

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7843 of 2024

Rakesh Construction Private Limited, a company having its registered office at Shivjee Singh Building, Dimna Road, Mango, Police Station-Mango, District Jamshedpur, East Singhbhum Jharkhand through its Director and authorized signatory namely Rakesh Kumar (Male), aged about 48 years, Son of Sri Shivjee Singh, resident at Shivjee Singh Building, Dimna Road, Mango, Police Station-Mango, District-Jamshedpur, East Singhbhum Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna.
4. The Chief Engineer, South Circle, Road Construction Department, Government of Bihar, Patna.
5. The Superintending Engineer, Central Road Circle, Road Construction Department, Government of Bihar, Patna.
6. The Executive Engineer, Road Division, Hilsa at Nalanda, Road Construction Department, Hilsa.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Adv.
For the Respondent/s : Mr. Government Pleader 14

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

Date: 19-09-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-

“(a) To issue a Writ in nature of Certiorari for quashing of the order as contained in Memo No. 352 dated 14.03.2024 by which the Agreement being No. 03/SBD/2021-22 has been terminated and Consequent upon quashing has been terminated and Consequent upon quashing of the same, Issuance of a Writ in the nature of Mandamus commanding the respondents to allow the petitioner to complete the remaining work.

(b) To issue a Writ in nature of Certiorari for quashing of the order by which Bank Guarantees



have been forfeited and consequent upon the same, Issuance of a Writ in the nature of Mandamus commanding the respondents to refund the Bank Guarantee and to use the said Bank Guarantees for completion of remaining work to be executed by the petitioner.

(c) During the pendency of the Writ application, the respondents may be restrained from creating 3rd party right related to new tender during the pendency of the writ application.

(d) During the pendency of the Writ application the respondents may kindly be directed not to take any coercive action against the petitioner.

(e) To any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.”

3. The only issue in the present writ petition is as to whether the petitioner can be granted extension of time for completing the works entrusted to him or not.

4. The brief facts necessary for the purpose of deciding this particular case are, that the petitioner was entrusted with the work of construction of HL RCC Bridge of Hilsa Noorsarai Road vide agreement dated 07.12.2020 and the period of completion of the said work was initially for a period of one year. Thereafter, the period of completion was extended by the authorities concerned till 31.03.2024. Though the petitioner was given the extension of time, he could not complete the work within the given time and, therefore, the impugned order vide Memo No. 352 dated 14.03.2024 was passed whereby the agreement bearing No. 03/SBD/2021-22 was terminated and the bank guarantee forfeited.



5. Learned counsel for the petitioner has stated that the petitioner could not complete the work due to various reasons which were beyond his control, that there was an existing old bridge which was damaged and required dismantling, that there were temples at both the end of the bridge and some residential houses had encroached which required removal. That when the petitioner tried to take up the works, he was prevented from doing the same. The petitioner with a view to complete the work had written letters to the authorities and take a diversion of the route but the same could not be done as the official respondents did not approve the revised estimates. Learned counsel has stated that due to the above problems on ground, the obstructions caused and also the lackadaisical approach of the officials, the work could not be completed within the time frame. Thereafter the letter dated 25.04.2022 was issued by the respondent No. 6 seeking as to why the agreement should not be terminated and the petitioner has given a suitable explanation but, the same was not considered and the agreement was cancelled. Learned counsel has stated that the petitioner had completed more than 60% of the contract work and he is willing to complete the entire work within a period of six months and the respondents may also be directed to make necessary payments for the works already done. Learned counsel



has stated that no useful purpose would be achieved by the authorities, if they go for fresh tenders as it could result in escalation of the cost, wastage of time and public money, more particularly, when the petitioner is willing to complete the work within a period of six months without asking for any price escalation and at the previous rates. Learned counsel has therefore, prayed this Hon'ble Court to direct the authorities to extend the time for completion of the work by another six months and prayed for setting aside the impugned order dated 14.03.2022.

6. *Per contra*, the learned counsel for the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner was given ample opportunity to complete the works which were entrusted to him. However, the petitioner has failed to adhere to the timelines given and could not complete the work even though sufficient time was granted to the petitioner. Further, it is stated that the authorities have already cancelled the agreement entered between the parties and have already issued notification calling for fresh tenders. Learned counsel has also stated that the respondent authorities do not have any trust in the petitioner and doubtful as to whether he would complete the work within a period of six months. That the project has already been delayed sufficiently due to the



inefficiency of the petitioner in completing the works. Learned counsel has also stated that there is an arbitration clause in the agreement entered between the parties and the petitioner can as well as approach the arbitrator for payment of the money due. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

7. As seen from the record, the petitioner was entrusted with the work in the year 2020 and the period of completion of the work was initially twelve months. The petitioner was given extension of time till 31.03.2024, but he could not complete the work. The petitioner has drawn the attention of the Court to the series of diagrams (Annexure-49) to show as to why the work could not be completed and that the petitioner had taken necessary steps for diverting the bridge he could not complete the work in time for reasons beyond his control. Learned counsel has further stated that the petitioner would complete the work, if a further period of six months more is given and he was willing to even give a further bank guarantee of Rs. 50,00,000/- as a performance guarantee. The petitioner has relied on the judgments of this Court passed in LPA No. 114 of 2021 with analogous case dated 29.07.2024, CWJC No. 17602 of 2023 with analogous case dated 07.05.2024 and the order passed in CWJC No. 8084 of 2024 dated



16.05.2024. However, it is to be noted that these judgments are distinguishable from the facts of this particular case and are not of much help to the petitioner.

8. Admittedly in this case, the tenders have already been floated and it would not be prudent for this Court to extend the time once the process of tenders are already notified. Though the contention of the petitioner that he is willing to complete the work within a period of six months, at the same rate and he would not seek any price escalation appear very attractive, this Court would loath to grant any extension as the tenders have already been called for in this particular case. Further, once it is stated that the element of trust has been lost between the parties and the official respondents are of the view that the petitioner having wasted almost five years is not capable of completing the work within a period of six months, no positive orders can be passed by this Court extending the time. Whenever work contracts are granted, the contractors are bound to complete the work within the time frame fixed in the contract. There may be some cases where delay in executing the works by a few months may occur, which may be condoned by the authorities on the basis of the facts of that particular case. However, not completing of the works within the time fixed will result in wastage of time, resources, hardship to the



public, escalation of cost etc. This Court sitting under Article 226 of Constitution of India cannot go into the question as to whether the extension of time for completion of the works can be given or not and it is for the authorities to take a call depending on the ground realities.

9. Having regard to the above mentioned facts and circumstances, this Court does not find any merit in the present writ petition which entails the petitioner for grant of the relief sought for, the present writ petition is accordingly dismissed. However, it is made clear that this Court has not gone into the merits of the case and any observations made by this Court are only for the purpose of deciding the issue in the present case, leaving it open to the petitioner to challenge the order dated 14.03.2024 before an arbitrator and seek a payment of the money dues to him for the work already done or for adjudicating any other issue.

10. The present writ petition is accordingly, dismissed.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.09.2024.
Transmission Date	NA

