

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3784 of 2022

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Tripurari Prasad Singh, Son of Late Kartik Narayan Singh, Resident of Mohalla- Bhikhanpura Narayan Bhawan, P.O.- Head Post Muzaffarpur, P.S.- Muzaffarpur Sadar Thana, Dist- Muzaffarpur, Pin- 842001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Tourism Department, Old Secretariat, Patna- 15.
2. The Principal Secretary, Tourism Department, Old Secretariat, Patna- 15.
3. Bihar State Tourism Development Corporation Ltd. (A Govt. of Bihar Undertaking) through the Managing Director, Beerchand Patel Path, Kautilya Hotel, Patna- 800001.
4. The Managing Director, Bihar State Tourism Development Corporation Ltd. (A Govt. of Bihar Undertaking), Beerchand Patel Path, Kautilya Hotel, Patna- 800001.
5. The Chief Engineer, Bihar State Tourism Development Corporation Ltd. (A Govt. of Bihar Undertaking), Beerchand Patel Path, Kautilya Hotel, Patna- 800001.
6. The Executive Engineer, Bihar State Tourism Development Corporation Ltd. (A Govt. of Bihar Undertaking), Beerchand Patel Path, Kautilya Hotel, Patna- 800001.
7. The Union of India through the Secretary, Ministry of Tourism, Govt. of India, Room No.109, Transport Bhawan, 1 Parliament Street, New Delhi- 110011.
8. The Secretary, Ministry of Tourism, Govt. of India, Room No. 109, Transport Bhawan, 1 Parliament Street, New Delhi- 110011.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Manish Sahay, Advocate Mr. Anil Kumar Sinha, Advocate
For the Union of India	:	Mr. Radhika Raman, CGC Mr. Ram Tujabh Singh, Advocate
For the State	:	Mr. Santosh Chandra Bhaskar, AC to GP-11
For the BSTDC	:	Mr. Kumar Abhimanyu Pratap, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 17-03-2023

Heard learned senior counsel for the petitioner and



learned counsel for the respondents.

2. Initially, the present writ petition has been filed claiming the following reliefs :-

“(I) For after quashing of rescinding order of contract, issued vide Memo No. 41/Engg./2018/61/ Eng/ 2022 dated 28.01.2022 as well as fresh NIT No. 15/ E-Tender/ BSTDC/ SBD/ 2021-22 dated 15.02.2022, as contained in Annexure P-4 & P-11, directing the concerned respondent either allow the petitioner to complete the balance work in question within 2 (Two) months from the date of allow to do so Or direct them to pay all contractual amount with relates to bill of work done including entire amount of security deposit and deducted amount of Time Extension etc.

(II) For restraining the respondents for taking any coercive steps against the petitioner as well as creating third party right relates to fresh tender during pendency of this writ application.

(III) For declaring that the actions of the respondents are arbitrariness, malafide, malicious, colourable exercise of power.

(IV) For further passing such an Order or Orders for which the petitioner is entitled under the law in the facts and circumstances of this case”.



3. Thereafter, the petitioner has filed an interlocutory application bearing I.A. No.1 of 2022 for amendment in the instant writ petition by adding following relief in para 1 of the instant writ petition :

“(V) For quashing of Notice for inviting very short Re-Tender No.16/E-Tender/BSTDC/SBD of 2021-22 dated 25.02.2022 read with its corrigendum issued vide letter no.212/Engg/2022 dated 07.03.2022 as contained in Annexure-P-13 series because without preparing final bill in presence of the petitioner, the respondent Chief Engineer (i.e. Respondent No.5) has invited re-tender for “Remaining Work of Development of Them Park at Bhitiharwa, West Champaran, under Gandhi Circuit”.

4. Again, the petitioner has filed an interlocutory application bearing I.A. No.2 of 2022 for amendment in the instant writ petition by adding following relief in para 1 of the instant writ petition :

“(VI) For quashing of Notice for inviting very short Re-Tender No.17/E-Tender/BSTDC/SBD of 2021-22 dated 14.03.2022 as contained in Annexure-P-14 because without preparing final bill in presence of the petitioner, the respondent Chief Engineer (i.e. Respondent No.5) has invited re-tender for



“Remaining Work of Development of Them Park at Bhitiharwa, West Champaran, under Gandhi Circuit for estimated cost of Rs.710.54 lacs”.

5. Thereafter, the petitioner has filed an interlocutory application bearing I.A. No.3 of 2022 for impleading Mr. Saroj Narayan Prasad Singh, son of not known, resident of Mohalla-Habibpura, Barara, P.O. +P.S.-Sohsarai, District-Nalanda as a party respondent no.9 in the instant writ petition on the ground that during pendency of the instant writ petition, the respondent Corporation has created 3rd party interest in terms of liberty granted by this Court vide order dated 11.05.2022. However, vide order dated 05.07.2022, the said interlocutory application has been dismissed as withdrawn as the same has lost its significance.

6. Again, the petitioner has filed an interlocutory application bearing I.A. No.4 of 2022 for amendment in the instant writ petition by adding following relief in para 1 of the instant writ petition :

“(VII) For quashing of Memo No. 07/16/Engg./Ac/19/ 933/ Engg./2022 dated 27.09.2022 read with Memo No. 07/07/ Engg./Ac/18-19/ 935 / Engg./ 2022 dated 28.09.2022, as contained in Annexure-P-19



series, issued under the signature of the Executive Engineer (i.e. Respondent No.6) whereby and whereunder the said authority has passed the adjustment and payment order in terms of rescinding order dated 28.01.2022 as contained in Annexure-P/4 at page-111 in most arbitrary manner and contrary to provision of agreement in question”.

