

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6237 of 2024

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M/s M.S. Enterprises having its Office at 53B, Satyam Apartment, Kavi Raman Path, Nageshwar Colony, Boring Road, Patna through its Proprietor Manju Singh, Female, aged about 57 Years, D/o Tapeswar Singh, Resident of 53B, Satyam Apartment, Kavi Raman Path, Nageshwar Colony, Boring Road, Dist. - Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through 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 Biharsharif (Nalanda).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Adv.
For the Respondent/s	:	Mr. Kumar Manish, Standing Counsel 05
	:	Mr. Prashant Kumar, AC to SC5

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

Date : 19-04-2025

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

relief(s):-

“(i) Quashing of the Show Cause Notice bearing Letter No. 860 dated 28.06.2023 by which the Executive Engineer, in extreme derogation of the requirement of Clause 3 of the SBD has straight away proceeded to issue Show Cause Notice for the contemplated action of Rescindment of Agreement No. SBD-01/2020-21 in terms of Clause 3 (iii) and 3 (iv) of the SBD;

(ii) For Quashing of the subsequent Show Cause Notice as contained in Letter No. 875 dated 03.07.2023 by which without



considering the reply filed by the Petitioner, the Executive Engineer again issued a Show Cause Notice with regard to the contemplated action of rescindment of the Agreement under Clause 3 (iii) and 3 (iv) of the SBD and simultaneously the same Executive Engineer acknowledges the fact that the requisition from release of payment is being made and further requiring the petitioner to furnish necessary document(s) so that the delivery order for bitumen and emulsion may be issued;

(iii) Quashing of the reasoned order contained in Letter No. 895 dated 06.07.2023 by which, Executive Engineer, without complying the mandatory provisions of Clause 3 of the SBD, has proceeded to rescind the Agreement No. SBD-01/2020-21 in terms of Clause 3 (iii) and 03 (iv) of the SBD and further forfeited the security deposit; and

(iv) Restraining the Respondent from taking any coercive action(s) against the petitioner by giving effect to the Order rescinding the Agreement as contained in Letter No. 895 dated 06.07.2023 without the leave of this Hon'ble Court."

3. It is the case of the petitioner that the petitioner has entered into an agreement for execution of the work (Annexure-P/1) dated 20.02.2020. That the authority without putting the petitioner on show cause notices has terminated the contract vide order dated 06.07.2023 (Annexure-P/10).

4. Learned counsel appearing on behalf of the petitioner has stated that the petitioner could not execute the work due to non-issuance of the necessary letters for lifting of the bitumen and emulsion. Learned counsel has stated that vide letter dated 30.06.2023 (Annexure-P/8), the petitioner had asked the



authorities to furnish a letter to the concerned oil corporation for lifting of the bitumen and emulsion for the purpose of completing the work. However, the authority on 03.07.2023 (Annexure-P/9) having replied that the letter issued by the petitioner was not satisfactory and directed him to submit further details. That even before the same could be furnished by the petitioner, the impugned order dated 06.07.2023 (Annexure-P/10) was passed cancelling the agreement. Learned counsel has stated that the termination of the contract is illegal, bad and contrary to the principles of natural justice and equity. That for no fault of the petitioner, the contract of the petitioner has been cancelled. Learned counsel has stated that the petitioner should have been given an opportunity to give a suitable reply to the letter dated 03.07.2023 (Annexure-P/9) before passing the impugned order of termination dated 06.07.2023. Further, learned counsel has stated that previous replies given by the petitioner were not adverted to by the authority while passing the impugned order dated 06.07.2023 and the same has been passed in a mechanical manner without any application of mind. Learned counsel has relied on the following judgments in support of his case.

i. ***Canara Bank and Ors. Versus Debasis Das and Others reported in (2003) 4 SSC 557***



ii. *Balchandra L. Jarkiholi and Ors. Versus B.S.*

Yeddyurappa and Ors. reported in *2011 (7) SCC 1*

iii. *Smt. Fulpati Devi wife of Ramanand ram vs. the*

State of Bihar reported in *2012 SCC OnLine Pat 1198*

5. Learned counsel has therefore, prayed this Hon'ble Court to allow the present writ petition and set aside the order of termination dated 06.07.2023.

