

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15558 of 2021

M/s Shree Jogmaya Infrastructure Co. Pvt. Ltd. Registered office at Flat No. 204, Building No. 32/C, Wing-C, MHADA Colony, Chandivali, Andheri (E), Mumbai- 400072, Branch office at Mojri House, Company Sarai, District- Sasaram, represented through its Director namely Deepak Kumar, male, aged about-38 years, son of Ashok Kumar Singh, Director of Shree Jogmaya Infrastructure Co. Pvt. Ltd., permanent resident of Mojari House, Ward No.-2, Company Sarai, Kargahar More Behind of Sasaram- Bhabhua Central Co-Operative Bank, Sasaram, Rohtas, District- Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. Bihar State Educational Infrastructure Development Corporation Ltd. Through its Managing Director, Shiksha Bhawan, Bihar Rastrabhasa Parishad Campus, Acharya Shiv Pujan Sahay Path, Saidpur, Patna- 800004.
3. Managing Director Bihar State Educational Infrastructure Development Corporation Ltd., Patna Shiksha Bhawan, Bihar Rastrabhasa Parishad Campus, Acharya Shiv Pujan Sahay Path, Saidpur, Patna- 800004.
4. The Deputy Secretary Education Department, Government of Bihar, Patna.
5. Chief Engineer Bihar State Educational Infrastructure Development Corporation Ltd. Patna, Shiksha Bhawan, Bihar Rastrabhasa Parishad Campus, Acharya Shiv Pujan Sahay Path, Saidpur, Patna- 800004.
6. Executive Engineer Bihar State Educational Infrastructure Development Corporation Ltd. Magadh Division, Gaya, District- Gaya.
7. Asst. Engineer Bihar State Educational Infrastructure Development Corporation Ltd. Magadh Division, Gaya, District- Gaya.
8. Junior Engineer Bihar State Educational Infrastructure Development Corporation Ltd. Magadh Division, Gaya, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sumeet Kumar Singh, Adv.
	:	Ms. Deepali Singh, Adv.
	:	Mrs. Alka Singh, Adv.
For BSEIDC	:	Mr. Girijish Kumar, Adv.
For the State	:	Mr. Apurva Kumar, Adv.

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

Date : 08-05-2024

Heard the learned counsel for the parties.



The present writ petition has been filed for the following

reliefs:-

“i. That the present writ application is being filed in the nature of Certiorari for quashing the letter dated 28.7.2021/5.8.2021 bearing letter no. 5047(Annexure-P/20) issued under the signature of Chief Engineer, Bihar State Educational Infrastructure Development Corporation Ltd, Patna (hereinafter referred as "B.S.E.I.D.C.L" for the sake of brevity) by which the contract of construction of Model School-158 at High School at Amas, High School at Bharaunda(herein after called as "contract work") has been cancelled/rescinded by citing Clause No. 3(iii), (iv), (v), and vii(a) and clause -14(iii) and x(b) of the Standard Bidding Document(herein after referred as "S.B.D") of clause of contract agreement; on the ground that the impugned order is a nonspeaking order, the show cause notice was issued on 14.7.2021 which was received on 29.07.2021 by the petitioner but the contract has been cancelled on 28.07.2021/05.08.2021, the reply filed by the petitioner on earlier occasion has not been considered by the authority;

ii. That the present writ application is being filed in the nature of Certiorari for setting aside the order of forfeiting the Security Deposit of ₹15,83,000/- which has been given by the petitioner in terms of the agreement on 16.12.2014 in relation to construction of M.S-158 in the district of Gaya;

iii. That the present writ application is being filed in the nature of Mandamus for a direction to the respondent authority especially to the Chief Engineer, B.S.E.I.D.C.L, Patna and Executive Engineer, Magadh Division, B.S.E.I.D.C.L, to allow time of 6 months for completion of the contract in relation to MS-158 for construction of two model school in the district of Gaya and also to



provide funds for completion of the same and also to clear the earlier pending bills of Rs. 11,94,385/-;

iv. That the present writ application is being filed in the nature of Mandamus for a direction to the respondent authority especially to the Chief Engineer, B.S.E.I.D.C.L, Patna and Executive Engineer, Magadh Division, B.S.E.I.D.C.L, to release the 8% Security amount which has been deducted over the period of time by the B.S.E.I.D.C.L in terms of the SBD clauses No.1-A- of clause of contract to the tune of Rs.15,73,894/- so that the entire work can be completed by the petitioner company; on the ground that there is no fund available with the Respondent authority on time resulting in delay of the entire project;

v. For any other relief/Reliefs for which the petitioner is entitled for.”

3. At the outset the learned counsel appearing on behalf of the respondents has stated that the prayer sought for in the present writ petition has become infructuous as the contract has been terminated and the work has already been allotted to a third party who has completed the balance work.