7. The short facts, according to the petitioner, are that pursuant to a Re-Tender Notice dated 10.07.2018 issued for construction and development of theme park (with cafeteria and tourist amenities) at Bhitiharwa West Champaran under Gandhi Circuit for the year 2018-19 at an estimated cost of Rs.1637.9 lacs, which has been corrected and sanctioned for Rs.11,99,02,000/- within 15 months from the date of work order, the petitioner participated in the tender process and the said work was finally allotted in favour of the petitioner in accordance with law @ 5.40% below on estimated costs. On 06.03.2019, a Letter of Acceptance was issued in favour of the petitioner. Thereafter, on 09.03.2019, Agreement No. 18/SBD/2018-19 was entered and executed among the parties for agreement value of Rs.11,43,27,292/-. A work order was also issued vide letter no. 241 dated 09.03.2019 for completing the said work within 15 months, i.e., on or before 08.06.2020 which



was extended up-to 15.02.2022. The petitioner had completed almost 50% of work as per agreement and only finishing work was left to be completed. Vide letter dated 28.01.2022, agreement of the petitioner has been terminated alleging breach of contract and entire Performance and Additional Performance Security has been forfeited besides that Risk and Cost upon the petitioner has also been imposed before the extended date of completion of work i.e. 15.02.2022. The petitioner had submitted his 8th Running Account Bill amounting to Rs.5,29,82,114/- and it is not in dispute that till 7th R/A Bill, the petitioner has received a payment of Rs.2,94,85,988/- and a sum of Rs.2,34,96,126/- is pending for making payment to the petitioner by the respondent Corporation after checking and passing of the same. Thereafter, the petitioner has filed a representation on 31.01.2022 with a request to allow him to complete the balance work till 31.03.2022 after recalling the rescinding order dated 28.01.2022. Lastly, the respondent Chief Engineer has issued very short Tender No.15/E-Tender/BSTDC/SBD/2021-22 for execution of balance work amounting to Rs.845.10 lacs. Subsequently, the balance work has been assigned to a third party. Hence, the present Writ.

8. At the outset, the learned senior counsel appearing



on behalf of the petitioner has submitted that though the dispute is arising out of the contractual obligation and termination of contract by the respondents, concerning the issues involved, the writ petition is maintainable. The learned senior counsel further submitted that the instant petition has been filed against the illegal act of the respondent no.3 as he rescinded the contract with the petitioner vide order dated 28.01.2022, but the said order is itself illegal. The contract has been terminated by the respondent no.3 on directions of his higher authorities and since the respondent no.3 has not applied his independent mind to the facts of the case, the order dated 28.01.2022 cannot be said to be an order passed by the respondent no.3 on his own. Hence, the termination of the contract is wrong and incorrect and it is unlawful. So a legal issue is involved in this case which can be agitated before the writ Court. In support of this contention, he has placed reliance on the following decisions :

(i) 2023 SCC Online SC 116 (Gas Authority of India Ltd. Vs. Indian Petrochemicals Corporation Ltd. and Ors.)

(ii) 2021 SCC Online SC 99 (Unitech Limited & Ors. Vs. Telangana State Industrial Infrastructure Corporation and Ors.)

(iii) (2021) 6 SCC 15 (Uttar Pradesh Power Transmission Corporation Ltd. & Anr. Vs. CG



Power & Industrial Solutions Ltd. & anr.)

***(iv) (2011) 5 SCC 697 (Union of India & Ors.
Vs. The State of Bihar & Ors.)***

***(v) (2022) 2 PLJR 161 (M/s Sanjeev Kumar
Vs. The State of Bihar & Ors.)***

***(vi) (1991) 1 PLJR 352 (FB) (M/s Pancham
Singh Vs. The State of Bihar & Ors.)***

***(vii) (2015) 13 SCC 592 (Ram Barai Singh &
Company Vs. State of Bihar & Ors.)***

***(viii) (2004) 3 SCC 553 (ABL International
Ltd. & Anr. Vs. Export Credit Guarantee
Corporation of India Ltd. & Ors.)***

***(ix) (2010) 11 SCC 557 (Manohar Lal Vs.
Ugrasen & Ors.)***

9. The learned senior counsel for the petitioner further submitted that the petitioner had started execution of works at war footing but due to some hindrance/obstruction which came during the execution period, he could not achieve the milestone for that the petitioner was not responsible. In spite of that, the Executive Engineer has passed the order of termination/rescinding on 28.01.2022 without applying his independent mind. The learned counsel further submitted that when the Executive Engineer himself admits in the rescinding order dated 28.01.2022 that time for completing the remaining work was extended till 15.02.2022, but he has taken coercive



action against the petitioner before such extended date of completion. The learned senior counsel further submitted that from perusal of the rescinding order dated 28.01.2022 issued by the Executive Engineer, it is quite clear that he himself admit that over the work site, there were several obstructions till September 2021 and it is also not in dispute that required designs for the said project was provided to the petitioner on three earlier occasions by the consultant. So the petitioner was not in breach of contract and he is not responsible for any kind of delay because situation was beyond his control. The learned senior counsel further submitted that the order terminating the contract dated 28.01.2022 has been passed against the established canons of law. From paragraph 6 of the aforesaid order, it is clear that the Executive Engineer has passed the order on the directions of the Minister, Tourism Department, Secretary, Tourism Department, Managing Director, Bihar State Tourism Development Corporation Ltd., Patna and the concerned Chief Engineer as they directed him to rescind the contract of the petitioner and put his name in the blacklist. Thus, the Executive Engineer has not applied his independent mind prior to rescinding the contract of the petitioner.

