

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7928 of 2020

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M/s Arun Deo Kumar, a proprietorship firm, through its sole proprietor,
namely, Arun Deo Kumar, aged about 60 years, Male, Son of Shri Hira Lal,
Resident of Mahalpar, P.S. Biharsharif, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Principle Secretary, Department of Urban Development, Main Secretariat, Patna.
2. The Divisional Commissioner, Patna.
3. The Chairman, Biharsharif Smart City Limited, Biharsharif, Nalanda.
4. The Municipal Commissioner, Biharsharif, Nalanda.
5. The Chief Executive Officer, Biharsharif Smart City Limited, Biharsharif, Nalanda.
6. The Executive Engineer BUDICO-cum-Nodal Officer, Biharsharif Smart City Limited, Biharsharif, Nalanda.
7. The Deputy Team Leader, Project Management Consultant, Biharsharif Smart City Limited, Biharsharif, Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Mohit Agarwal, Advocate
For the Respondent no.5&6:		Mr. Lalit Kishore, Sr. Advocate Mr. Ranjeet Kumar, Advocate
For the Respondent no.4		Mr. Gyan Prakash, 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 : 20-04-2023

Heard learned senior counsel for the petitioner and
learned counsel for the respondents.

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

“(i) For issuance of appropriate writ and/or



direction upon the Respondents to execute agreement for the entire work at 20 locations in terms of the Letter of Acceptance dated 30.08.2019 in Tender No. NIT-1/2018-19 dated 11-10 2018.

(ii) For issuance of appropriate writ and/or direction upon the Respondents to forthwith pay the 1st running bill dated 18.06.2020 amounting to Rs 1,62,04,447/- (one crore Sixty Two Lakhs Four Thousand Four Hundred Forty Seven Only) raised by the Petitioner against the works done on the instruction of the Respondent pursuant to issuance of Letter of Acceptance by the Respondent in favor of the Petitioner which was duly inspected by the Respondent from time to time;

(iii) For a direction upon the Respondent to forthwith facilitate with the Petitioner to expedite to complete the developmental project of construction of Jan Suvidha Kendra building in 20 different wards in the town of Bihar Sharif and not to obstruct in the execution of the welfare project.

(iv) For issuance of appropriate writ and/or direction upon the Respondents restraining them from taking any adverse action or coercive steps against the Petitioner in execution of the present Tender Notice dated 20.01.2018; and/or for any other relief[s] for which the Petitioner may be found entitled to in the facts & circumstances of the present case.”

3. Briefly stated the facts of the case, according to the petitioner, are that on 11.10.2018, the respondent Bihar Sharif



Smart City Ltd. floated NIT vide Tender No. BSSCL-01/2018-19 for construction of Jan Suvidha Kendra Building at 20 locations in Bihar Sharif under the Smart City Mission. The petitioner participated in the tender by submitting its bid on 04.12.2018 along with its security deposit and the petitioner was the lowest bidder. The petitioner was called by the concerned respondent for negotiation of rate and finally on 30.08.2019, Letter of Acceptance was issued to the petitioner by the respondent authority for construction of aforesaid 20 Jan Suvidha Kendra at different Wards of Bihar Shariff. The contract was finally awarded for a sum of Rs. 11,35,06,000/-in total. In terms of LOA and clause 50.1 of Instructions to Bidder, the petitioner submitted the performance security to the tune of Rs. 14,57,000/ in the shape of Fixed Deposit and also submitted Non-Judicial Stamp of Rs. 1000/- on 27.09.2019. The petitioner also submitted registration certificate issued by the Building Construction Department, Government of Bihar, Patna. On 21.10.2019, the petitioner submitted the topographical survey drawing and soil investigation report of different locations, architectural design, etc. Thereafter, vide letter dated 24.10.2019, the petitioner was directed by Project Management Consultant to submit the work schedule of the allotted work.



Thereafter, the petitioner informed the respondent authority regarding difficulties faced in execution of work at Ward No. 5, 8, 25, 31 and 34 and also informed that the topographical survey for 11 sites, soil investigation for 06 sites and material dumping has been done at different sites and submitted its work schedule to be performed. The petitioner submitted the topographical survey drawing and soil investigation report of the locations of Ward No. 19, 24, 26. The Executive Engineer vide letter No. 117 dated 07.12.2019 directed the petitioner to submit drawing and design and architectural view of the Jan Suvidha Kendra. Thereafter, vide letter No. 122 dated 10.12.2019, the Executive Engineer directed the petitioner for correction in drawing and design of the architectural view and reinforcement drawing of staircase of Jan Suvidha Kendra. Thereafter, on 12.12.2019, the petitioner paid Rs. 20,000/- in favour of Dean (R&C) NIT, Patna for vetting drawing design. On 16.12.2019, the petitioner requested the authority concerned to provide the work order, execute agreement, lay out drawing and working drawing for execution of the contract as the same has not been given yet. The petitioner submitted the architecture and structure drawing of boundary wall and the topographical survey drawing and soil investigation report of the locations. The petitioner in reply to



