

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.395 of 2021

In
Civil Writ Jurisdiction Case No.8307 of 2020

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Nagar Panchayat, Maner through the Executive Officer, District- Patna.

... Respondent No. 2... Appellant
Versus

1. Manish Kumar S/o Kameshwar Kumar Resident of Village- Mahinawa, P.O. and P.S.- Maner, District- Patna, Bihar.
.....Petitioner-Respondent 1st Set
2. Urban Development and Housing Department through its Secretary, Vikas Bhawan, Bailey Road, Patna.
3. Department of Transport through the Secretary, Vishwesaraiya Bhawan, Bailey Road, Patna.
4. Executive Officer, Nagar Panchayat-Maner, Dist- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Anil Kumar, Advocate
For the State	:	Mr. Yogendra Pd. Sinha, AAG 7 with Mr. Rajeev Kumar Sinha, AC to AAG 7
For the Res. No. 1	:	Mr. Manu Tripurari with Mr. Apurv Harsh, Mr. Raghu Raj Pratap, Mr. Hitesh Kumar and Mr. Hritik Anand, Advocates

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)
Date : 02-05-2024

We have heard learned Advocate for the Nagar Panchayat, Maner and the learned Advocate representing the writ petitioner-respondent 1st set. The learned Government Advocate is also present.

2. The present Letters Patent Appeal is preferred, seeking exception to the judgment/order dated 22.03.2021



passed by the learned Single Judge of this Court in CWJC No. 8307 of 2022, whereby the appellant-respondent no. 2 in the writ petition, is directed to refund the contractual amount of Rs.17,35,080/- to the writ petitioner within a period of two months.

3. Learned Counsel for the appellant while challenging the impugned order passed by the learned Single Judge has narrated the short facts to the effect that pursuant to a tender notice for collection of parking charges of bus/jeep in Nagar Panchayat, Maner, including the Ramghat vehicle parking, for the financial year 2020-21, the writ petitioner, was declared as lowest bidder and had been awarded contract. The successful bidder, was to deposit the total tender amount of Rs.34,58,582/-. The writ petitioner on being declared successful submitted two cheques, one for an amount of Rs.17,35,080/- and another cheque for an amount of Rs.17,33,994/- as the security deposit. In terms of the NIT and the letter No. 225 dated 18.03.2020, contemplating the prescription of the rate of vehicle parking for the period 01.04.2020 to 31.03.2021, the writ petitioner was to deposit rest of the tender money along with stamp duty of 3% as per the agreement.

4. It is the case of the appellant-Nagar Panchayat that



the writ petitioner carving the benefits of tender was collecting parking charges for vehicles over allotted areas, himself has deposited a cheque of Rs.8,66,994/- against the remaining due amount in the office of Nagar Panchayat on 30.06.2022. The writ petitioner had never made any complaint with regard to terms and conditions of period of parking which was awarded to him from 01.04.2020 to 31.03.2021.

5. The writ petitioner has continued with the tender agreement and has been collecting parking charges from the allotted parking area. However, in the meanwhile on account of Covid-19 pandemic the entire nation stood stalled facing severe threat and crisis. The writ petitioner made an application before the appellant seeking extension of tender or if it could not be possible then cancel the tender and refund the tender amount. While the afore-noted representation of the writ petitioner was pending, without waiting for its outcome, the writ petitioner approached this Court by filing CWJC No. 8307 of 2020 seeking a direction to the appellant-Nagar Panchayat, Maner to extend the period of work of tender for parking or to refund the entire deposit amount of Rs. 17,35,080/- paid in advance as security money.

6. Considering the request of the writ petitioner the



appellant had taken benevolent approach and cancelled the settlement with effect from 01.11.2020 with a direction to deposit the proportionate outstanding amount of seven months for the period April 2020 to October 2020. The afore-noted order as contained in Letter No. 791 dated 29.10.2020 was put to challenge by filing Interlocutory Application No. 1 of 2021 in CWJC No. 8307 of 2020.