Moreover, once the time for completion of remaining



work was extended till 15.02.2022, the respondent no.6 could not have taken coercive action against the petitioner before the end of the extended date and in this regard, the petitioner relied on the decision of the Patna High Court in the case of ***Arjun Singh & Co. Vs. the Union of India & Ors., reported in PLJR 2008 (2) 485.***

10. The learned senior counsel further submitted that the petitioner has submitted his 8th Running Account Bill amounting to Rs.5,29,82,114/- and it is not in dispute that till 7th R/A Bill, the petitioner has received a payment of Rs.2,94,85,988/- and a sum of Rs.2,34,96,126/- is pending for making payment to the petitioner by the respondent Corporation after checking and passing of the same. The learned senior counsel further submitted that on earlier occasion, the respondent-Chief Engineer (respondent no.5) had invited tender for balance work vide NIT No.15/ E-Tender/ BSTDC/ SBD/ 2021-22 dated 15.02.2022. Thereafter, all of a sudden, the respondents had issued fresh NIT No. 16/E-Tender/BSTDC/SBD of 2021-22 dated 25.02.2022 for the said remaining work, which was cancelled and another NIT No.17/E-Tender/BSTDC/SBD of 2021-22 dated 14.03.2022 has been issued for remaining work.

11. The learned senior counsel further submitted that



during the pendency of this writ application, the Executive Engineer passed payment and adjustment orders dated 27.09.2022 and 28.09.2022 by which he has adjusted risk and cost amount of Rs.1,60,49,675.52/- from the payment of the petitioner's liabilities. From perusal of the said payment order dated 27.09.2022, it appears that out of bill amount of Rs.5,29,82,114/-, the respondents have admitted only Rs.4,42,95,726/- and balance claimed amount of Rs.86,86,388/- has been refused without assigning any reason and at no point of time, they have given any opportunity to the petitioner to justify his bill/claimed amount. Hence, the petitioner would also be entitled for the said balance amount of work done for the ends of justice. Besides that, the petitioner deserves refund of entire security deposit amounting to Rs.52,13,659/- and deducted amount of 'Time Extension' i.e. Rs.14,80,974/- and deposited amount of earnest money i.e. Rs. 22,90,000/- along with interest @ 18% over entire payable amount from the date of said rescinding order and till the date of its realization. From perusal of adjustment order dated 28.09.2022, it appears that the respondents have adjusted risk and cost amount of Rs.1,60,49,675.52/- from the payable amount of Rs.1,67,65,256/- and rest payable amount i.e. Rs.7,15,580/- was



kept pending till lapse of defect liability period, which was three years after the date of completion.

12. The learned senior counsel further submitted that the contract of the petitioner could not be terminated and forfeiture of security deposit and imposition of cost could take place under Clause 3 (7) (a & b) of the contract only for breach of contract admitted by the petitioner and otherwise not. In the instant case, the petitioner has not admitted breach of contract. So, the rescinding order dated 28.01.2022 is illegal and against the specific terms of the contract and, therefore, his entire security deposit/Additional Performance Security/ Performance Security deposit/deducted amount of Time Extension and other lawful amount including work done amount relating to the said agreement be paid to the petitioner without any further delay.

13. On the other hand, the learned counsel for the respondents has submitted that the instant writ petition filed by the petitioner suffers from vice of multiple reliefs in one case, so it is not maintainable on the factual aspects of the matter and on the point of law. Hence, it may be dismissed on this count itself. He has further submitted that the petitioner has approached this Court by ignoring and neglecting the provisions of alternative remedy given under clause 25 of the contract which provides for



arbitration in case of dispute. Both the parties of the contract are bound by its provisions and mandate of the contract at first place and must not be allowed to jump over the provisions of the contract. Therefore, this writ petition which has been filed without exhausting alternative remedy provided under the contract is fit to be dismissed on this point of law alone. The learned counsel further submitted that tender has been awarded to one Saroj Narayan Prasad Singh being successful bidder and letter of acceptance dated 22.04.2022 has been issued to him and approx 25% of work has been completed by the said contractor. The learned counsel further submitted that the Tourism Ministry, Govt. of India vide letter dated 07.01.2022 had clearly directed that if the whole project including all components was not finished up to 31.03.2022 then rest amount would not be granted by the Government of India, rather the same would have to be borne by the State Government of Bihar which would have badly affected the image of Bihar Government besides creating unnecessary financial liabilities on public money of the State of Bihar. The learned counsel further submitted that the petitioner has been given twenty months extra time to complete the work, but he has never taken interest to abide the conditions incorporated in the agreement and extended



