

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10478 of 2024

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D.B.S. Constructions Pvt. Ltd. having its Registered Office at Tar Banglow More, Dehri On Sone, P.S.- Dehri, District Rohtas, Bihar through its Director, Sunil Kumar Singh, aged about 60 years, Male, Son of Sri Daroga Singh, resident of Mohalla Samdika Nagar, P.S.- Dehri, District- Rohtas, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Energy cum Chairman, Bihar State Hydroelectric Power Corporation, (A Government of Bihar Enterprise), Sone Bhawan, Patna.
2. Managing Director, Bihar State Hydroelectric Power Corporation, (A Government of Bihar Enterprise), Sone Bhawan, Patna.
3. The Chief Engineer, Bihar State Hydroelectric Power Corporation Ltd., (A Government of Bihar Enterprise), Sone Bhawan, Patna.
4. The Executive Engineer, Bihar State Hydroelectric Power Corporation Ltd., (A Government of Bihar Enterprise), Sone Bhawan, Patna.

... .. Respondent/s

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Appearance :

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

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 06-05-2025

1. Heard learned counsels for the parties.

2. The petitioner has filed the instant application praying for quashing the order contained in Letter no. 105 dated 1.3.2024 issued under the signature of the Chief Engineer of the Bihar State Hydroelectric Power Corporation Ltd. (herein after referred to as the ‘Corporation’) whereby while closing the agreement entered into with the petitioner, order was passed



blacklisting the petitioner for a period of three financial years and further the security deposit was directed to be forfeited.

3. The relevant facts in brief are that the respondent-Corporation having come out with a Notice Inviting Tender no. 05/Civil/18-19 dated 6.3.2019 which was for completion of the balance work of projects in various stages of construction, the petitioner applied for the work of Amethi MHP (1x500 kW). A Letter of Intent dated 21.8.2019 was issued for execution of work at a total cost of Rs.5,33,68,345/- and an agreement was entered into between the Corporation and the petitioner on 14.10.2019. The work was to be completed within a period of 12 months from the date of agreement.

4. It is the case of the petitioner that the site of work having been flooded, on the water receding, there was considerable change in the condition of the site and a year having passed since the agreement was entered into and the site not having been handed over to the petitioner, he prayed that the site be handed over, the same be dewatered and further a representation was filed for revision of the rates at the rate of 5% of the agreed amount. The petitioner has brought on record his representations dated 10.10.2020, 18.12.2020 as also 22.1.2021 to substantiate his above contention.



5. Learned counsel for the petitioner submits that not having received any response to the representations filed by him, the petitioner moved this Court in CWJC no. 371 of 2023 which was disposed of by order dated 20.7.2023 directing the Chief Engineer of the Corporation to consider the petitioner's representations in accordance with law and pass a speaking order thereon.

6. The respondent-Corporation by their order contained in Letter no.105 dated 1.3.2024 was pleased to close the agreement, blacklist the petitioner for three financial years and ordered for forfeiture of the security deposit.

7. Learned counsel for the petitioner submits that against the time for completion of work being 12 months though the agreement was entered into between the parties on 14.10.2019, the site for the work was not handed over to the petitioner even on the time for completion of the work having expired. It was further submitted that the order of blacklisting was not preceded by a show-cause contemplating such an action. Further, there was no application of Clause 1.2.21 of the General Conditions of the Contract which deals with negligence. It is thus submitted that the order impugned is illegal, arbitrary and not sustainable and thus be set aside.



8. In response, Mr. Mritunjay Kumar, learned counsel appearing for the respondent-Corporation submitted that though the agreement was signed between the Corporation and the petitioner on 14.10.2019, however the petitioner did not intend nor took interest to start the work for reasons best known to him. It is for this reason that the Corporation sent several letters including dated 6.10.2020 and 15.1.2021 asking him to start the work, failing which steps would be taken in accordance with the agreement. The petitioner Firm not having submitted any bar/part chart of the projects works to the Corporation and the work which was to be concluded in 12 months, as such the Corporation sent a notice to the petitioner on 15.1.2021 as to why the agreement be not cancelled. On receiving the reply of the petitioner and considering the contents thereof as also complying with the directions contained in order dated 20.7.2023 passed in CWJC no. 371 of 2023, the Corporation issued the order dated 1.3.2024, impugned herein.