6. *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 as per the terms and conditions of the contract, the petitioner has any grievance is having an alternative and efficacious remedy of approaching the Arbitrator. Learned counsel has stated that though the petitioner has been given ample opportunity to complete the work, the petitioner has failed to do so and, therefore, left with no other option, the authority had to cancel the contract. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

7. Admittedly, in the present case, the petitioner has been entrusted with the work of construction of RCC High Level Bridge vide work order dated 20.02.2020. The period of completion the said work as per the said work order is on 23.02.2021. A perusal of



the documents filed by the petitioner reveal that the work could not be completed as the necessary material i.e., bitumen and emulsion were not available. Admittedly, in this case unless and until the authority issues the necessary letters to the Oil Corporations for lifting of bitumen and emulsion, the same could not be available to the petitioner. The petitioner vide letter dated 30.06.2023 had informed the authority about the same and also stressed on the issuance of letter for lifting the bitumen and emulsion, however the authority vide letter dated 03.07.2023 except stating that the response of the petitioner is incomplete has not taken any steps for issuance of the said letter. It is specifically stated by the petitioner that in case the bitumen is issued, the petitioner will complete the work within four days. However, for the reasons best known to the authority, they have immediately passed the order dated 06.07.2023. The authority before termination of the contract ought to have given ample opportunity to the petitioner to submit his explanation but in this case the impugned order was passed within three days of issuing the letter dated 03.07.2023.

8. The Hon'ble Supreme Court in the case of ***Balchandra L. Jarkiholi and Ors. Versus B.S. Yeddyurappa and Ors.*** reported in ***2011 (7) SCC 1*** has held as under;



“143. Even if as held by this Court in Dr. Mahachandra Prasad Singh case, Rules 6 and 7 of the Disqualification Rules are taken as directory and not mandatory, the appellants were still required to be given a proper opportunity of meeting the allegations mentioned in the show-cause notices. The fact that the appellants had not been served with notices directly, but that the same were pasted on the outer doors of their quarters in the MLA complex and that too without copies of the various documents relied upon by Shri Yeddyurappa, giving them three days time to reply to the said notices justifies the appellants' contention that they had not been given sufficient time to give an effective reply to the show-cause notices.

144. Furthermore, the appellants were not served with the copies of the affidavit filed by Shri K.S. Eswarappa, although, the Speaker relied heavily on the contents thereof in arriving at the conclusion that the appellants stood disqualified under Para 2(1)(a) of the Tenth Schedule to the Constitution. Likewise, the appellants were also not supplied with the copies of the affidavits filed by Shri M.P. Renukacharya and Shri Narasimha Nayak, whereby they retracted the statements which they had made in their letters submitted to the Governor on 6-10-2010.

145. The Speaker not only relied upon the contents of the said affidavits, but also dismissed the disqualification application against them on the basis of such retraction, after having held in the case of the appellants that the provisions of Para 2(1)(a) of the Tenth Schedule to the Constitution were attracted Immediately upon their intention to withdraw their support to the Government led by Shri Yeddyurappa. The Speaker ignored the claim of the appellants to be given reasonable time to respond to the show-cause notices and also to the documents which were handed over to the learned advocates of the appellants at the time of hearing of the disqualification application.”

9. The Hon'ble Supreme Court in the case of **Canara**

Bank and Ors. Versus Debasis Das and Ors. reported in (2003) 4

SCC 557 has held as under;



“15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated: (ER p. 420)

“[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?'"

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order



affecting those rights. These rules are intended to prevent such authority from doing injustice.”

