

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.114 of 2021

In
Civil Writ Jurisdiction Case No.4020 of 2020

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1. The State of Bihar through the Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
 2. The Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
 3. The Engineer-in-Chief Cum Special Secretary Public Health Engineering Department, Govt. of Bihar, Patna.
 4. The Chief Engineer, Design Public Health Engineering Department, Govt. of Bihar, Patna.
 5. The Chief Engineer (Zonal), Public Health Engineering Zone, Purnea, Bihar.
 6. The Superintending Engineer, Public Health Engineering Division, Purnea, Bihar.
 7. The Executive Engineer, Public Health Engineering Division, Purnea, Bihar.

... .. Appellant/s

Versus

M/s Khushee Construction through its Power of Attorney Holder, namely Shree Rajeev Kumar, aged about 32 years, (Male), Son of Virendra Singh, Resident of Village - Rampur Dumra, P.S. Maranchi, District- Patna.

... .. Respondent/s

with
Letters Patent Appeal No. 126 of 2021
In
Civil Writ Jurisdiction Case No.3963 of 2020

1. The State of Bihar through the Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief Cum Special Secretary Public Health Engineering Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Design Public Health Engineering Department, Govt. of Bihar, Patna.
5. The Chief Engineer (Zonal), Public Health Engineering Zone, Purnea, Bihar.
6. The Chief Engineer (Nationality), Public Health Engineering Department, Govt. of Bihar, Patna.
7. The Superintending Engineer, Public Health Engineering Circle, Saharsa, Bihar.
8. The Executive Engineer, Public Health Engineering Division, Saharsa, Bihar.

... .. Appellant/s



Versus

M/s Khushee Construction through its Power of Attorney Holder, namely Shree Rajeev Kumar, aged about 32 years, (Male), Son of Virendra Singh, Resident of Village - Rampur Dumra, P.S. Maranchi, District- Patna.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 114 of 2021)

For the Appellant/s : Mr.Anjani Kumar, AAG-4
Mr.Alok Kumar Rahi, AC to AAG-4
For the Respondent/s : Mr.Vikas Kumar, SC-11

(In Letters Patent Appeal No. 126 of 2021)

For the Appellant/s : Mr.Anjani Kumar, AAG-4
Mr.Alok Kumar Rahi, AC to AAG-4
For the Respondent/s : Mr.Vikas Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-07-2024

Read order no. 10 dated 24.06.2024:

Having heard the learned Additional Advocate General who argued the matter, we were of the prima facie opinion, without looking into the merits of the matter, that the respondent-contractor’s submission before this Court that he is willing to carry out the work on the rates agreed upon in the year 2019 has to be considered.

2. The allegation on which the cancellation of work order was made was that the EMD was fraudulently submitted. However, after the work order was issued the performance guarantee was properly made. In fact, despite the EMD having been submitted before the work order was issued, the respondents did not verify it.

3. We did not go into the merits of the matter. However, we were of the opinion that the interest of



the State would be served, if the respondent, who was the writ petitioner, agrees to carry out the contract as submitted by the learned counsel, on the very same rates agreed upon in the year 2019. The judgment was in the year 2020 and the appeal in the year 2021. Till date, the work has not commenced. Even if we set aside the judgment, there would be a re-tender and there would necessarily be escalation of costs. In such circumstances, we thought it fit that the learned Additional Advocate General should get instructions from the Department as to whether they would prefer the continuation of the tender, in which event, the respondent-petitioner would have to undertake before this Court that the work would be carried out on the basis of the rates fixed earlier in 2019. However, if the department decides otherwise and the judgment is upheld we may have to give liberty to the petitioner to seek escalation of costs, by virtue of the passage of time.

4. Post this case on 4th of July, 2024.

2. A supplementary affidavit has been filed by the appellant-State on 03.07.2024 from which Paragraph No. 7 is extracted hereunder:

'That in compliance of order dated 24.06.2024, after considering the entire materials available on record no objection to allow the respondent to continue with the tender subject to undertaking that the respondent shall complete the remaining work of the scheme on the basis of rate fixed under the agreement in 2019 in stipulated



time without any extension of time. '

3. In reply to the decision of the respondent to allow the contractor to commence and complete the work on the rates agreed to in 2019 and the terms and conditions therein, a rejoinder dated 24.07.2024 has been filed by the 1st respondent, who is the contractor. Paragraph 3 of the rejoinder is extracted hereunder:

'That respondent furnishing an undertaking that he is ready and willing to carry out remaining works in question as per terms and conditions and rate fixed in the agreement of the year 2019.'

4. The undertaking of the 1st respondent is taken on record and it is directed that the appellant shall issue work order based on the terms and conditions and at the rates fixed in the year 2019. There shall be no escalation of cost demanded by the respondent. The parties having agreed upon the via-media suggested by this Court, we are of the opinion that the judgment of the learned Single Judge need not be interfered nor it be pressed as against the parties since now the work is commenced and continued on the agreement arrived at before this Court.

5. The order of the learned Single Judge stands modified to the extent of the concession made by the State and



the undertaking made on behalf of the 1st respondent. The learned Counsel for the respondent also submits that there are certain bills pending with the respondent, disbursement of which will be looked into, on the contractor satisfying the appellant about the completion of such work, for which the bills were raised.

6. We make it clear that affidavits filed by both sides is a composite affidavit applicable to both the cases relating to the different works in two different districts.

7. The appeals stand disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.07.2024
Transmission Date	

