

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4212 of 2024

Realty Advance Structure Enterprises Pvt. Ltd. Head Office House no. 955,
Maurya Path, Khajpura, Near Pillar No. 15, Bailey Road, P.S - Hawai Adda,
Dist - Patna, through its Managing Director namely Dharmendra Kumar,
(male) aged about 47 years, Son of Ashutosh Kumar, Resident of Village -
Chhaku Bigha, P.O. - Kanap, P.S. - Haspura, District – Aurangabad
... Petitioner

Versus

1. The State of Bihar through Additional Chief Secretary, Road Construction Department, Patna.
2. The Additional Chief Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Engineering in Chief (Work Management) Road Construction Department, Bihar, Patna.
4. The Chief Engineer, North Road Construction Department, Bihar, Patna.
5. The Internal Financial Adviser, Road Construction Department, Bihar, Patna.
6. The Superintending Engineer, Saran Road Circle, Hajipur.
7. The Executive Engineer, Road Division, Chhapra. ... Respondents

Appearance :

For the Petitioner : Mr.Sanjay Kumar, Adv.
For the Respondents : Mr.Government Advocate 05

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

5 20-09-2024 Heard the parties.

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

“(i) For issuance of direction/s, writ/s, order/s to the Respondents for quashing Memo no. 5741 (E) dated 26.08.2021 passed by Departmental Tender Committee whereby and under decision was taken to withhold the amount of defect liability amount of the petitioner for agreement no. CMBD-43/2016-17 which was awarded to the petitioner for widening and strengthening of Road from 0.00 Km to 6.915 Km.



from Garkha-Shahpur Chowk via Akhtiyarpur, Motirajpur Road even though time extension was granted to the petitioner for completion of work due to circumstances which was beyond control of the petitioner and thereafter direct the respondent to pay amount of Rs 31,30,281.00/- to the petitioner.

(ii) For issuance of an appropriate writ/order/direction to the respondents to make payment of amount of Rs. 31,30,281.00/- which has been withheld under defect liability on the ground of extension of time in completion of work vide decision of tender committee dated 26.08.2021 and for further to make payment of admissible rate of interest to the petitioner for delayed payment.

(iii) For issuance of an appropriate writ/order/direction to the respondent to pay admissible rate of interest to the petitioner on the amount withheld by them under defect liability amount under garb of extension of time in completion of work, though the circumstances under which EOT was granted to the petitioner, was beyond his control.

(iv) To pass such other order or orders as your lordships may deem fit and proper in the facts and circumstances of the case as stated herein below.”

3. It is a case of the petitioner that pursuant to the tender issued by the respondents for the purpose of widening and strengthening the work of road from 0.00 KM to 6.915 KM



from Garkha-Shahpur Chowk via Akhtiyarpur, Motirajpur, the petitioner has participated in the said tender. That after being qualified both in the technical and the financial bid, the petitioner was entrusted with the above work and an agreement was entered between the parties on 25.03.2017. That the date of completion of the work was fixed at 17.12.2017. That due to various problems which were beyond the control of the petitioner, the petitioner could not complete the work within the stipulated period and work was completed on 15.04.2019. The petitioner after the commencement of the work had informed the official-respondents about the problems being faced from time to time and sought extension of the period of completion for the execution of the work. That the officials vide Memo No. 5741(E) dated 26.08.2021 (Annexure P/7) have extended the period of completion of the work till 15.04.2019. However, the official-respondents while extending the period have recommended for forfeiture of the amount of defect liability to the tune of Rs.31,30,281/-.

4. Counsel for the petitioner has stated that the official-respondents duly taking into consideration the fact that the conditions were not conducive for completion of the work within the stipulated time and duly taking note of the fact that



the petitioner could not procure the sand due to the stay granted by the Hon'ble National Green Tribunal/Supreme Court of India and also taking into consideration the fact that there were some land disputes with regard to the work site have erred in withholding the defect liability of the petitioner. Counsel has stated that the authorities having noticed the fact that the procurement of the sand was not possible due to the stay granted by the Hon'ble National Green Tribunal/Supreme Court of India and also that the work site was not free from litigation ought not to have recommended for forfeiture of the defect liability. Learned counsel has therefore prayed this Hon'ble Court to allow this writ petition and direct the respondents to pay the sum of Rs.31,30,281/- which has been withheld by the authorities while extending the period of completion.

