

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9795 of 2023

Green Design and Engineering Services Pvt. Ltd. Which is a private limited company registered under provision of the Companies Act having its registered office at 5, Sugam Society Aadjan, Gujarat and having local office at 3 B, Devahuti Kutir, Shivpuri, Patna- 800023, represented through its Authorized representative-cum- Vice President namely Parag P Mithaiwala (male), aged about 41 years, Son of Pravinchandra Mithaiwala, Resident of Plot No. 4, Moxa Villa, NR Dharamaraj Society Tadwadi, P.S.- Rander, Surat City, Surat- 395009, and Local address at 3 B, Devahuti Kutir, Shivpuri, Patna- 800023 ... Petitioner

Versus

1. The Muzaffarpur Smart City Ltd. represented through its Managing Director- cum- Municipal Commissioner, Muzaffarpur Municipal Corporation, Muzaffarpur- 842001.
2. The Managing Director- cum- Municipal Commissioner, Muzaffarpur Smart City Ltd., Muzaffarpur Municipal Corporation, Muzaffarpur- 842001.
3. The Chief General Manager, Muzaffarpur Smart City Ltd., Muzaffarpur Municipal Corporation, Muzaffarpur- 842001. ... Respondents

Appearance :

For the Petitioner : Mr.Ashish Giri, Adv.
For the Respondents : Mr.Awadhesh Kumar, Adv.

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

8 29-01-2024 Heard the parties.

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

i. To issue a writ/order/ direction in the nature of certiorari for quashing the order bearing No.1130/MSCL dated 17.06.2023 issued under the signature of the Respondent Managing Director- cum- Municipal Commissioner, Muzaffarpur Smart City Ltd by which it has been stated that the Board of Directors of the Company has terminated the Contract with immediate effect and to forfeit the performance security for poor performance and that



the petitioner is not entitled to receive any agreed payments under the contract.

ii. To hold and declare that the impugned order of termination etc. dated 17.06.2023 is in violation of natural justice and also wholly without jurisdiction since beyond the terms of the contract. And hence, the petitioner is liable for its balance dues as against the work executed and as such direct the authorities to release the same at the earliest.

iii. To pass ex-parte /ad-interim relief during the pendency of the writ application preventing the authorities from proceeding to forfeit the performance security of the petitioner and or prevent them from encasing the same and not to take any further coercive action pursuant to the impugned order dt. 17.06.2023 such as black listing etc.

iv. To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

3. The Writ Petitioner has filed Interlocutory Application No. 1 of 2023 seeking amendment of the prayer as follows and the same was ordered on 19.07.2023. :

I(v) To quash the letter dt. 24.06.2023 issued by the Managing Director, Muzaffarur Smart City Ltd. by which pursuant to the order of termination dated 17.06.2023, the Bank guarantee of the petitioner bearing No. 08711GP 210018105 dated 11th August, 2021 for amount of Rs. 55 Lakh has been asked to be released from the Bank for its encashment.



(vi) To direct the Respondent Authorities to refund back the amount so encashed by the Respondents in terms of the Letter dated 24.06.2023.

4. The brief facts of the case are that the petitioner pursuant to tender called by the respondents for the purpose of selection of Project Management Consultant (PMC) to design, survey, bid process management and support for implementation of Smart City Project in Muzaffarpur, has participated in the said tender and, thereafter, being successful bidder was awarded the contract. The agreement was entered between the parties on 21.07.2021 which was initially valid till 21.07.2022. Pursuant to the said agreement the petitioner has furnished bank guarantee on 11.08.2021 for an amount of Rs.55/- Lakhs. It is the case of the petitioner that the petitioner has been executing the work diligently as per the terms of the contract. That during the execution of the work there was lot of communication between the parties for proper implementation of the contract and to that effect the petitioner was given notices, dated 05.03.2022, 15.07.2022, 10.08.2022. The petitioner has been implementing the suggestion and wherever necessary giving suitable replies to the said notice. Thereafter, the authorities duly taking into notice the contract period has been extended.