the oral instructions to change boundary wall height, requested to give clear instruction for the same. On 22.01.2020, the petitioner requested the respondent to give permission to start the work and also informed that the Commissioner had instructed to change the foundation design for G+2 instead of G+1 which would increase the cost @ 12%. Work site was even inspected by the Respondents personally. The petitioner vide letter dated 17.03.2020 requested the respondents to get the site clear and also to issue written work order and has also informed that construction work has been started according to verbal instructions. On 18.05.2020 and 06.2020, the petitioner also requested the respondents to execute agreement and issue written work order as the petitioner was executing the work as per oral instructions. Thereafter, on 18.06.2020, 1st RA Bill for an amount of Rs. 1,62,04,447/- was submitted by the petitioner to the respondent authority. Instead of payment the running bill, the respondent authority has issued a letter dated 08.07.2020 by which the petitioner has been called upon to execute agreement only for the construction of Jan Suvidha Buildings in Ward No.01,0623, 29, 33, 46 and 12 within a period of three days. In reply to the aforesaid letter, the petitioner filed a detailed representation dated 13.07.2020, but the respondent nos. 3 to 6



kept pressurizing the petitioner to execute agreement only with respect to 3 wards and they have not executed the agreement till date. Hence, the present Writ.

4. The learned senior counsel for the petitioner submitted that the petitioner has been forced to work on instruction of the respondents without formal execution of the agreement and, therefore, it is incumbent upon the respondent to clear the first running bill raised by the petitioner for the works done by the petitioner and the same cannot be withheld by the respondent and it is the respondent who is responsible for delaying an important development work by not entering into an agreement in terms of LOA for all 20 wards and to enable the petitioner to execute the same by extending full cooperation. The learned senior counsel further submitted that the action of the respondent in not executing the formal agreement even after taking substantial work from the petitioner on their verbal instruction and non-payment of the first running bill is nothing but most arbitrary action on the part of the respondents. The learned senior counsel further submitted that the petitioner worked in 19 wards and is further willing to complete the entire work as per the NIT and LOA, but the petitioner was now being forced to execute agreement with respect to seven wards only



against the terms of LOA. The respondent did not assign any reason for reducing the scope of work from 20 wards to 7 wards. The learned senior counsel further submitted that though the dispute has arisen out of the contractual obligation, 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 respondents. So a legal issue is involved in this case which can be agitated before the writ Court.

5. On the other hand, the learned counsel for the respondents has submitted that the instant writ petition filed by the petitioner is not maintainable on the factual aspects of the matter and on the point of law. The learned counsel further submitted that till date, agreement has not been signed by the parties, as such, no payment can be processed. He has further submitted that vide letters dated 25.06.2020, 03.07.2020 and 13.07.2020, the petitioner was called for signing the agreement but he did not turn up. Now, after lapse of more than one year, there is no question of execution of agreement. Hence, no interference is required by this Court in this matter.

6. Having considered the material available on record and further considering the rival submission, in the present case,



this Court is required to examine the maintainability of the writ petition under Article 226 of the Constitution of India.

7. It is well settled principle of law that in determining as to whether the jurisdiction under Article 226 of the Constitution of India 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. 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. Reliance could be placed on the decisions of the Hon'ble Apex Court in *Subhash Jain vs. Rajeshwari Suman and Ors*, reported in *2021 SCC Online SC 562* and *Union of India and Ors. Vs. Puna Hinda, reported in (2021) 10 SCC 690*.

8. Furthermore, this Court would not come to the rescue of a person who proceeded to execute the work on verbal orders without any agreement being signed by the parties. If the petitioner acted upon the oral instruction of the respondent, he should be ready to face the consequence. His grievance is not redressable in the writ jurisdiction of this Court.

9. Thus, in the instant case, *prima facie* writ petition is not maintainable since the petitioner has not been able to



establish that he has any statutory and legal right to invoke the writ jurisdiction of this Court. Moreover, this Court would be transgressing its jurisdiction if it enters into the dispute raised by the petitioner, i.e., directing the respondents to sign the agreement for all wards and making payment to the petitioner for the work done on verbal instruction.

10. Accordingly, this writ petition stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	11.04.2023
Uploading Date	21.04.2023
Transmission Date	NA

