

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8643 of 2023

Evermore India Pvt. Ltd. through its Project Director Gaurav Kumar (Male)
aged about 35 years S/o Sanjay Kumar, resident of village and P.O- Khanma,
P.S. Narhat, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. The Engineer in Chief, Headquarter, Water Resources Department, Govt. of Bihar, Patna.
3. The Chief Engineer, Headquarter, Water Resources Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Muzaffarpur, Water Resources Department, Muzaffarpur.
5. The Superintending Engineer, Flood Control Circle, Sitamarhi.
6. The Executive Engineer, Flood Control Division, Runnisaidpur (Muzaffarpur).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Nibash Prasad
For the Respondent/s : Mr. Anjani Kumar (Aag4)

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

Date: 29-07-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-

“i) To issue an order/orders/direction/directions writ/writs in the nature of mandamus be issued commanding upon the respondent’s concerned especially respondent no-4, 5 and 6 to make payment of outstanding admitted dues of Rs.89,11,419.00 pending since the year 2022 along with statutory interest against the work of construction of Embankment Under Bagmati Flood



Management Scheme, Phase-V(a) through work order No.634, which has been allotted to the petitioner from the office of Respondent no-6 vide Letter No.634 dated-02.07.2021.

ii) To issue an order / orders / direction / directions / writ / writs in the nature of mandamus be issued commanding upon the Respondent no-5 to release the adequate fund in order to make the payment of admitted dues of Rs.89,11,419.00, which was demanded by Respondent No-6 vide Letter No.1205 dated-08.11.2022 as contained in Annexure-P/6.

iii) To issue an order / orders / direction / directions / writ / writs in the nature of mandamus be issued commanding upon the Respondent concerned to abide by order dated-14.09.2022 passed in CWJC No.13024 of 2022 by the Hon'ble Division Bench of the Hon'ble High Court whereby and where under the Hon'ble Division Bench has observed that the admitted dues should be paid along with statutory interest.

iv) To issue an order / orders / direction / directions / writ / writs in the nature of mandamus be issued commanding upon the Respondent concerned not to take any coercive action against the writ petitioner till the final disposal of this writ application.

v) Any other relief/ reliefs for which the petitioner is found entitled to under the facts and circumstances of the case.”

3. During the pendency of the present CWJC the

authorities has passed the order dated 10.08.2023 vide Letter No.



2479 and 11.08.2023 vide Letter No. 1286 cancelling the agreement dated 17.06.2021. The petitioner has filed I.A. No. 01 of 2023 seeking amendment of the prayer and the said I.A. was allowed on 27.09.2023. The amended prayer reads as under;

“I. Issuance of writ in the nature of certiorari or an appropriate order / direction quashing the Letter No-2479 dated-10.08.2023 of respondent no.3 as contained in Annexure-P/8 whereby and where under, earlier petitioner was assigned to the work of land Acquisitions through Letter no.1308 dated-17.06.2021, has been cancelled.

II. Issuance of writ in the nature of certiorari or an appropriate order / direction quashing the Letter No-1286 dated-11.08.2023 of respondent no.6 as contained in Annexure-P/9 whereby and where under earlier petitioner was assigned to the work of preparation Alignment, Land Acquisition and Resettlements Plan of Bagmati Flood Management Plan Phase-V(a) from the office of Respondent NO.6 through Letter no.634 dated-02.07.2021 (Annexure-P/2) has been cancelled.

III. Till the final decision of this writ application the operation of the Letter No-2479 dated-10.08.2023 of respondent no.3 as contained in Annexure-P/8 and Letter No-1286 dated-11.08.2023 of respondent no.6 as contained in Annexure-P/9 may kindly be stayed.”

4. It is the case of the petitioner that he was entrusted with the work of the preparation, Alignment, Land Acquisition and Resettlement Plan of Bagmati Flood Management Plan Phase-V(a)



vide Letter No. 634 dated 02.07.2024 by the respondent No. 6 herein. That the above letter was issued consequent to the agreement dated 17.06.2021 entered between the parties. The work included various stages i.e., survey, preparation of plan, submission of inception plan, demarcation of the Row, preparation of Land Acquisition plan with pegging, approval of the authorities, consent of the land owner etc. etc. That there were different stages of the work to be completed and on completion of the above work the payment was supposed to be paid in a staged manner. The total amount fixed for the completion of the work is Rs. 19,990/- per acre for each area. That the petitioner after completion of the assignment activity I to III has submitted his bill for an amount of Rs. 89,11,419/- to the respondent No. 6 in the year 2022.

