

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17204 of 2022

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M/s Shubham Enterprises having its registered office at Punjabi Colony, Gali No. - 2, P.S. and District - Samastipur, Bihar - 848101, through its proprietor namely Sri Divakant Chaudhary, aged about 46 years (Male), son of Sri Dineshwar Chaudhary, resident at Punjabi Colony, Gali No. - 2, P.S. and District - Samastipur, Bihar – 848101 ... Petitioner

Versus

1. The Eastern Central Railway through the General Manager Electrical, Hajipur.
 2. The General Manager Electrical (ECR), Hajipur.
 3. The Senior Divisional Electrical Engineer, East Central Railway, Samastipur.
 4. The Senior-Section Electrical Engineer, East Central Railway, Samastipur.
 5. Sri R.K. Pandey, the then Senior Section Electrical Engineer, East Central Railway, Samastipur.
 6. The Senior Divisional Material Manager (Adm.) East Central Railway, Samastipur.
 7. The Senior Divisional Electric Engineer, East Central Railway, Samastipur.
- ... Respondents

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Appearance :

For the Petitioner	:	Mr/s Ashish Giri, Sumit Kr. Jha, Riya Giri, Bivotosh Kr. & Ravi Bhushan Bharat, Advs.
For the Respondents	:	Mr. Additional Solicitor General

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

7 19-12-2023 Heard the learned counsel for the parties.

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

i) To issue a writ/order/ direction in the nature of certiorari for quashing of the order dated 07.11.2022 issued under the signature of the Senior Divisional Electric Engineer. East Central Railway, Samastipur by which the representation of the petitioner dated 29.08.2022 filed for examination of the persons in relation to the ex-parte report and for releasing the amount to the tune of Rs. 14,26,620.00 with interest in relation to the purchase order bearing no. 72185169150243 dated 10.05.2018 has been rejected without applying its mind rather in violation of the



principle of natural justice (Annexure-18).

ii) To issue a writ/order/ direction in the nature of certiorari for quashing of the letter no. 1053 dated 04.10.2019 issued under the signature of the Assistant Divisional Electric Engineer, East Central Railway, Samastipur by which the amount of Rs. 14,26,620.00 has been decided to be deducted and accordingly the same has been deducted on 04.10.2019 from the other bills of the petitioner in relation to the other contracts.

iii) To issue a writ/ order/ direction in the nature of certiorari for quashing the letter no. 466 dated 30.04.2019 issued under the signature of the Senior Divisional Electric Engineer, East Central Railway, Samastipur by which in relation to the purchase order bearing no. 72185169150243 dated 10.02.2018 in favour of the petitioner certain discrepancies have been found for which the amount paid to the petitioner to the tune of Rs. 14,26,620.00 has been decided to be deducted and accordingly direction has been given to deduct the same from the other bills of the petitioner in relation to other contracts.

iv) To issue a writ/order/ direction in the nature of certiorari for quashing the letter no. 1510 dated 10.08.2018 issued under the signature of the Senior Divisional Electric Engineer, East Central Railway, Samastipur by which the decision was taken to stop payment of the petitioner in relation to other works as against discrepancy regarding supply of 118 quantity of Desert Air Cooler. (Annexure-7)

v) To issue a writ/ order/ direction in the nature of Mandamus for direction to the Respondent Authorities to release to the tune of Rs. 14,26,620.00 with interest in relation to the purchase order bearing no. 72185169150243 dated 10.05.2018 which has wrongly been deducted by the respondents.

vi) To hold and declare that the amount due in some other contracts cannot be withheld from another contract and accordingly direct the respondents to



immediately release the payment of the petitioner in relation to other contracts which has been withheld by them under the garb of recovery of payment in relation to different contract vide purchase order no. 72185169150243 dated 10.05.2018 with interest.

vii) During the pendency of the writ petition pass appropriate interim/ex-parte interim order preventing the respondents from taking any further coercive action against the petitioner.

viii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

3. Learned counsel for the petitioner has stated that the the petitioner has been awarded a purchase order for supply 118 desert coolers of different make vide Purchase Order No. 72185169150243, dated 10.05.2018. That the petitioner supplied the desert coolers to the satisfaction of the authorities and to that effect the Senior Divisional Electrical Engineer (ECR), Samastipur, and the Senior Section Electrical Engineer (ECR), Samastipur, have found that the desert coolers supplied by the petitioner were of the make and quality ordered by the authorities and issued inspection certificate, dated 09.06.2018. That after the delivery of the above desert coolers the petitioner has been paid the full amount of approximately Rs.14,26,620/-. Learned counsel has stated that the authorities seems to have made some inspection on 19.07.2018 in the various departments