7. Adverting to the aforesaid facts, learned Counsel for the appellant contended even assuming that the writ petitioner, during the period between 01.04.2020 to 05.08.2020 was affected on account of Covid-19 pandemic and there was a lockdown enforced in all parts of the country, but it is a fact that thereafter a new guideline came into existence. Under the new guideline of lockdown, district wise Green Zone, Red Zone and Orange Zone were created for the movement of population in and out. The unlock process was started in a phase-wise manner providing more relaxation for movement of people. The writ petitioner had himself deposited a cheque of Rs.8,66,994/- which *prima facie* suggests that he had been collecting the parking charges. Thus, his request to give extension for tender period or to refund the deposited amount of Rs.17,35,080/- was untenable. The conduct of the writ petitioner was also found to



be not over board as he knowingly failed to submit the details of proportionate income which he had collected during the said period. Admittedly the writ petitioner continued realizing parking charges upto 31.10.2020 and as such in any manner he is required to deposit the proportionate due amount of seven months for the period April 2020 to October, 2020.

8. Learned Counsel for the appellant further urged that the learned Single Judge failed to appreciate the proportionate income collected by the writ petitioner before allowing the writ petition in view of Section 56 of the Indian Contract Act, 1874. The rights and obligation of the parties would be determined by the terms and conditions of the agreement and non utilization of the premises on account of lockdown cannot render the lease/agreement void; was also the contention of the writ petitioner.

9. On the other hand, countering the aforementioned submissions of the appellant, learned Counsel for the writ petitioner-respondent herein has contended that the contract became impossible to perform on account of the circumstances beyond control of the writ petitioner and thus the matter is covered by Section 56 of the Indian Contract Act, 1872 resulting in frustration of contract. Hence, the order of the learned Single



Judge does not require any interference. It is also the contention of the writ petitioner that his case is also covered by the decision of the Hon'ble Supreme Court in the case of ***Delhi Development Authority vs. Kenneth Builders Developers Private Limited and Others [(2016) 13 SCC 561]***, which decision was taken note of by the learned Single Judge while allowing the writ petition.

10. We have heard the learned Counsel for the respective parties and also perused the materials available on record. Admittedly, the Government of India vide notification dated 24.03.2020 declared nationwide lockdown on account unprecedented Covid-19 pandemic. The afore-noted notification made effective with effect from 25.03.2020 for a period of 21 days. Thereafter, time to time through various orders/notifications, the period of lockdown has been extended. The guidelines on lockdown was also issued to carry out the necessary measures to save human lives from the virus and its infection.

11. True it is, that phase wise unlockdown process was initiated, however, there had been restrictions on the movement of vehicles and it was advised that the movement would only be through pass system vide notification issued by the Home



Department, Government of Bihar. The record reveals to us that the Government of Bihar in the Department of Home throughout the period in question has allowed restricted movement of vehicles which continued till October, 2020. On account of notified lockdown across the nation, it resulted into a grinding halt of the entire nation. The movement of the vehicles were first, completely, and later on, partially restricted for a long period. Taking note of the grim situation, where performance of the contract became impossible, the Government of India as well as the State of Bihar in various departments have extended the period of contract by treating restricted period under the lockdown as a *force majeure*. The learned Single Judge considering the unprecedented situation has taken note of Section 56 of the Indian Contract Act, 1872 which contemplates that an agreement to do an act impossible, in itself, is void.

12. This Court in an identical matter in relation to termination of a contract and forfeiture of the security money and other deposits on account of non-starting of the work of parking stand in terms of the contract has considered the provision of Section 56 of the India Contract Act, 1872, due to nation-wide lockdown leading to restriction of movement. It would be apt to quote paragraph nos. 30-33 of the CWJC No.



6322 of 2023 (M/s Ashutosh Enterprises Vs. Union of India & Ors.)

“30. Before parting with the case, this Court would also observe that in the facts of the case in hand, the provisions of Section 56 of the Contract Act, 1872 would also be attracted and it is thus extracted hereinbelow:

“56. Agreement to do impossible act.-An agreement to do an act impossible in itself is void.

Contract to do an act afterwards becoming impossible or unlawful.-A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.-Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.”