10. Further, it is to be noted that when contracts are terminated in an abrupt manner, the same have serious civil consequences on the participants/ contractors. The authority before passing any order should be aware of their civil consequences, until and unless necessary safeguards are taken and due procedures followed, they should not take the extreme step of cancelling the contracts.

11. The Hon’ble Supreme Court in ***Coimbatore District Central Coop. Bank v. Employees Assn.***², has held as under;

“18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise-the elaboration of a rule of permissible priorities. 19. de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-605, para 13.085; see also Wade & Forsyth: Administrative Law (2005), p. 366.] 20.

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in



administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the Government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time, "where paring knife suffices, battle axe is precluded"."

12. Though the counsel for the respondents has vehemently argued that the petitioner has alternative and efficacious remedy of referring the dispute between the Arbitrator, it is pertinent to note that the Division Bench of this Hon'ble Court in Civil Review No. 181 of 2023 with its analogous case i.e., Request Case No. 12 of 2023 dated 04.10.2024 has held as under;

"The contention also is only that there was a procedure available under the contract, which had to be scrupulously followed, insofar as the appointment of an arbitrator for settlement of disputes, through arbitration. The procedure also prescribes an appointment to be made by the Engineer-in-Chief or the head of the Public Works Division, which, as of now, is not permissible under Section 12 read with Schedule-V of the Act of 1996.

9. Voestalpine Schienen GmbH v. Delhi Metro Rail Corpn. Ltd, (2017) 4 SCC 665 held that though the nature and source of arbitrator's appointment could be deduced from the agreement entered into between the parties, yet nonindependence and non-impartiality of such arbitrator would render him ineligible to conduct the arbitration. **TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 8 SCC 377**, further held that the Managing Director of the awarder is rendered



*incapable of carrying out arbitration by virtue of Section 12(5) of the Act of 1996, who would also be rendered ineligible to nominate another person as arbitrator. **Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760** found that the logical deduction from **TRF Ltd.**(supra) would be that that Managing Director after becoming ineligible by operation of law, would also be ineligible to nominate an arbitrator. The ineligibility as a result of operation of law, would not only be the ineligibility to act as an arbitrator, but also to appoint anyone else as an arbitrator. Hence, as of now, the Engineer-in-Chief would not be entitled to appoint an arbitrator; the particular designate having been disqualified by operation of law.*

*10. **Nirman Engicons Private Limited** (supra) was a case in which reliance was placed on another judgment of the Hon'ble Supreme Court in **Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML(JV), (2020) 14 SCC 712**. Therein, a Co-ordinate Bench, after considering **TRF Ltd.** (supra), held that when a panel of retired employees is proffered by the Railways as per Clause 64(3)(b) of the General Conditions of Contract; with the details of those retired officers, and the contractor is required to nominate two persons from the list, then the further nomination made by the awarder gets counter balanced by the power of choice given to the contractor. The decision in **TRF Ltd.** (supra) was held to be not applicable to the General Conditions of Contract of the Railways; which enables the parties to choose two arbitrators. This Court is informed that the aforesaid decision has been referred by a Coordinate Bench to a Larger Bench. However, it has to be pertinently observed that there is no such distinguishing clause, in the present contract as is available in the General Conditions of Contract of the Railways.”*



13. Having regard to the above mentioned facts and circumstances of the case, this Court is constrained to set aside the impugned order dated 06.07.2023 as the same is in violation of the principles of natural justice and equity. The authorities are directed to take necessary steps for issuance of the bitumen and emulation so as to enable the petitioner to complete the work within one week from the date of the bitumen and emulation being handed over to the petitioner. In case the petitioner is unable to complete the work even after the bitumen and emulation have been provided then the authorities are free to take necessary action strictly in accordance with law.

14. With the above direction, the present writ petition stands allowed.

(A. Abhishek Reddy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.05.2025.
Transmission Date	NA