5. It is the case of the petitioner that he was also assigned the work of activity IV to VII besides activity Nos. I to III.

6. That after the submission of the bills the respondent No. 6 has also written to the Superintending Engineer, Flood Control Circle, Sitamarhi i.e., respondent No. 5 to release an amount of Rs. 71,29,135/- vide letter dated 08.11.2022 (Annexure-P/6). As the amount due to the petitioner were not being paid, the



petitioner left with no other option had to approach this Hon'ble Court by way of the present CWJC.

7. During the pendency of this CWJC, the authorities have issued letter dated 10.08.2023 & 11.08.2023 vide (Annexure-P/8 & P/9) cancelling the agreement entered between the parties on 17.06.2021. The said action is assailed by the petitioner by filing an I.A. seeking amendment of the prayer, the said I.A. was allowed by this Court vide order dated 27.09.2023.

8. Learned counsel for the petitioner has stated that the act of the respondents in cancelling the work order and the agreement entered, without putting the petitioner on notice, that too after completion of the work and during the pendency of the present CWJC is illegal, bad, arbitrary exercise of powers and against the principles of natural justice and equity. Learned counsel has therefore, prayed this Hon'ble Court to allow the present CWJC and set aside the orders dated 10.08.2023 & 11.08.2023 (Annexure-P/8 & P/9) and direct the official respondents to pay the amounts due to the petitioner.

9. In the counter-affidavit filed by the respondent, a specific stand has been taken, stating that the petitioner in spite of being given ample time to complete the works entrusted has not taken any steps to do so. That in spite of putting the petitioner on



notice to complete the work, the petitioner failed to complete the work within the stipulated time and therefore, left with no other option, the authorities had to cancel the agreement vide orders dated 10.08.2023 & 11.08.2023 (Annexure-P/8 & P/9). However, it is to be noted that neither in the counter-affidavit nor the supplementary filed by the respondents, there is any whisper regarding the issuance of any show cause notice to the petitioner before passing the order of cancellation (Annexure-P/8 & P/9). The counsel for the respondents when queried by this Court has also failed to answer as to whether the petitioner was put on notice before the orders of cancellation has been passed vide (Annexure-P/8 & P/9). Though the counsel for the respondents tried to support the order of cancellation by taking shelter under the earlier notices issued to the petitioner to complete the work, it is to be noted that the petitioner was not given any notice specifically stating that the agreement would be cancelled if the work entrusted is not completed within the stipulated time. The Hon'ble Supreme Court in a catena of judgments has time and again held that before taking any action against any person or firm which will adversely effect its rights, the said person or firm has to be put on notice by issuing a show cause notice and given an opportunity of



submitting his explanation against the allegation made and then only action can be taken.

10. The Hon'ble Supreme Court in **Raghunath Thakur v. State of Bihar and Ors.**, reported in **Air 1989 SC 620**, it was held as follows:

“4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order...”

11. In **S.N. Mukherjee v. Union of India**, reported in **AIR1990 SC 1984**. The Hon'ble Supreme Court dealt with the development of administrative law and the principles of the requirement to record reasons. The Supreme Court has held as under;

“In view of the expanding horizon of the principles of natural justice, the requirement to record reason can be regarded as one of the principles of natural justice which



govern exercise of power by administrative authorities....

Therefore except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record its reasons for its decision.

What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage.”

12. Having regard to the above mentioned facts and circumstances, this Court is of the opinion that the passing of the orders dated 10.08.2023 & 11.08.2023 (Annexure-P/8 & P/9) without giving any prior show cause notice to the petitioner is against the well settled principles of law, the principles of natural justice and equity and the same has to be held as illegal, bad, arbitrary and, therefore, liable to be set aside and the same is accordingly set aside.

13. As it is stated that the petitioner has completed the work and that the petitioner is entitled to the bill amounts for the work completed, the authorities are directed to verify the work completed by the petitioner and pay the amounts due to the petitioner for the work already completed.

14. If any work is still to be completed and in case the authorities are of the opinion that the petitioner is incapable of completion of the work and the agreement needs to be cancelled.



They shall issue a show cause notice to the petitioner and call for his explanation by giving him reasonable time. After receipt of the explanation from the petitioner, the authorities may pass a reasoned order. Any order passed shall be communicated to the party.

15. It is made clear that the authorities shall not stop the payment of the amounts due to the petitioner on the ground that they are taking steps for cancellation of the agreement.

16. With the above directions, the C.W.J.C. is allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.10.2024.
Transmission Date	NA

