

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5874 of 2024

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Techwell Construction Pvt Ltd Ahmad Campus, Khalilpura Road, Near FCI Godown, besides Gyan Shishu Public School, Phulwari Sharif, P S Phulwari Sharif, District Patna through its Director, Aadil Nesar, Male, aged about 35 years, son of Nesar Ahmad, resident of Ahmad Campus, Khalilpura Road, Near FCI Godown, besides Gyan Shishu Public School, Phulwari Sharif, P.S.Phulwari Sharif, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer -3 Rural Works Department, Government of Bihar, Patna.
4. The Executive Engineer, Rural Works Department, Works Division, Sheohar, District Sheohar, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate.
Mr. Chandra Kumar, Advocate.

For the Respondent/s : Mr. Government Advocate (5).

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

11 19-02-2025 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

“(i) For quashing of the order bearing Memo No. 802 dated 02.06.2023 passed by the Executive Engineer (Respondent No. 4) by which, without issuing any Show Cause Notice, beyond authority of law, contrary to the terms of the Agreement and SBD, the Agreement No. MBD/MMGSY-World Bank/07/2021-



22 has been Rescinded in terms of Clause 57.1 of the General Conditions of Contract;

(ii) For quashing of the consequential ex-parte order bearing Memo No. 1418 dated 16.10.2023 by which, the Executive Engineer, invoking clause 58 of the SBD, without authority of law, without any opportunity of hearing and contrary to the terms of the Agreement has proceeded to forfeit the earnest money and further quantified an amount of Rs. 86,91,254.00/- as the cost of termination to be deposited by the petitioner failing which institution of the Certificate Case has been contemplated; and

(iii) Restraining the Respondents from giving effect and taking any coercive/consequential action pursuant to the order bearing Memo No. 802 dated 02.06.2023 passed by the Executive Engineer (Respondent No. 4) and Memo No. 1418 dated 16.10.2023 during the pendency of the present writ application and/or without the leave of this Hon'ble Court."

3. Learned counsel appearing on behalf of the respondents has stated that the impugned order dated 02.06.2023 and the order dated 16.10.2023 (Annexure P/6 and P/7) has been passed by the Executive Engineer, Rural Works Department, Works Division, Sheohar (Respondent No. 4) who is not competent to pass the said order. Learned counsel has stated that it is only the Engineer-in-Chief, Rural Works



Department, Government of Bihar, Patna who is the competent authority for passing the necessary orders but in this case, contrary to the terms of the agreement and the SBD, the Agreement No. MBD/MMGSY-World Bank/07/2021-22, the Respondent No. 4 has passed the order without having any jurisdiction. Learned counsel has stated that any order passed by the person who is not having the jurisdiction is a nullity in the eye of law and therefore the order is illegal, bad, without jurisdiction and non-est and has to be set aside.

4. This Court, vide order dated 10.05.2024 has directed the authorities to get necessary instructions as to whether the Executive Engineer, Rural Works Department, Works Division, Sheohar (Respondent No. 4) is competent to pass the impugned order or to verify if any delegation of powers has been given to the Respondent No. 4. The supplementary counter affidavit filed by the Respondent Nos. 2 to 4 at Paragraph Nos. 6, 9 and 10 states as under:-

“6. That it is stated that the petitioner participated in the said tender and was declared qualified vide decision of the Technical Bid Evaluation Committee. Thereafter, the meeting of the Departmental Tender Committee was convened for evaluation and acceptance of financial bid of MMGSY (World Bank) (tender in question) on 26.07.2021 under



Chairmanship of the Secretary, Rural Works Department Comprising of four other members including the Engineer-in-Chief, Rural Works Department, Bihar

9. That pursuant to the aforesaid works order, the Executive Engineer, Rural Works Department, Works Division, Sheohar entered into agreement with petitioner bearing the Agreement No. MBD/MMGSY World Bank/07 of 2021-22 according to which the date of commencement of the work was 24.09.2021 and date of completion of the work was fixed as on 29.09.23022 under terms and condition as stipulated in the MBD (Model Biding Document).

10. That it would not be out of place to mention here that the Executive Engineer, Rural Works Department, Works Division, Sheohar has rescinded the agreement in question in the capacity of executor of the agreement as well as being the Engineer-in-Charge of the work in question.”

5. In sum and substance the authority is of the view that the petitioner having entered into agreement with the Executive Engineer, he is competent to pass the order. However, it is to be noted that the Engineer-in-Chief has not delegated any powers to cancel or rescind the contract. The Executive Engineer cannot pass the impugned order on the ground that the Engineer-in-Chief has delegated the power to sign the agreement. With all due respect, the same cannot be construed as delegating the power for passing the order of cancellation.



When the agreement/MBD/MMGSY-World Bank/07 of 2021-22 speaks of particular thing to be done in a particular manner that has to be scrupulously followed without any deviation unless the authority (Engineer-in-Chief) has delegated the specific powers to cancel the agreement. The agreement entered between the parties (Annexure P/2) and the terms and conditions enumerated therein more specifically Clause 57.1, speaks of termination, the said clause makes it abundantly clear that the employer of the contractor may terminate the contract, if the other party causes any fundamental breach of contract after giving 14 days written notice. The term employer has been defined in Section 9 at CGC [1.1 (r)] the employer is Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.

6. Having regard to the above, the impugned order dated 02.06.2023 and the order dated 16.10.2023 passed by the Executive Engineer, Rural Works Department, Works Division, Sheohar, (Respondent No. 4) is without jurisdiction and the same are accordingly set aside. The matter is remanded back to the authority concerned (Respondent No. 2) for passing orders afresh. The Respondent No. 2 shall put the petitioner on notice and call for his explanation and, thereafter, pass a reasoned order duly taking into account the explanation submitted by the



petitioner herein strictly in accordance with law.

7. With the above directions, the present writ petition stands **allowed** to the extent indicated above.

(A. Abhishek Reddy, J)

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