The progress in the work for a further period of one year from 21.07.2022 or till the date of completion of the contract whichever is earlier on 05.09.2022. Learned counsel has stated that without giving any prior notice or issuing any show cause notice to the petitioner, the authorities have straightaway cancelled the contract on 17.06.2023 contrary to the terms and conditions of the agreement and also in violation of the principles of natural justice and equity. Learned counsel has stated that a perusal of the termination order reveals that the authority concerned without putting the petitioner on prior notice with regard to the violations, if any, of terms and conditions of the contract or intimating the proposed action to be taken has straightaway terminated the contract. Further, it is stated that in none of the references cited by the authorities in the termination order are not given to the petitioner and some of the references cited by the authorities in the termination order pertain to the request made by the authorities which were already complied with. Learned counsel has, further, stated that by extending the period of contract on 05.09.2022 it is deemed that earlier show cause notices/letters issued by authority to the petitioner are deemed to have been resolved and there are no complaints against the petitioner. That even the show cause



notice, dated 24.04.2023, which is referred to in the termination order threatens to only take action, but, does not seek any explanation from the petitioner. That in the absence of any proposed action to be taken by the authority concerned, the termination order is bad, arbitrary, illegal and contrary to the principles of natural justice and equity and, therefore, liable to be set aside. Further, it is stated by the learned counsel for the petitioner that till date the contract has not been awarded to any third party, therefore, the petitioner may be given the opportunity to complete the contract as per the agreement and payments due to the petitioner may be directed to be paid.

5. Per contra the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner has an alternative and efficacious remedy of approaching the Arbitrator as per the terms of the Agreement. That as per the terms and conditions of the agreement entered between the parties there is an arbitration clause and that the petitioner may be delegated to the Arbitration for resolving the dispute, if any. Learned counsel has stated that this Court sitting under Article 226 of the Constitution of India cannot decide the disputed questions of facts, more so, in contractual matters and, therefore, the present Writ Petition may be dismissed. The



counsel for the respondents has relied on the following judgments passed in case of **Radhakrishna Agarwal & Ors. Vrs. State of Bihar & Ors.** reported in (1977)3 SCR 249 and **Kerala State Electricity Board & Ors. Vrs. Kurien E. Kaiathil & Ors.** reported in (2009) 6 SCC 293.

6. Even though number of grounds have been raised by the petitioner as well as the respondents with regard to the maintainability of the present Writ Petition, it is to be noted that a perusal of the termination order reveals that the petitioner was not given any prior show cause notice before the order of termination has been passed.

7. This Court has gone through the references cited in the termination order and does not find that the petitioner was put on notice or that any action was sought to be taken against him for any of the violation of the terms of the contract. Moreover, the references cited from serial nos. 2 to 7 of the termination order pertains to the period prior to the extension of contract which was done on 05.09.2022. Further most of the notices referred at serial nos. 2 to 7 have been replied by the petitioner, but, in the impugned order of termination there is no reference to the reply submitted by the petitioner. The authorities having extended the contract period from 21.07.2022 for a further period of one year or till the completion of the



contract whichever is earlier cannot rely on the references cited at serial nos. 2 to 7 for taking any action which are admittedly prior to 05.09.2022. Even the letter, dated 24.04.2023, reference at serial no. 1 of the termination order, i.e., only speaks of recommending of black listing, but, does not talk about any violations or seeking any explanation from the petitioner and also for taking any further action. This Court as well as the Hon'ble Supreme Court in a catena of cases has held that before taking any adverse action against any person which may have serious financial consequences the authorities are bound to put that person on prior notice, call for an explanation and thereafter pass necessary orders, but, in this particular case the same has not being done. The order of termination has both civil and financial consequences which will adversely effect the party and also effect the future prospects of the petitioner-company in participating in other works. Learned counsel for the petitioner relied upon the judgment passed in the case of **Gorakha Securities Pvt. Ltd. Vrs. NCT of Delhi**, reported in (2014) 9 SCC 105, and in the case of **Birendra Prasad Singh Vrs. State of Bihar** reported in 2021 SCC OnLine Pat 262.

8. Having regard to the above the impugned order, bearing No. 1130/MSCL, dated 17.06.2023 passed by the authority is set aside and also the consequential letter, dated



24.26.2023, is set aside. Having regard to the fact that the contract has not been given to any third party and also taking into consideration the fact that most of the works have already been completed and at the fag end of the contract the authorities are directed to consider the case of the petitioner in a pragmatic manner and in case they come to the conclusion that the balance works can be completed by the petitioner they shall take suitable decision. That in case the authorities are of the opinion that the petitioner is incapable of completing the work they shall put the petitioner on notice giving the details of the violations and also the action that is proposed to be taken duly giving him opportunity of submitting his explanation. On receipt of the explanation by the petitioner, the authorities shall pass necessary orders strictly in accordance with law. Till such time, no coercive action will be taken against the petitioner.

9. With the above directions, the present Writ Petition stands **disposed of**.

(A. Abhishek Reddy , J)

Shamshad/-

U			
---	--	--	--