9. Heard Mr. Prabhat Ranjan, learned counsel for the petitioner and Mr. Mritunjay Kumar, learned counsel for the Corporation. Perused the material on record.

10. Pursuant to the petitioner having applied against N.I.T. dated 6.3.2019 floated by the respondent-Corporation, the



petitioner was issued with the L.O.I. with respect to the work for Amethi MHP (1x500 kW) and an agreement was entered into between the parties on 14.10.2019. As per the terms of the agreement, the work was to be executed at a total cost of Rs.5,33,68,345/- and the same had to be completed within a period of 12 months ie by 14.10.2020.

11. From the record it transpires that the Corporation wrote a letter dated 6.10.2020 to the petitioner stating therein that the period of the agreement was coming to an end on 14.10.2020. Further referring to the communication on telephone, the petitioner was requested to submit the part chart and revised item and quantity as per the approved drawings within a period of one week and to commence work at site at the earliest or else further action would be taken as per the agreement. The petitioner in response mentioned about the work site being inundated with water, the site having changed considerably and also with respect to the revision, deviation and variation in the plan and estimate proposed by the Corporation.

12. On further perusal of the communications it transpires that though the petitioner kept reminding the Corporation of handing over the site after dewatering the same and also to provide them with a copy of the agreement with the



revised item and quantity, the Corporation only proceeded to write to the petitioner about the fact that the work had to be completed by 13.10.2020 and the same had not been started yet. The response/letters of the Corporation do not show that any of the issues raised by the petitioner were dealt with. Not having received any effective response to his representations led to the petitioner filing CWJC no. 371 of 2023, which was disposed of by this Court on 20.7.2023 directing the respondent-Corporation to dispose of the petitioner's representations by a speaking order.

13. Subsequent thereto, the respondent-Corporation sent a letter dated 12.1.2024 to the petitioner which contained the schedule of the deviated quantities and prices, however it needs to be noted that by this time more than 4 years had passed of the petitioner having entered into an agreement with the Corporation. It is soon thereafter that the respondent-Corporation came out with the order dated 1.3.2024, impugned herein.

14. In view of the facts and circumstances of the case and as dealt with herein above, the Court is of the opinion that the Corporation itself having delayed in handing over the site for carrying out the work, free from water, the further inordinate



delay in issuing the schedule of deviated quantities and prices which was done more than 4 years after the parties entered into an agreement and of which the work was to be completed within 12 months, the petitioner cannot be held solely responsible for non-performance of the work in question.

15. Clause 1.2.21 of the Terms and Conditions of the Contract deals with negligence and provides that if the contractor neglects to execute the work with due diligence and expedition or refuses to comply with the orders given to him in writing by the Engineer in connection with the work, after giving due notice the owner shall have the option to take the work out of the contractor's hand and to get the same done himself. Further Clause 1.1.12(iii) reserves to the owner the right to encash the Bank guarantees if sufficiently convinced of the contractor's negligence and lack of dedication to work and failing the milestones against the agreed date on part of the contract. It is in exercise of these two Clauses 1.2.21 and 1.1.12(iii) that the order impugned has been passed closing the agreement blacklisting the petitioner for three financial years and forfeiting the Bank guarantee.

16. As already held, in the facts of the case, it cannot be said that the petitioner was solely responsible for the work



not being done in view of the facts as narrated herein above.

17. In view of the facts and circumstances of the case, the order impugned is not sustainable and the same is set aside so far as the blacklisting of the petitioner for a period of three financial years and forfeiture of his Bank guarantees are concerned.

18. The writ application is allowed to the above extent and is accordingly disposed off.

(Partha Sarthy, J)

Ashutosh Kumar, ACJ: I agree.

(Ashutosh Kumar, ACJ)

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AFR/NAFR	
CAV DATE	18.02.2025
Uploading Date	06.05.2025
Transmission Date	

