

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9320 of 2018

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Shekhar Kumar Singh S/o Harendra Prasad Singh, Resident of Mohalla-
Durga Mandir, Laliyahi Shivaji Nagar, P.O. and District- Katihar, PIN-
855107 Bihar.

... .. Petitioner/s

Versus

1. The Union of India, through General Manager(W), N.F. Railway, Maligaon, Gauhati, Assam.
2. The D.R.M. (Works), DRM Office, Katihar, P.O.- Katihar, District- Katihar.
3. The Senior DEN- IV/C, W-2 N.F. Railway, DRM Office, Katihar, Katihar, District- Katihar.
4. The S.S.E. (Works) East, N.F. Railway, DRM Office, Katihar, District- Katihar.
5. A.D.E.N- II, N.F. Railway, DRM Office, Katihar, District- Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anshuman Jaipuriyar, Advocate
For the Respondent/s : Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

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

Date : 12-04-2023

In the instant petition, petitioner has prayed for the

following relief(s):-

“1. That this is an application Under Article 226 of the Constitution of India for issuance of a Writ in the nature of Mandamus, or any other appropriate Writ, order or direction to Command the respondents to quash the Memorandum no. W/362/17/Boundary Wall/DEN-IV/W-2 dated 02.05.2018 (Annexure-II) whereby the Respondents have prematurely and arbitrarily Terminated/Rescinded the Contract/Letter of Acceptance dated 15.02.2018.”



2. Open Tender Notice No. 03-KIR-Engg-35-2017 was notified and the petitioner was successful bidder as is evident from Annexure-2 acceptance of bid *vide Memo no. W/362/17* Boundary wall/DEN-IV/W-2 dated 15.02.2018. Work order was issued while indicating that the petitioner has to deposit Performance Guarantee Money etc. It is learnt that on 22.02.2018, 27.02.2018 and 19.03.2018, officials of the respondents were stated to have inspected the work spot and found that petitioner had not yet commenced the work and it was in violation of direction given to the petitioner to commence the work within 5 days from the date of work order. Thereafter, notice of termination was issued on 06.04.2018. Further, certain protracted correspondence were made between the parties from 13.04.2018 to 02.05.2018. On 02.05.2018 contract was terminated, hence, the present petition.

3. Learned counsel for the petitioner submitted that work order is for 24 months. The petitioner is stated to have purchased the material. In this regard, petitioner has produced communication as well as photograph for not commencing the work within 7 days would not result in cancellation/termination of contract and it would be arbitrary and illegal. Even though, official respondents have informed the petitioner that work is



required to be commenced within few days from the date of work order. It is pointed out that work order was issued on 15.02.2018, the officials respondents have undertaken inspection on 22.02.2018. Within a short span of time inspecting the work spot and in not commencing the work within few days from the date of work order and proceeding to terminate the contract is arbitrary and illegal.

4. *Per Contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that while issuing the work order, the petitioner was informed that work was required to be commenced within few days from the date of work order. The petitioner failed to commence the work order on 22.02.2018 with reference to work order dated 15.02.2018. Therefore, impugned action is in terms of conditions stipulated in the work order dated 15.02.2018.

5. Learned counsel for the respondent submitted that termination of contract *vide* Annexure-14 para 62.1 and in particularly (xiii) (B) empowers the official respondents to resend the contract as a whole or in part or parts (as may be specified in such notice). Therefore, there is no infirmity in the impugned action of the official respondents in terminating the contract of the petitioner.



6. Heard learned counsel for the respective parties.

7. Open Tender Notice was issued for construction of Boundary wall. The petitioner's bid was accepted on 15.02.2018 simultaneously, the work order was issued. Work spot was inspected within 7 days from the date of work order and after noticing that petitioner has not yet commenced the work, in the result, the official respondent proceeded to terminate the contract after completion of formalities of issuing notice. Inspecting of work spot on 22.02.2018, 27.12.2018 and 19.03.2018 is behind the back of the petitioner and within short span of period from the date of work order i.e. 15.02.2018. In other words, within 7 days, petitioner failed to commence the work in such circumstances, terminating the contract would be too harsh, at the best, they could have warned the petitioner. Ultimately, one has to take note that work was required to be completed by the petitioner within a period of 24 months from the date of work order. In the present case, it is surprising to know that within one week, the concerned respondent had taken action and it would be arbitrary and illegal. Para 62.1 cited (supra) relating to termination of contract does not assist the respondent insofar as taking impugned action in not commencing the work within a period of 7 days when the



petitioner had time of 24 months from the date of work order.

8. In the light of these facts and circumstances and the fact that interim order (status quo) is being operated. Therefore, the petitioner has made out a *prima facie* case so as to interfere with the impugned action of the respondent, accordingly, dated 02.05.2018 (Annexure-11) stands set aside.

9. The concerned respondent is hereby directed to refund the EMD amount and Performance Guarantee Money within a period of three months from the date of receipt of this order. The interim order of Status quo stands merged with the present order, in other words, status quo order would cease from today in the light of Apex Court's decision in the case of ***Kalabharati Advertising Vs. Hemanth Vimal Nath Narichania*** reported in ***(2010) 9 SCC 437***.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.04.2023.
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