of respondents' organization and came to the conclusion that the desert coolers were not of the same make as ordered and were of spurious quality. That the inspection was conducted behind the back of the petitioner and without putting the petitioner on notice or informing him the authorities came to the conclusion that the coolers which were supplied by the petitioner were not of the same brand as was ordered and were of spurious quality and they have decided to deduct an amount of Rs.14,26,620/- from the bills payable to the petitioner and also the security deposit of other contract works. Learned counsel has stated that aggrieved by the said action of the authorities, the petitioner has approached this Hon'ble Court by way of CWJC No. 13722 of 2019 and this Hon'ble Court has disposed off the said CWJC on 10.08.2022 directing the petitioner to make a representation to the authorities concerned duly explaining the facts and circumstances and with necessary proof to show that the petitioner has supplied the material that was ordered and that the same was inspected by the concerned authorities and found to be correct. However, the representation made by the petitioner rejected vide order, dated 07.11.2022 and same is impugned in the present writ petition. Learned counsel has assailed the order passed by the authority concerned rejecting the representation



made by the petitioner firstly on the ground that the authority without any physical verification of the goods supplied by the petitioner has rejected the representation on the ground that enquiry report was against the petitioner, second, that the petitioner was not given any opportunity to cross examine the witness who was examined by the authorities concerned, third, that the copy of the enquiry report was never furnished to the petitioner, therefore, the same is vitiated by the principles of natural justice and equity. Learned counsel has stated that the impugned order may be set aside and the petitioner may be given an opportunity of cross examining the witnesses relied by the authority concerned and if needed give him an opportunity of producing evidence to substantiate his claim. Fourth, that the senior official who had received the consignment and signed on the inspection report was not examined, fifth that the enquiry was conducted behind the back of the petitioner, sixth that the petitioner was not given any show cause notice prior to the passing of the order directing the deduction of the amount which was already paid. Learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court passed in the case of **Ayaaubkhan Noorkhan Pathan Vrs. State of Maharashtra & Ors.** reported in **(2013) 4 SCC, 465** and Sri



Sitaram Ladsaria Vrs. Bharat Coking Boal Ltd. & Ors.
reported in **1989 SCC Online Pat 181.**

4. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the writ petition and has stated that the authority concerned duly taking into consideration the fact that the desert coolers supplied by the petitioner were not of the same brand that were ordered and was of less quality and was of a different brand and less quality have decided to deduct the amount which was paid to the petitioner. Learned counsel has also stated that all these are disputed question of facts which can not be gone into the writ petition. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. A perusal of the documents filed by the petitioner reveal that the petitioner was given an order for supply of 118 desert coolers vide Purchase Order No. 72185169150243, dated 10.05.2018. Thereafter, the petitioner has supplied the same to the authority concerned on 07.06.2018. The inspection certificate issued by the Senior Divisional Electrical Engineer (ECR), Samastipur, and the Senior Section Electrical Engineer (ECR), Samastipur, on verification found that the desert coolers



supplied were of the same brand and quality as per the Purchase Order. It is pertinent to note that the petitioner was also paid the full amount as per the invoice. Thereafter, based on an inspection report submitted by a Vigilance Team the authorities have passed an order directing deduction of the amount paid to the petitioner from the other bills of other contracts. Even though a ground is taken that the inspection done by the Vigilance Team found that the desert coolers supplied by the petitioner were not of Voltas brand and were of spurious quality, the fact that the inspection done by the Vigilance Team was not conducted in the presence of the petitioner has not being denied. More over, the decision to deduct the amount of Rs.14,26,620/- was also taken without putting the petitioner on prior notice. When queried by this Court as to whether the petitioner was put on notice before passing the order of deduction or whether the copy of the enquiry report was submitted to the petitioner, the counsel for the petitioner has fairly stated that counter affidavit does not reveal that any such notice was issued to the petitioner prior to the order directing for deduction of the amount of Rs.14,26,620/-. The fact that the inspection was conducted behind the back of the petitioner also not been denied. Though this Hon'ble Court in CWJC No. 13722 of 2019 had directed the



petitioner to give a representation and directed the authorities to pass orders on the said representation, a perusal of the order passed by the authority reveals that the authority has only reiterated the facts of the case and not given any reason for rejecting the claim of the petitioner. Except relying on the report of the Vigilance Team no other reason is given nor the authority has dealt with the various contentions raised by the petitioner. The authority concerned has not discussed the various grounds raised by the petitioner and has not examined the two persons who had issued the initial inspection certificate at the time of delivery of the desert coolers.

6. Admittedly, in this particular case the petitioner was not given any prior show cause notice before taking a decision to deduct the amounts paid to the petitioner for supply of the desert coolers. This Hon'ble Court as well as the Hon'ble Supreme Court in a catena of cases has held that passing an order against any person without issuing any prior notice is violative of principles of natural justice and equity and the said order cannot be sustained.

7. Having regard to the above facts and circumstances, the impugned order is **set aside** and the matter is remanded back to the authority concerned for passing a



reasoned order duly taking into account the grounds raised by the petitioner in his representation.

8. It is needless to mention that before passing any order the petitioner shall be granted an opportunity of hearing and adduce any evidence, if necessary. The entire exercise shall be completed as expeditiously as possible preferably within a period of 8 weeks from the date of receipt of a copy of this order.

9. With the above directions, the writ petition stands **allowed** to the extent indicated.

(A. Abhishek Reddy , J)

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