*31. The interpretation of Section 56 of the Contract Act came up for consideration in **Satyabrata Ghose Vs. Mugneeram Bangur and Company and Anr.** reported in **AIR 1954 SC 44**, wherein, the Hon’ble Supreme Court held that the word “impossible” used in Section 56 of the Contract Act has not been used here in the sense of physical or literal impossibility. It ought to be incorporated as impracticable and useless from the point of view of the object and purpose which*



the parties had in view, when they entered into the contract. This impracticability or uselessness would arise due to some intervening or supervening circumstances which the parties had not contemplated. However, if the intervening circumstances was contemplated by the parties, then the contract would stand despite the occurrence of such circumstances. In such an event, there can be no case of frustration because the basis of contract being to demand performance despite the happening of a particular event, it cannot disappear when the event happens.

32. *The Hon'ble Supreme Court following the dictum of the aforementioned decision in **Satyabrata Ghose (supra)** in the case of **Delhi Development Authority Vs. Kenneth Builders and Developers Pvt. Ltd. and Ors.** reported in (2016) 13 SCC 561 while dismissing the appeal preferred by Delhi Development Authority has held that the respondent Kenneth Builders took all necessary steps to commence the construction activity on the project land but due to the impasse created by the governmental agencies, it could not proceed in the development activity. Hence, the provisions of Section 56 of the Contract Act, 1872 found attracted to the facts of the case. Thus directed to refund the deposit made by the Kenneth Builders with interest of 6 % per annum till realisation.*

33. *In the wake of extra-ordinary events, where the circumstances were beyond human control, the non-commencement of the parking stand work, despite issuance of Letters of Acceptance and work order; on account of Covid-19 pandemic and its consequential lockdown, the petitioner cannot be solely held to be responsible and further burdened with the liability of forfeiture of security deposits and license fees. The force majeure clause applies squarely."*



13. We also notice that the appellant-Nagar Panchayat, Maner, on the request of the writ petitioner cancelled the contract. However, reason for cancellation has not been stated. The writ petitioner explicitly demonstrated his inability to perform the contractual obligations on account of unforeseen circumstances making it impractical for the writ petitioner to start collection of parking charges. The direction of the Nagar Panchayat, Maner to ensure the payment of proportionate outstanding amount is not based upon any finding that the writ petitioner has collected parking charges for the period April 2020 to October, 2020. The appellant Nagar Panchayat has never refuted the contention of the petitioner that he was unable to commence and continue the act of realisation of parking charges due to restrictions in the vehicle movement.

14. Well settled it is that an order is to be judged on the basis of reasons assigned and not otherwise. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by the fresh reasons in the shape of affidavit or otherwise *[Mohinder Singh Gill Vs. Chief Election Commissioner, AIR 1978 SC 85]*.

15. The impugned order in the writ petition having



accepted the request of the petitioner and cancelled the contract considering the unprecedented lockdown; but the appellant-Nagar Panchayat exceeded its jurisdiction in withholding the security amount and raising a demand to ensure deposit of proportionate outstanding amount for the period April, 2020 to October, 2020, without any valid reason. Any order which has the effect of causing prejudice, must be in consonance with the principles of natural justice. The appellant, being a public authority cannot act unreasonably and arbitrarily to extort amounts from a contractor who was unable to commence the contract due to *force majeure* conditions. The impugned order of forfeiture of security amount and direction to deposit the proportionate outstanding amount also is not preceded by a show-cause notice. Thus on that score also, it does not conform to the requirements of principles of natural justice.

16. The learned Single Judge has rightly observed that the writ petitioner did not contemplate at the time of entering into contract that there would be complete nation-wide lockdown and all vehicular movement would be stopped or restricted. It is due to these circumstances, the petitioner could not perform the obligations imposed upon him for collection of parking charges. The reason as stipulated hereinabove, leads to



frustration of performance of contract making it impossible and impracticable to perform the duty, thus attracting Section 56 of the Contract Act, 1872. We fully agree with the observations and finding of the learned Single Judge.

17. In the facts and circumstances of the case and the position obtaining in law, this Court does not find any illegality, infirmity or impropriety in the order/judgment impugned. The Letters Patent Appeal stands dismissed.

18. There shall be no order as to costs.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.05.2024
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