time to complete the work within time limit stipulated. Though there was some practical and technical problems at initial stage, but the same were resolved by the respondents authorities at the earliest. The petitioner has been warned several times earlier for slow pace of work, but he kept making false promise to the respondents. The petitioner had given an affidavit and a letter, both dated 04.08.2021 to the effect that he would complete the work by December, 2021, still he failed to keep up his promise given on affidavit. The other contractors, who were facing the same conditions and working in the same campus, had executed and completed their work within the stipulated time limit. The project was delayed and remained incomplete due to lackadaisical approach of the petitioner only, which compelled the respondents to take strong action against the petitioner and, as such, the respondent no.6 vide letter dated 11.12.2021 issued show cause to the petitioner as to why the contract be not rescinded and why not he be blacklisted for failure to complete the work. The learned counsel further submitted that a supervision meeting was conducted by the Principal Secretary, Tourism Department on 16.12.2021 in which the petitioner was also present. The authorities expressed their displeasure in strong terms and sought explanation from the petitioner



whereupon the petitioner asked for some extra time up to 15.02.2022 to complete the work. The Principal Secretary directed the respondent no.2 BSTDC to supervise the work being done by the contractor on regular basis and if satisfactory progress was not found, then to take steps to blacklist the petitioner-contractor by publishing short tender notice. In terms of the aforesaid direction of the Principal Secretary, the technical team visited the site on 27.12.2021 and 16.01.2022 wherein no satisfactory progress was found to draw inference that project would be completed within third extra time given to the petitioner. In the supervision meeting of the Principal Secretary dated 20.01.2022, it was found that progress of work was not satisfactory enough to suggest the completion of work within extra time of 15.02.2022 and, accordingly, the Executive Engineer passed a detailed order dated 28.01.2022 after considering all aspects of the case and thereby rescinded the contract and forfeited the entire performance and additional performance security as per provisions of contract. Furthermore, the petitioner had hardly less than three weeks to complete the work from the date of impugned action, i.e., up to 15.02.2022 and it was highly impracticable for him to complete the remaining work.



14. The learned counsel for the respondents further submitted that Clauses 3 (i) to (vii) of the contract are quite explicit and the said clause provides for recession/termination of the contract in case the petitioner is found to be lagging or negligent in carrying out his obligation and does not complete the work within the specified period in the notice given in writing. The respondents have rescinded the contract in terms of express provision of the contract and extended time and there is no illegality in it.

15. The learned counsel for the respondents further submitted that the order dated 28.01.2022 is a speaking order and it mentions in detail the events taking place in the matter towards execution of the contract by the petitioner and default made by him despite constant reminders. The petitioner even attended the meetings. The learned counsel stressed the schedule dates to buttress his submission that the petitioner was granted a number of opportunities to complete the work and despite so much indulgences being shown, the petitioner failed to complete the project. The learned counsel further submitted that the petitioner even attended the meetings called by the respondents in which he was impressed upon to complete the work and every possible help was extended to him and when it was found



that the petitioner was not interested in completing the work assigned to him, despite extension of time period of completion of work till 15.02.2022, the contract was terminated vide order dated 28.01.2022 since it was found that it was impracticable for the petitioner to complete the work within the extended period and since the project has already overshoot the time period and there was every possibility of Central Government not providing funding for the project if it was not completed by 31.03.2022, the entire financial burden would have shifted to the State Government resulting in loss of face for the State Government. Cumulatively taking all these points into consideration, the respondent no.3 was left with no option but to terminate the contract.

16. The learned counsel for the respondents vehemently denied that the contract was rescinded at the instance of higher authorities of respondent no.3. The learned counsel further submitted that from bare perusal of the order dated 28.01.2022 shows only a supervisory meeting was conducted to take stock of the situation by the higher authorities of the respondent no.2 and finding the tardy progress of the work and considering the unsatisfactory work of the petitioner and also taking into account the previous conduct of the



petitioner as enumerated in paragraphs 2 to 5 of the order dated 28.01.2022, the decision was taken to rescind the contract of the petitioner and also for blacklisting him. It cannot be said that the respondent no.3 took the decision only on the basis of the decision arrived at in the meeting of the higher authorities of respondent no.3 because the contents of the order dated 28.01.2022 clearly show that the respondent no.3 arrived at an independent conclusion based on the material facts which have been mentioned from paragraph 2 to 5 (supra) and paragraph 6 of the aforesaid order is only the logical culmination of the events in hand.

17. The learned counsel for the respondents further submitted that the alternative prayer of the petitioner is with regard to disputed questions of facts about his claims regarding the payment of contractual amount and forfeiture of earnest money and other financial issues regarding payments made and claim of balance amount. There are other issues with regard to payment of interest and adjustment of risk and cost amount. These issues cannot be agitated before a writ Court and the petitioner has a remedy under clause 25 of the Contract which provides for settlement of dispute by arbitration.

18. The learned counsel for the respondents again



reiterated that the petitioner has got alternative efficacious remedy by either resorting to the provisions of the Arbitration and Conciliation Act, 1996 or taking recourse to the provisions of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008. Hence, no interference is required by this Court in this matter.

19. Having considered the material available on record and further considering the rival submission, in the present case, this Court is required to examine first the maintainability of the writ petition under Article 226 of the Constitution of India.

20. It is well settled principle of law that while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of



the State or its instrumentality is so arbitrary and unreasonable so as to violate the constitutional mandate or Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.

21. Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of State power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to



whether recourse to a public law remedy can justifiably be invoked.

