

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11354 of 2019

M/s Kalika Swachchhanda Joint Ventrue Private Limited Kalimati, Kathmandu, Nepal at present having is branch office at Sarsaula, Sheohar (Bihar) through authorized representative Mr. Siddha Prasad Lamichhane (Gender- Male), aged about- 49 Years, S/o- Bharat Prasad Lamichhane, resident of Mohalla- Lampati Kathmandu, Ward No.- 14, P.S.- Kalimati, District- Kathmandu, Nepal at present Ram Padarath Nagar, Ward No.- 1, Chakmahila, Sitamarhi, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The Secretary, Bihar Rural Works Department Rural Works Department, Government of Bihar, Patna.
2. The Bihar Rural Roads Development Agency (A Govt. of Bihar Undertaking), under Pradhan Mantri Gram Sadak Yojana, 3rd Floor, Land Development Bank, Budha Marg, Patna.
3. The Engineer-in- Chief, Rural Works Department, Govt. of Bihar, Vishweswaraiya Bhawan, 5th Floor, Bailey Road, Patna.
4. The Superintending Engineer, Rural Works Department, Department Circle Office, Shankar Chowk, Dumra, Sitamarhi.
5. The Executive Engineer, Belsand (Division-II), Rural Works Department, Bihar.
6. The Empowered Standing Committee, represented through the Engineer-in-Chief-cum- Secretary, BRRDA, Bihar, Patna.
7. The Deputy Chief Executive Officer cum Secretary BRRDA, Rural Development Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Subodh Kumar Sinha, Advocate Mr. Jyoti Shankar, Advocate Mr. Pradip Kumar Sinha, Advocate
For the State	:	Mr. Kumar Alok (SC-7) Mr. Satyeshwar Prasad, AC to SC-7

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

Date : 25-04-2023

Heard learned counsels for parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-



"I. To issue a writ in the nature of certiorari for quashing of the order dated 07.02.2019 bearing letter No. 139/Anu. (Annexure- P/12) issued under the signature of the Respondent No. 5, because the Respondent No. 5 in complete departure to the order dated 08.08.2018/ 13.08.2018 (Annexure- P/11 & P/11-A) passed in C.W.J.C. No. 3640 of 2018, pleased to fix liability upon the petitioner to a tune of Rs. 3,37,36,154/-, despite of fact, while departing with the writ application bearing C.W.J.C. No. 3640 of 2018 her lordship was pleased to hold that the agreement, entered in between the petitioner and the Respondent No. 5 as void.

II. To declare the order impugned dated 07.02.2019 bearing letter No. 139/Anu. (Annexure – P/12) illegal, arbitrary, capricious and without any statutory sanction, because admittedly and acceptably an agreement in between the petitioner and the Respondent No. 5 was entered on 25.05.2009 bearing Agreement No. 1-S.B.D./ 2009-10 and the Respondent No. 5, unilaterally took a decision to revoke the agreement. The order of revocation were questioned before this Hon'ble Court by the petitioner in C.W.J.C. No. 6186 of 2014, disposed of on 24.08.2015 (Annexure- P/3) and C.W.J.C. No. 9157 of 2016 disposed of on 17.03.2017 (Annexure- P/8). After the order passed in C.W.J.C. No. 9157 of 2016, disposed of on 17.03.2017 (Annexure- P/8), the petitioner, in strict compliance of the order dated 17.03.2017 filed an application before the Empowered Standing Committee and the Empowered Standing Committee vide its order dated 18.12.2017 communicated through the letter dated 04.01.2018 bearing memo No. BRRDA (HQ)-PMGSY-304/2016-66 (Annexure- P/10) rejected the claim of the petitioner. The order dated 18.12.2017 communicated through the letter dated 04.01.2018 bearing memo No. BRRDA (HQ)-PMGSY-



304/2016-66 (Annexure-P/10) questioned before this Hon'ble Court in C.W.J.C. No. 3640 of 2018, which was disposed of on 13.08.2018/08.08.2018 (Annexure-P/11 & P/11-A).

III. To issue a writ in the nature of certiorari for quashing of the order dated 07.02.2019 bearing letter No. 139/Anu. (Annexure-P/12) issued under the signature of the Respondent No. 5, because the Respondent No. 6, though mentioned in the order impugned that after perusal of entire available records and also after close scrutiny of the work done by the petitioner, the order of recovery or amount shown as recoverable to a tune of Rs. 3,37,36,154/- from the petitioner. The entire exercise was made without transmitting or communicating any information, resulting thereof, entire exercise was made by the Respondent No. 5 behind the back of the petitioner, hence order impugned warrants interference in the interest of justice, equity and fair play in action.

IV. To issue a writ in the nature of certiorari for quashing of the order dated 07.02.2019 bearing letter No. 139/Anu. (Annexure-P/12) issued under the signature of the Respondent No.5, because admittedly and acceptably the petitioner stake his claim to a tune of Rs. 18,16,03,511=92 paise in his representation dated 30.04.2016. The claim raised by the petitioner was neither questioned nor challenged by the Respondent Authorities in all three writ applications bearing C.W.J.C. No. 6186 of 2014 (Annexure- P/3), C.W.J.C. No. 9157 of 2016 (Annexure- P/8) & C.W.J.C. No. 3640 of 2018 (Annexure – P/11 & P/11-A). That apart, no such claim was ever disputed by the Respondent Authorities before the Respondent No. 6. For the first time the Respondent Authorities raised his claim in the letter dated 07.02.2019 bearing letter No. 139/Anu. (Annexure- P/12) and entire report and unfounded claim was created



behind the back of the petitioner. In other words, prior to submission of report dated 07.02.2019 bearing letter No. 139/Anu., no opportunity was ever provided to the petitioner.

V. Any other relief or reliefs."

3. Pursuant to the Notice Inviting Tender dated 10.11.2008, there were certain disputes which was subject-matter of litigation before the Empowered Standing Committee, Tribunal and this Court. Insofar as termination of contract is concerned, it has attained finality. Then what remains is petitioner's settlement of dues with reference to work executed by him. In this regard, in M.J.C. No. 4663 of 2018 liberty has been given to the petitioner on 17.04.2019 to file a fresh claim. Petitioner has submitted a fresh claim before the concerned authority which has resulted in passing impugned communication dated 07.02.2019. Respondents are of the view that they have paid excess to the petitioner and certain amounts were required to be recovered. Perusal of Annexure- P/12 dated 07.02.2019, it is evident that there are certain disputed issues which cannot be adjudicated under Article 226 of the Constitution in the light of Apex Court's decision in the case of ***Rajasthan State Industrial Development & Investment Corporation & another Vs. Diamond & Gem Development Corporation Ltd.*** reported in (2013) 5 SCC 470.

4. Accordingly, present writ petition stands disposed of reserving liberty to the petitioner to invoke appropriate remedy



before the appropriate forum. In terms of clause 24.3 of Part-I - General Conditions of Contract, petitioner has remedy before jurisdictional forum.

Clause 24.3 reads as under:-

"24.3 The decision of the Standing Empowered Committee will be binding on the Employer for payment of claims up to 5% (five percent) of the Initial Contract Price. The Contractor can accept and receive payment after signing as "in full and final settlement of all claims". If he does not accept the decision, he is not barred from approaching the Courts. Similarly, if the Employer does not accept the decision of the Standing Empowered Committee above the limit of 5% (five percent) of the Initial Contract Price, he will be free to approach the courts applicable under the law."

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.05.2023
Transmission Date	N.A.