5. Per contra the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present Writ Petition. Counsel has stated that the petitioner having participated in the tender was obligated to procure the sand at his own cost and it was the bounden duty of the petitioner to procure the sand and the authorities cannot be blamed for any lapses in procurement of the sand. Learned counsel has stated that the extension of time



was given to the petitioner on compassionate grounds taking a sympathetic view, otherwise the petitioner could have been liable for strict action for not completing the work within the stipulated time, including black listing. However, the authorities have taken a lenient view and passed the order which is impugned in the present Writ Petition. Learned counsel has stated that it was for the petitioner to procure the sand and petitioner cannot blame the authorities or take umbrage under the orders of Hon'ble National Green Tribunal/Supreme Court of India. Learned counsel for the respondents has therefore prayed this Hon'ble Court to dismiss the present writ Petition.

6. Admittedly, as seen from the record the petitioner was entrusted the work of widening and strengthening of the road from 0.00 KM to 6.915 KM from Garkha-Shahpur Chowk via Akhtiyarpur, Motirajpur, in the year 2016-17 and, thereafter, an agreement was entered between the parties, the date of commencement of the work as per the agreement was 18.02.2017 and the date of completion of the work is 17.12.2017.

7. A perusal of the order (Annexure P/7) reveals that the petitioner had submitted applications for extension of the time period and the same was extended till 15.04.2019. The



authorities in their wisdom duly taking into consideration that the delay which was caused was due to the non-availability of the sand in the light of the stay orders passed by the Hon'ble National Green Tribunal/Supreme Court of India. That the environmental clearance was issued by the Mines and Geology Department, Government of Bihar, only on 23.08.2017 and also the fact that there was some dispute with regard to the work site, have extended the time period for completion of the work till 15.03.2019. Though the recommendations of the Executive Engineer and the Superintending Engineer were taken into consideration while passing the extension of time order, the authorities for reasons best known have restricted the benefits to the petitioner by stating that the petitioner would not be entitled to the benefit of price escalation, financial claim under the extended period and also recommended for forfeiture of the amount of the defect liability. As rightly pointed out by the petitioner, the procurement of the sand which is one of the main ingredients for completion of the work was not feasible due to the stay granted by the Hon'ble National Green Tribunal/Supreme Court of India. Further, it is to be noted that there was a dispute near the work site and the work could not be started till the police were informed and the site was cleared. It



is not disputed that the stay by the Hon'ble National Green Tribunal/Supreme Court of India was not at the behest of the petitioner and the petitioner had no control over the proceedings pending before the Hon'ble National Green Tribunal/Supreme Court of India. Further it is to be noted that whenever the contractors are entrusted the works the officials before entering into the agreement have to take necessary steps to see that the site is free from any kind of litigation. When there is any litigation pending in respect of the work site, the petitioner cannot be blamed for the same. Therefore, the reasons given by the authorities and putting the onus on the petitioner by stating that it was the duty of the petitioner to procure the sand is without any legal basis and contrary to the principles of natural justice and equity. More over, the petitioner cannot be blamed for the stay orders passed by the Hon'ble National Green Tribunal/Supreme Court of India. Therefore the question of blaming the petitioner for the non-procurement of the sand and completing the project within the stipulated time does not arise.

8. Having regard to the above mentioned facts and circumstances, the CWJC is liable to be allowed and the impugned order, dated 26.08.2021, vide Memo No. 5741(E), to the extent of forfeiting the defect liability is set aside and the



petitioner is entitled for the refund of the amount of Rs.31,30,281/-. The authorities are directed to pay the above amount as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order.

9. With the above directions, this writ Petition stands allowed to the extent indicated.

(A. Abhishek Reddy , J)

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