22. Giving our thoughtful consideration on the aspect of the maintainability, the Apex Court in ***ABL International Ltd. (supra)*** in paragraph 27 has held as under :

“27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable”.

23. On the other hand, in the case of ***Union of India and Ors. Vs. Puna Hinda, reported in (2021) 10 SCC 690***, the Apex Court has held that in the contractual matters in the field of private law are better adjudicated upon by the forum agreed to by the parties. For example, the dispute as to whether any amount is payable or not and/or how much amount is payable



are disputed questions of facts and cannot be adjudicated by the writ court.

24. From the aforesaid discussions, it seems reasonable to conclude that wherever mixed questions of law and facts are involved, the writ Court has jurisdiction to look into the matter under Article 226 of the Constitution of India. The present case being one such instance, we hold that this Court has got jurisdiction to entertain the writ petition.

25. The contention of the petitioner is confined basically against rescinding of his contract and the petitioner has assailed the order of rescinding of the contract mainly on two grounds; firstly that despite extension granted till 15.12.2021, his contract was terminated on 28.01.2022. Secondly, the order has been assailed on the ground that the respondent no.3 passed the rescinding order on the directions of his higher authorities. But we are afraid that both the contentions are not sustainable in the light of facts and circumstances and under the contractual obligation of the parties. The record shows the petitioner was the successful bidder for construction and development of theme park at Bhitiharwa, West Champaran and he was issued a work order to proceed with the work vide order dated 09.03.2019. In terms of the contract, the petitioner was supposed to complete



the work till 08.06.2020. The petitioner gave his letter of acceptance on 06.03.2019 and vide further letter dated 12.04.2019, the petitioner submitted a work programme time line with an undertaking to complete the work by June, 2020. Thereafter, due to non-completion of work by the petitioner till 08.06.2020, which was the scheduled date for completion of the work, the petitioner was issued a reminder on 08.12.2020 with a warning that he would be debarred from further participating in any bid. Further letters of warning were issued to the petitioner on 09.02.2021 and 04.06.2021 by the respondents. When the work was not completed even three months after 30.05.2021, the date which was fixed for completion of the work, the petitioner was finally directed to complete the work by December, 2021 and to furnish an affidavit in this regard. Meanwhile, when it was found that the petitioner has been grossly negligent, a letter dated 16.08.2021 was issued further extending warning to the petitioner. Though the petitioner submitted an undertaking to complete the work by 31.12.2021. Seeing the indifferent attitude of the petitioner, he was debarred to participate in any future tender vide order dated 19.11.2021 by the respondent no.3. In a meeting dated 15.12.2021 which was also attended by the petitioner, the petitioner was directed



to complete the work on or before 15.02.2022 with the rider that periodic supervision of the progress in the work would be made. It further appears from the record that when the progress was found to be tardy and there was no likelihood of completion of the work till 15.12.2022, the respondent no.3 moved to rescind the contract vide order dated 28.01.2022. So, the claim of the petitioner that his contract could not have been terminated before the expiry of the extended time could not be sustained in view of the aforesaid discussions, dates and events which show the petitioner has been given ample opportunity to complete the work but he failed to honour his commitment.

26. On the second aspect of the contention of the petitioner that the respondent no.3 passed the order on the directions of his higher authorities, the said contention is also not sustainable. The order dated 28.01.2022 is reproduced below for ready reference :

दिनांक-28/1/2022

आदेश

भारत सरकार द्वारा स्वदेश दर्शन योजना के अन्तर्गत बिहार राज्य पर्यटन विकास निगम लि० पटना में "गांधी सर्किट का विकास" पैकेज के अन्तर्गत कई योजनाओं समेत "contruction of Theme Park at Bhitiharwa,



West Champaran, नामक गोजना की स्वीकृति वित्तीय वर्ष 2018-19 में दी गई। इस योजना हेतु NIT के माध्यम से निविदा प्रकाशित की गई एवं चयनित संवेदक M/s Tripurari Prasad Singh, Narayan Bhawan, Bhikanpura, HPO- Muzaffarpur-842001 को इस कार्यालय के पत्रांक- 241, दिनांक 09.03.2019 के द्वारा issue of Notice To Proceed with The Work का पत्र निर्गत किया गया। एकरारनामा के अनुसार 08.06.2020 तक यह कार्य पूर्ण करना था। पत्रांक - 213/Engg/2019, दिनांक 06.03.2019 द्वारा Letter of Acceptance निर्गत किया गया। संवेदक के द्वारा दिनांक - 12.04.2019 को work program Time Line समर्पित करते हुए June 2020 तक पूर्ण करने का वचन दिया गया।

दिनांक- 19.09.2019 को संवेदक के द्वारा कार्यालय को सूचना दी गई जिसमें चल रहे कार्य को भूमि विवाद बताया गया। उस समय तक मात्र छोटा एवं बड़ा शौचालय का कार्य छत स्तर तक तथा कैफेटेरिया का कार्य लिन्टल स्तर तक हुआ था, और पाँच महीने के बाद भी अन्य Components में कार्य प्रारंभ नहीं किया गया था। इस कार्यालय के पत्रांक - 1153/Engg/2019, दिनांक- 03.12.2019 एवं पत्रांक - 64/Engg/2020, दिनांक 18.01.2020 के द्वारा स्थल विवाद का समाधान होने की सूचना एवं युद्धस्तर पर कार्य कराने हेतु निर्देशित किया गया। संवेदक द्वारा अपने समर्पित work Program Time Line के अनुरूप लगभग एक वर्ष बाद भी कार्य में प्रगति नहीं दिखायी गयी।

