

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.889 of 2024

Manoj Kumar Yadav Son of Hari Narayan Yadav, Resident of village and P.O- Akbarpur Bank, P.S-Biraul, District-Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar is represented through the Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer-cum- Senior In-charge, Rural Works Department, Government of Bihar, Patna.
4. The Secretary-cum-President, Empowered Standing Committee, Rural Works Department, Government of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Work Division, Purnia.
6. The Executive Engineer, Rural Works Department, Work Division, Manihari.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Avinash Kumar, Adv.
For the Respondent/s : Mr. Alok Kumar Rahi, AC to AAG-4

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

2 22-03-2024 Heard the parties.

2. The present writ petition has been filed for the
following relief(s):-

“i) For calling upon the respondents to produce the entire records pertaining to Agreement No.-90SBD/2018-19 for the work under PMGSY Scheme for construction of road from L 044 TALHARI BLOCK SAHEBGANJ TO MAHARAJPUR RAILWAY STATION ROAD TO GADAIMAHARAJPUR bearing Package No.-BR-16R- 336 having 5.425 km length and upon being satisfied be pleased to set aside both the decisions being Orders dated 22.02.2023 passed by the Empowered Standing



Committee (Appellate Authority) whereby the decisions of rescindment of Agreement vide Letter No.-2100 dated 22.09.2022 taken without issuing the show-cause notice in gross violation of Principles of Natural Justice, besides forfeiting the Surety amount and Advance money ignoring their own report as issued by the Executive Engineer, Rural Works Department, Work Division, Manihari, Katihar has been upheld and in consequence thereof, be further pleased to direct the respondents to restore the work for getting it completed through the petitioner at revised rate taking into account the report prepared by the respondents concerned which justifies the delay in non-completion of work agreement.

ii) For further directing the respondents to quantify the loss suffered by the petitioner during recurrent flood and pay the same.

iii) For any other relief/reliefs which the Hon'ble court may grant in general interest that may be deemed appropriate and necessary in this case”.

3. Learned counsel for the petitioner has stated that the authorities, without issuing any show-cause notice to the petitioner, have terminated the contract issued in favour of the petitioner. Further, it is stated that even the authorities without advertng to the factual report, the inspection report, have passed the order of termination in a mechanical manner. Learned counsel has further stated that the order is passed by an authority which is not competent and does not have jurisdiction to pass the order. Further, learned counsel has stated that even though the petitioner has approached the appellate authority, the



appellate authority without adverting to grounds taken by the petitioner and also the inspection report has passed the order in a mechanical manner. Therefore, learned counsel for the petitioner has prayed this Hon'ble Court to set aside the impugned order of termination.

4. *Per contra*, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the writ petition and stated that the petitioner has been awarded the contract way back in the year 2018 and as per the terms of the contract the completion of work was to be done within one year from the date of entering into the agreement. Though more than four years have elapsed, the petitioner has not completed the work. That the authority, left with no other option had to terminate the contract. Learned counsel has further stated that the authorities have issued several notices to the petitioner before order of cancellation was passed but the petitioner has not given any reply that the order of cancellation passed by the authorities is in consonance with the well settled principles of law and does not call for any interference by this Hon'ble Court. 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 as well as by the respondents does not reveal that petitioner was put on prior notice before the termination order was passed. Even though the petitioner has argued on the other ground, this Court is not inclined to make any comment on the same as the impugned order is liable to be set aside on the sole ground that the non issuance of the show-cause notice prior to the order of cancellation is contrary to the principle of natural justice and equity. This Court as well as Hon'ble Supreme Court in a catena of judgments has time and again held that if any adverse orders are sought to be passed by the authority, the least that is expected from the said authority is to issue prior notice to the said person calling for explanation and thereafter pass necessary orders. However, the same has not been done in the present case. The principles of natural justice and equity mandate that the person should be issued show-cause notice before any orders are passed which will have adverse impact on the said person.

6. Having regard to the same, the impugned order is set aside. The matter is remanded back to the authority concerned for passing orders afresh duly putting the petitioner on notice calling for his explanation and then passing a reasoned order. The entire exercise shall be completed as expeditiously as



possible preferably within a period of eight weeks from the date of receipt of a copy of this order.

7. It is needless to mention that before passing any orders, the petitioner shall be granted an opportunity of hearing. Any orders passed shall be communicated to the petitioner.

8. With the above direction, the writ petition stands disposed of.

(A. Abhishek Reddy , J)

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