engineer-in-Charge and he would be the competent authority.



07. Clause-3 is relating to ‘When Contract can be determine/Rescined’ whereas Clause-14 is relating to ‘Cancellation of contract in full or part’. We are concerned with the Clause 14, therefore, Clause-3 would not spring into action insofar as taking action under Clause 14 of GCC. Both the Clauses are independent to each other. In Clause-14, competent authority was required to cancel the contract and not by Engineer-in-Charge. Therefore, the petitioner has made out a *prima facie* case, accordingly, impugned action dated 07.01.2020 (Annexure-3) to the writ petition stands set aside.

08. Accordingly, the writ petition stands allowed, reserving liberty to the concerned/competent authority to invoke Clause 14 of GCC in the manner known to the law. Such action shall be taken within a period of three months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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