2. अधोहस्ताक्षरी के पत्रांक - 847/Engg/2020, दिनांक- 08.12.2020 के द्वारा निर्धारित तिथि 08 जून 2020 तक कार्य पूर्ण नहीं होने पर खेद व्यक्त करते हुए बिहार ठीकेदारी निबंधन नियमावली 2007 के तहत भविष्य में किसी भी निविदा में भाग लेने से वंचित किए जाने की कार्रवाई करने हेतु चेतावनी पत्र निर्गत किया गया। संवेदक द्वारा वृक्ष कटाई न होने के कारण संबंधित component कार्य में बाधा होने का पत्र दिनांक- 18.01.2021 को दिया गया जिसके लिए ड्राईंग में आवश्यक संशोधन कर इस समस्या का भी निदान करते हुये कार्य को शीघ्र पूर्ण करने का निर्देश संवेदक को दिया गया। अधोहस्ताक्षरी के पत्रांक 144/Engg/ 2021 दिनांक 09.02.2021 के द्वारा कार्य को शीघ्र पूर्ण करने हेतु पुनः निर्देश चेतावनी पत्र निर्गत किया गया। संवेदक द्वारा चार माह बाद भी तीव्र गति से कार्य नहीं किए जाने के कारण पुनः अधोहस्ताक्षरी के पत्रांक -382/Engg/2021, दिनांक - 04.06.2021 के द्वारा कार्य को शीघ्र पूर्ण करने एवं विफलता



की स्थिति में कार्रवाई किए जाने सम्बन्धी चेतावनी पत्र निर्गत किया गया। दिनांक- 06.05.2021 को पुनः सचिव, पर्यटन विभाग, बिहार सरकार की अध्यक्षता में हुई समीक्षात्मक बैठक में भी सचिव महोदय द्वारा दिनांक 30.05.2021 तक चरखा की
स्थापना

... ..
... .. (not legible) नहीं किया गया। दिनांक- 10.06.2021 को संवेदक के द्वारा पत्र देकर बताया गया कि मिट्टी भराई में एकरारनामा में कम परिमाण में मिट्टी रखने के कारण अतिरिक्त वांछित मिट्टी का कार्य करने हेतु निर्देश दिया जाय जिसे कार्यपालक अभियंता द्वारा मौखिक स्वीकृति प्रदान की गई तथा कार्य को तीव्र गति से करने हेतु निर्देश दिया गया। अंकनिय है कि जो कार्य मिट्टी भराई से संबंधित/बाधित नहीं था यह कार्य भी 10.06.2021 तक संवेदक के द्वारा पूर्ण नहीं किया गया था। जो कार्य के प्रति लापरवाही को प्रमाणित करता है। दिनांक 04.06.2021 को संवेदक के द्वारा पत्र के साथ शपथ-पत्र संलग्न कर समर्पित किया गया, जिसमें संवेदक ने स्वयं शपथ लिया है कि यह कार्य दिसम्बर 2021 तक निश्चित रूप से पूर्ण कर लिया जाएगा एवं उस समय तक किसी भी व्यवधान की चर्चा नहीं की गई।

3. प्रबंध निदेशक, बिहार स्टेट टूरिज्म डेवलपमेंट कॉरपोरेशन लि. पटना की अध्यक्षता में हुई इस योजना के प्रगति की समीक्षात्मक बैठक में पाया गया कि कार्य को पूर्ण करने हेतु दिनांक 30.05.2021 की निर्धारित समय के तीन माह के बाद भी कार्य पूर्ण नहीं किया गया। संवेदक को अंतिम रूप से दिसम्बर 2021 तक कार्य पूर्ण करने का निर्देश दिया गया एवं पुनः शपथ-पत्र समर्पित करने का निर्देश दिया गया। संवेदक द्वारा पत्रांक-NIL, दिनांक- 15.08.2021 द्वारा अवगत कराया गया कि स्थल पर मिट्टी भराई कार्य हेतु मिट्टी उत्खनन पर स्थानीय प्रशासन द्वारा अवरोध उत्पन्न किया जा रहा है। इसके समाधान हेतु खनन विकास पदाधिकारी, पश्चिम चम्पारण, बेतिया को अधोहस्ताक्षरी के पत्रांक - 702/Engg/2021, दिनांक-23.09.2021 द्वारा पत्र दिया गया। साथ ही संवेदक को जो कार्य मिट्टी भराई से संबंधित नहीं है उसे तत्काल पूर्ण करने हेतु निदेश दिया गया।

4. सचिव, पर्यटन विभाग, बिहार सरकार के द्वारा समीक्षात्मक बैठक की कार्यवाही प्रतिवेदन के अवलोकन के क्रम में इस योजना के संवेदक के द्वारा कार्य में घोर लापरवाही किए जाने के कारण इन्हें भविष्य की किसी भी निविदा में भाग लेने से वंचित करने हेतु स्पष्टीकरण निर्गत करने हेतु निर्देश दिया गया। निर्देश के आलोक में अधोहस्ताक्षरी के पत्रांक -



