

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16604 of 2023

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M/s Singh and Brothers a Partnership Firm through its Partner Sunil Kumar Singh, Male aged about 62 Years Son of Kamta Prasad Singh, having its Registered Office at Mohalla-Mogal Kuan, P.S.-Sohsarai, Biharsharif, District-Nalanda at Biharsharif.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Public Health Engineering Department, Government of Bihar, Patna-800001.
2. The Officer on Special Duty. Public Health Engineering Department, Government of Bihar, Patna-800001.
3. The Executive Engineer, Public Health Engineering Department, Public Health Division, Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Advocate Mr. Sumit Kumar, Advocate Mr. Avinash Kumar Singh, Advocate
For the State	:	Mr. S. Raza Ahmad, AAG-5 Mr. Alok Ranjan, AC to AG-5

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-07-2024

The petitioner is concerned with a proceeding initiated five years after the term of guarantee also was over. On the admitted facts it is to be noticed that an NIT was issued for construction of high yielding T/Well, Pump House with Attendant Room, Stand Post, distribution with all materials (Turn-key-basis) including five year operation and maintenance under re-organization of rural piped water supply scheme,



Karma Bhagwan in district of Aurangabad under P.H. Division, Aurangabad as per Annexure-P/1 on 04.06.2013.

2. The work was awarded and as per Annexure-P/2, an agreement was entered into with the petitioner who was successful in the tendering process. The work was to be completed within one year and the NIT and agreement provided for operation and maintenance for a five year period after that. Work was commenced on 15.07.2013 and it is said to have been successfully completed on 14.07.2014. There is no dispute, on the said submission of the successful completion, from the respondents. Even according to the petitioner five years period also concluded in December-2019. The petitioner was then confronted with Annexure-P/4 dated 05.04.2023 seeking explanation for certain defects found.

3. We have heard Mr. Shekhar Singh, learned Counsel for the petitioner and Mr. Alok Ranjan learned Counsel for the respondents.

4. Learned Counsel for the petitioner submits that there is absolutely no provision in the NIT or the agreement, to issue such a notice four years after the completion of the contract period. It is submitted that the allegations made in Annexure-P/4 is also with respect to seven poles used, having been found missing and at four places the average covering of soil being



less than 100 metres.

5. It is submitted that ten years have elapsed after the entire work was completed and even after that the petitioner was required to maintain it only upto 2014. There could be no proceedings taken at this stage, after four years of handing over of the project.

6. The learned Counsel for the respondents, submits that the petitioner was issued with a notice as is seen from Annexure-A produced in the counter affidavit, after an enquiry conducted. The enquiry report is also enclosed with Annexure-P/4. It is also submitted that there was an initial condition of the pipes being laid 125 metres deep under the surface soil which however was only dug up to 49 metres.

7. It is the allegation in the present notice that pipes were found laid at 59.60 cms while the agreement was to lay at 100 cms. The stipulation at 125 cms for boring, which was relaxed initially itself since it was found to be not practical. The said allegation is also not raised in the notice.

8. We see that the present notice Annexure-P/4 was issued on 05.04.2023. True, an enquiry report is enclosed but however, the enquiry has been carried out without the participation of the petitioner. The enquiry report has been sent to the petitioner by covering letter of 2021 and the further



proceedings have been taken only after two years on 05.04.2023.

9. Regarding the allegation of seven poles found missing and in four places the average depth was found to be deficient, we cannot but notice that the work was completed in 2014 and till 2019 the petitioner was operating and maintaining it. The allegations raised after four years could as well be occasioned when the water supply system was maintained and run by the Government authorities.

10. We find absolutely no reason to sustain the proceedings taken against the petitioner. Annexure-P/4 and Annexure-P/6 to Annexure-P/9 stands set aside.

11. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.08.2024
Transmission Date	NA