4. Learned counsel appearing on behalf of the petitioner has stated that the impugned order of termination is passed without serving any show cause notice and without taking into consideration the explanation submitted by the petitioner. Further, it is stated that unless and until the order of termination is set aside, the petitioner will not be in a position to participate in other tenders. Learned counsel has stated that any tenderer who wishes to participate in tender has to necessarily give a sworn affidavit



stating that they have never been debarred/blacklisted/defaulters from any work or by any department therefore the impugned order is liable to be set aside. Bereft of details, the admitted facts are that the petitioner has been given a work contract for the purpose of constructing modern schools at three places i.e., High School at Amas, High Court at Bharsanthu and Government Basic School at Jatian and the agreement was entered between the parties. Thereafter, due to various reasons, the work could not be completed within the stipulated time by the petitioner. The petitioner was issued show cause notices starting from the year 2019 (Annexure-P/10), February 2020 (Annexure-P/15) and again on 14.07.2021 (Annexure-P/18) for the slow progress in work. Finally pursuant to the show cause notice dated 14.07.2021, the contract issued in favour of the petitioner was terminated (Annexure-P/21). Learned counsel has assailed the order of termination on the following two grounds;

(i) that the order of termination is liable to be set aside on the sole ground that the same is a violation of the principles of natural justice and equity as no opportunity of hearing was given to the petitioner before passing the said order.

(ii) that through the impugned order is dated 05.08.2021 but as a matter of fact, the order is signed on 24.07.2021.



5. Further, it is stated that against the show cause notice dated 14.07.2021, the petitioner has submitted his explanation on 02.08.2021(Annexure-P/20) but the same has not been considered by the authority and there is no whisper with regard to the explanation submitted by the petitioner.

6. *Per contra*, the learned counsel has opposed the very maintainability of the present CWJC and stated that the petitioner is having an alternative remedy by invoking the arbitration clause before approaching this Court. Further, it is stated that there are disputed questions of facts involved in the present writ petition and this Court cannot adjudicate the same sitting under the Article 226 of the Constitution of India and prayed for dismissing the present writ petition.

7. Even though, both the counsel have argued on the merits of the case, this Court is not inclined to go into the same and dealing with the present writ petition only on the sole ground as to whether the principles of natural justice have been violated or not. A perusal of the show cause issued to the petitioner (Annexure-P/18) reveals that the show cause notice is dated 14.07.2021 and as per the postal track record, the same was delivered on the petitioner on 29.07.2021 (Annexure-P/19). The petitioner has submitted his explanation on 02.08.2021 (Annexure-



P/20) after which the authority has passed the order of termination (Annexure-P/27). It is pertinent to note that the order of termination bearing the Memo No. 5047 is dated 05.08.2021 however, the same is signed on 28.07.2021. The signing of the termination letter on 28.07.2021 and putting the date of order on 05.08.2021 creates a doubt with regard to passing of the order on 05.08.2021. If the order was really passed on 05.08.2021, the question of signing on 28.07.2021 does not arise and vice versa. If it was really signed on 28.07.2021, the authorities have failed to explain why the order is dated 05.08.2021. In the absence of any plausible explanation offered by the respondent authority an adverse inference has to be drawn that the order has been backdated only for the purpose of showing that the order is passed after receipt of the show cause notice to the petitioner.

8. The authorities even before the petitioner has received the show cause notice dated 14.07.2021 received on 29.07.2021 have passed the order of termination one day before the show cause notice was delivered and only to get over this lacunae, they have dated the same as 05.08.2021 on this ground the impugned order is liable to be set aside. Even if the date of 05.08.2021 is taken to be correct, then also, the order is liable to be set aside as the authorities have failed to explain as to why the explanation



dated 02.08.2021 (Annexure-P/20) submitted by the petitioner was not considered by the authority. Once it is established that the explanation submitted by the petitioner dated 02.08.2021 was on record as on the date of passing of the order dated 05.08.2021, then the non-consideration of the same by the authority is violative of principles of natural justice and equity and the same has to be necessarily held as arbitrary, bad, illegal and liable to be set aside.

9. On this short question alone, the impugned order dated 28.07.2021/05.08.2021 bearing letter no. 5047 is hereby set aside. The matter is remanded back to the authority concerned for passing orders afresh duly putting the petitioner on notice and giving him an opportunity of hearing. Though the impugned order of termination dated 05.08.2021 is set aside, the question of restoration of the contract to the petitioner does not arise as the work has already been completed by the third party contractor. The matter is remanded back to the authority only for the purpose of refund of the Earnest Money Deposit (EMD) and that there is no black mark on the petitioner. It is also made clear that this Court has not gone into the merits of the case and leaving all the issues open to be agitated and for the authority to decide in accordance with law.



10. With the above direction, the present writ petition
stands disposed of.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.05.2024.
Transmission Date	NA