584/Engg/2021, दिनांक-16.08.2021 द्वारा स्पष्टीकरण निर्गत किया गया। संवेदक द्वारा दिनांक 25.08.2021 को उक्त स्पष्टीकरण के जबाब में केवल पुरानी कठिनाईयों का हवाला देते हुए कार्य में बिलम्ब होने की बात कही गई , जिसका समाधान काफी पहले किया जा चुका था एवं संवेदक द्वारा दिए गए शपथ-पत्र के अनुसार भी कार्य निर्धारित समय दिसम्बर 2021 तक पूर्ण करने हेतु कार्य में समानुपातिक प्रगति नहीं की गई। संवेदक के द्वारा दिनांक - 31.12.2021 तक कार्य पूर्ण करने का पुनः वचन दिया गया, परन्तु तदनुसार कार्य के त्वरित क्रियान्वयन में तत्परता नहीं दिखाई गई। कार्य की समीक्षा के क्रम में दिसम्बर 2021 तक कार्य के पूर्ण होने की संभावना नहीं दिखने के कारण एवं कार्य में उदाशीलता बरतने के कारण अधोहस्ताक्षरी के पत्रांक-850/Engg/2021, दिनांक-19.11.2021 के द्वारा इस योजना के संवेदक को भविष्य में किसी भी निविदा में भाग लेने से वंचित कर दिया गया। लगभग एक माह बाद पुनः कार्य में अपेक्षित प्रगति नहीं लाने की सूचना प्राप्त होने एवं संवेदक के द्वारा दिये गए निर्धारित समय दिसम्बर 2021 के अन्दर कार्य पूर्ण नहीं होने की संभावना दिखने के कारण अधोहस्ताक्षरी के पत्रांक - 909/Engg/2021 दिनांक 11.12.2021 के द्वारा एकरारनामा की के अनुसार (1) अवशेष कार्यों को संवेदक के Risk & Coat पर कराने (2) सभी जमानत राशि जम्मा करने एवं (3) उनके निबंधन को काली सूची में दर्ज करने हेतु निर्गत किया गया।

5. सचिव, पर्यटन विभाग, बिहार सरकार के द्वारा गाँधी सर्किट के अन्तर्गत क्रियान्वित की जानेवाली योजनाओं की समीक्षात्मक बैठक दिनांक- 16.12.2021, जिसमें संवेदक भी उपस्थित थे. इस योजना के क्रियान्वयन में होनेवाले अत्यधिक बिलम्ब करने पर काफी रोष व्यक्त किया गया। संवेदक द्वारा स्थल पर मिट्टी भराई में आ रही बाधा दूर हो जाने संबंधी सूचना भी सचिव महोदय की बैठक दिनांक- 16.12.2021 में दी गयी। संवेदक को स्थल पर कैम्प कर कार्य कराने एवं आगे से हर सप्ताह के गुरुवार को प्रबंध निदेशक महोदय के समक्ष प्रगति प्रतिवेदन के साथ उपस्थित होने का निर्देश दिया गया। क्षेत्रीय अभियंताओं को इस कार्य की सतत् निगरानी रखने एवं कार्य 15 फरवरी 2022 तक पूर्ण करने हेतु समय के साथ समानुपातिक प्रगति का अवलोकन करने का निर्देश दिया गया। संवेदक द्वारा काली सूची से संबंधित स्पष्टीकरण पत्र के आलोक में दिनांक-18.12.2021 को स्पष्टीकरण समर्पित किया गया जिसमें कार्य को उन्हीं के द्वारा दिए गए शपथ-पत्र एवं Time Line के अंदर पूर्ण नहीं करने के संबंध में कोई



ठोस कारण नहीं बताया गया एवं केवल पुरानी कठिनाईयों का जिक्र किया गया जिसका समाधान बहुत पहले ही किया जा चुका था। दिनांक 28.12.2021 को क्षेत्रीय अभियंताओं के द्वारा स्थलीय निरीक्षण एवं संबंधित प्रतिवेदन से स्पष्ट हुआ कि समय के अनुसार कार्य में समानुपातिक प्रगति नहीं हुई एवं संवेदक को पुनः कार्य में युद्धस्तर पर प्रगति करने, पर्याप्त मानव बल, निर्माण सामग्री उपलब्ध कराने का निर्देश दिया गया। संबंधित वास्तुविद के द्वारा भी स्थल भ्रमण कर संवेदक को सभी प्रकार का तकनीकी सहयोग प्रदान किया गया। दिनांक-16. 01.2022 को पुनः क्षेत्रीय अभियंताओं द्वारा स्थलीय निरीक्षण कर प्रतिवेदित किया गया कि स्थल पर हो रहे कार्यों की पूर्णता हेतु समय के साथ समानुपातिक प्रगति नहीं है। एवं अपेक्षित गति का अभाव है एवं कार्य को पुनर्निर्धारित समयसीमा दिनांक- 15.02.2022 तक पूर्ण किया जाना कठिन है। तथ्यों से स्पष्ट है कि उक्त योजना के क्रियान्वयन में कुछ आशिक कठिनाईयाँ थी, जिसको काफी समय पूर्व निराकरण कर दिए जाने के बावजूद भी संवेदक के द्वारा कार्य में अपेक्षित प्रगति नहीं लायी गयी एवं कार्य को निर्धारित समय सीमा के अंदर पूर्ण नहीं किया जा सका। इस संवेदक के द्वारा कुछ Components] यथा चरखा का Pedestal निर्माण, थीम पार्क की संरचना का Finishing का कार्य आदि समय से पूर्ण नहीं करने के कारण इसी निर्माण स्थल के अन्य संवेदक को आवंटित योजना के कुछ अवयवों का कार्य यथा चरखा स्थापना Illumination STP आदि का कार्य कराना संभव नहीं हो सका।

