

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12055 of 2023

Hemant Kumar Singh a Proprietorship firm, having its Registered office at Shivpuri, Buxar P.O., P.S. and District-Buxar through its Proprietor namely, Hemant Kumar Singh, aged about 38 Years (Male), Son of Late Shiv Mangal Singh, Resident of Shivpuri, Buxar P.O. P.S. and District-Buxar.

... .. Petitioner/s

Versus

1. The National Projects Construction Corporation Ltd. through its Chief Managing Director, Raja House, 30-31, Nehru Place, New Delhi-110019.
2. The Zonal Manager (Bihar Zone), National Projects Construction Corporation Ltd., 15, IAS Colony, Kidwaipuri, Prasad.
3. The Project Manager (Bihar Zone), National Projects Construction Corporation Ltd., 15, IAS Colony, Kidwaipuri, Prasad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Y.G. Giri, Sr. Advocate
Ms. Shristhi Singh, Advocate
Mr. Pranav Kumar, Advocate

For the Respondent/s : Mr. Kumar Prateek, Advocate
Mr. Shashi Ranjan Kumar, Advocate
Mr. Rahul Kumar Dubey, Advocate
Mr. Rahul Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-07-2024



The petitioner, who was awarded with a work which was stalled for very long and later the contract itself was rescinded, seeks disbursement of pending payments and release of bank guarantees.

2. We have heard Mr. Y.V. Giri learned Senior Counsel appearing for the petitioner and Mr. Kumar Pratik, learned Counsel appearing for the 1st respondent.

3. The 1st respondent-National Project Construction Corporation Ltd., was awarded the work of development of '*Mandiri Nala*' under Patna Smart City Mission on 21.02.2019. The 1st respondent published a Notice Inviting Tender (NIT) for the work to be carried out under two bid systems. The petitioner was an applicant who was granted both the works in 2019 for which agreement dated 21.10.2019 was executed. The petitioner commenced work but immediately thereafter there was a communication stopping the work and though it was resumed after 18 months, again there was stoppage of work. As of now the petitioner contends that even the 1st respondent's contract has been terminated and in such circumstance the bank guarantees have to be released and the payments for the completed work disbursed. There is no purpose in retaining the bank guarantees since the petitioner is no more carrying on the



work; nor is the 1st respondent concerned with such work.

4. A counter affidavit has been filed on behalf of respondent nos. 1 to 3, wherein, it has been admitted that 1st respondent was granted the contract and the petitioner was awarded the same under both packages on 02.05.2019 and 19.06.2019, for which agreements were executed on 10.05.2019 and 21.10.2019. It is also admitted in the counter affidavit dated 16.01.2024 that the construction programme for only package no. 2 was approved by the 1st respondent and the petitioner was permitted to supply the goods for construction. However, there were certain impediments at the work site caused by electric poles, water supply lines and live electricity lines; the removal of which was sought with the assistance of the 1st respondent. Despite these admissions; it is also asserted that the petitioner had been continuously requested to commence the work.

5. It is an admitted position that the petitioner was directed to stop the work at the work site under both the packages on 05.11.2019 which was also on the direction of the Patna Smart City Ltd.; who was entrusted with Patna Smart City Mission, who had entered into a contract with the 1st respondent for the development of the subject *Nala* .

6. According to the counter affidavit; on 06.05.2020 the



1st respondent was directed to re-design and re-work the structural analysis of the construction under both the packages. The petitioner then informed the 1st respondent that the work re-designed would not be as per the scope of the work tendered and there could be both financial and technical impediments in carrying out the work as per the earlier tender. Again, by letter dated 07.07.2021 the 1st respondent instructed the petitioner to carry out the work as per the approved modifications upon which the petitioner demanded payments due till then, against its expenditure by reason of deployment of machinery, goods, staff and the additional works carried out. The petitioner also requested for revision of the contract amount since there was a considerable escalation of price by reason of the delay occasioned. Insofar as release of bank guarantees, it is submitted that there is a defect liability period as per the terms of the contract and the release is possible only after the entire work is over.

7. Admittedly, even the 1st respondent does not have the contract as of now and there is no question of any bank guarantees being retained till the work is over, which already has been entrusted to another. The termination of the contract of the 1st respondent is evident from the document produced as



Annexure-P/30 along with the supplementary affidavit filed by the petitioner on 12.07.2024. The question arises as to whether the defect liability period as per the contract would survive such termination of contract.

8. The defect liability period as is available in Clause-74.0 of the agreement produced as Annexure-2 and Annexure-2A enables the Principal to recover from the Contractor any amounts expended, for rectification of defects in the works arising within 36 months from the taking over of the work by the Principal. The contention of the learned Counsel for the 1st respondent is that there was work carried out by the petitioner at the site and there could be defects noticed for which the liability would arise on the petitioner. We are unable to countenance the said contention especially considering the fact that the contract itself has been terminated and the work had not been completed. The work though commenced had not been carried out and there is only very meagre work carried out. The contract though awarded in 2019 and despite the submission of the petitioner that they had arranged men and materials for commencing the construction work, admittedly, the construction got stalled because of the Principal having sought for re-design and modification of the original work tendered. After the



modification, the petitioner had requested for revision of rates based on the escalation of price and also pointed out that the structural differences would be contrary to the technical specifications of the tender advertised and awarded. In any event, the work has now been terminated and there is no question of the 1st respondent holding back the bank guarantees for the purpose of indemnifying itself during the defect liability period.

9. The performance guarantee as is seen from Clause-9 of the agreement is to remain valid only till completion of one and a half years of the defect liability period. Having found that the defect liability period as per the agreement would not enable the 1st respondent to retain the bank guarantees, we are of the opinion that the same has to be released expeditiously.

10. On the above reasoning, we direct the 1st respondent to immediately release the bank guarantees furnished by the petitioner with respect to the work advertised as per Annexure-1 and awarded to the petitioner as per Annexure-2 and Annexure-2A. Insofar as the other amounts due to the petitioner by virtue of the work carried out is concerned, the petitioner would be entitled to seek appropriate remedy for recovery including invoking the arbitration clause. The 1st respondent would also be



entitled to raise questions of any liability cast on them by reason of any defective work, in the proceedings initiated for recovery of payment by the petitioner; wherein set off could be claimed.

11. On the above reasoning, we allow the writ petition reserving the liberty aforementioned and further directing compliance of our order to release the bank guarantees within a period of two weeks from uploading of the judgment.

(K. Vinod Chandran, CJ)

Partha Sarthy, J.

(Partha Sarthy, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.07.2024
Transmission Date	NA