6. पर्यटन मंत्रालय, भारत सरकार के द्वारा स्पष्ट निदेश है कि यदि इस योजना का कार्य दिनांक 31.03.2022 को पूर्ण नहीं किया गया, तो इसे पूर्ण करने हेतु शेष राशि भारत सरकार के द्वारा प्रदान नहीं की जाएगी एवं यह राज्य सरकार के द्वारा वहनीय होगा जिससे पर्यटन विभाग, बिहार सरकार की छवि धूमिल होगी तथा राज्य सरकार को अतिरिक्त वित्तीय भार का सामना करना पड़ेगा। दिनांक - 20.01.2022 को माननीय मंत्री, पर्यटन विभाग, सचिव, पर्यटन विभाग, प्रबंध निदेशक, बिहार स्टेट टूरिज्म डेवलपमेंट कॉरपोरेशन लि० पटना एवं मुख्य अभियंता की उपस्थिति में समीक्षा बैठक में उक्त सभी तथ्यों के साथ कारण देते हुए इस संवेदक के एकरारनामा को विखंडित (rescinded) करने एवं पंजीयन को काली सूची में डालने हे निर्देश दिया गया।

उक्त सभी तथ्य इस संवेदक के पंजीयन को काली सूची में डालने एवं एकरारनामा की सुसंगत धाराओं के अनुसार



कारवाई हेतु पर्याप्त कारण है। अतः तत्काल इस कार्यालय के 09/Engg/2021, दिनांक- 11.12.2021 में वर्णित एकरारनामा की कंडिका- 03 (iii), 03 (iv) 03 (v) एवं 03 (vii) के आलोक में एकरारनामा को विखंडित करते हुए जमानत एवं अतिरिक्त जमानत की जमा राशि जब्त किया जाता है एवं अवशेष कार्य को संवेदक के Risk & Cost पर करवाने का निर्णय लिया जाता है।

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कार्यपालक अभियंता
बिहार स्टेट टूरिज्म डेवलपमेंट
कॉरपोरेशन लि० पटना

ज्ञापक-41/Engg/2018/ 64/2022

दिनांक- 28/11/2022 प्रतिलिपि:- संवेदक M/s Tripurari) Prasad Singh, Narayan Bhawan, Bhikanpura, HPO Muzaffarpur-842001 को सूचनार्थ प्रेषित। साथ ही उन्हें निदेश दिया जाता है कि अद्यतन किये गये कार्य की अंतिम मापी दिनांक 01.02.2022 को निर्धारित की जाती है। निर्धारित तिथि को आप स्वयं अथवा अपने अधिकृत प्रतिनिधि (प्राधिकार पत्र के साथ) की उपस्थिति सुनिश्चित करें। आपके अथवा आपके प्रतिनिधि के अनुपस्थिति रहने की स्थिति में विभाग द्वारा एक पक्षीय अंतिम मापी कर ली जायेगी जो आपको मान्य होगा तथा इस संबंध में आपका कोई भी दावा स्वीकार्य नहीं होगा।

ह० /-
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27. A bare perusal of the order dated 28.01.2022 shows the respondent no.3 has elaborately discussed various stages starting from notice inviting tender till passing of the order dated 28.01.2022 and the same shows the respondent no.3 has taken the decision in the totality of the facts and circumstances of the case and not on the basis of the directions of his higher



authorities. Paragraphs 2 to 5 of the order dated 28.01.2022 clearly bring out the fact on fore that the conduct of the petitioner was considered at length in the said order. Paragraph 6 of the said order is only consequential to the other developments in the matter and only stamps the inevitable, it is one of the incidental facts which was also considered by the respondent no.3 as it appears from the concluding paragraph of the order. The contention of the petitioner regarding the order dated 28.01.2022 is thus without any merit and hence is brushed aside.

28. In view of the discussions made regarding the contention of the petitioner, we find and hold that the petitioner has failed to make out any case in his support and the order dated 28.01.2022 is without any blemish and hence, the same is sustainable.

29. So far as the claim of the petitioner to allow him to complete the balance work in question is concerned, in the light of the aforesaid discussions, the same could not be allowed. Moreover, it is clear from the pleadings that the respondents floated a fresh tender and awarded the work to third party and it has been submitted at the bar that the remaining work has been completed by the third party.



30. Further, the claim of the petitioner to pay all contractual amount with relates to bill of work done including entire amount of security deposit and deducted amount of time extension etc. against the respondents is concerned, the same being a disputed questions of fact and cannot be adjudicated by this Court and in this regard, we place our reliance on the decision rendered in *Union of India and Ors. (supra)*. Furthermore, clause 25 of the conditions of contract provides for settlement of disputes by arbitration and the petitioner is at liberty to take recourse of the said clause of the contract in case of his grievance.

31. With the aforesaid observations and directions, this writ petition stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	21.02.2023
Uploading Date	17.03.2023
Transmission Date	N.A.

