IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1185 of 2024
In
Civil Writ Jurisdiction Case No.18226 of 2013

CNR No. BRHC011156592024

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1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Engineer-In-Chief, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Water Resources Department, District- Purnea.
4. The Superintending Engineer, Water Resources Department, Government of Bihar, Patna.
5. The Executive Engineer, Drainage and investigation Division, Kishanganj.
6. The Assistant Engineer, Drainage and investigation Division, Kishanganj.
7. The Junior Engineer, Drainage and investigation Division, Kishanganj.

... ... Appellant/s

Versus

Birat Construction Pvt. Ltd. through the Managing Director, Santosh Kumar having itsd Principle Office at Basantpur, Near Court Colony, Virpur, P.O.- Virpur, P.S. Virpur, District- Supaul.

... ... Respondent/s

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Appearance :
For the Appellant/State : Dr. Bipin Chandra, SC-28
For the Respondent : Mr. Alok Ranjan, Advocate
Mr. Akash Chaturvedi, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH)

15 06-11-2026 Heard learned counsel for the appellants-State and learned counsel appearing on behalf of the respondent.

2. The present Letters Patent Appeal has been

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preferred against the judgment dated 30.08.2024 passed by the learned Single Judge in *C.W.J.C. No. 18226 of 2013* whereby the writ petition filed by the respondent-writ petitioner was allowed, the respondent was held entitled to payment for the work executed under Agreement No. 36 F2 dated 19.03.2012, and the appellants were directed to delete its name from the blacklist.

3. The brief facts necessary for adjudication of the present appeal are that the Water Resources Department, Government of Bihar invited a tender bearing NIT No. 2/2011-12 for construction of porcupines on the right bank of the Kankai River near village Purandaha, District Kishanganj. Pursuant thereto, an agreement dated 19.03.2012 was executed between the respondent-writ petitioner and the concerned Executive Engineer. The work related to construction of porcupines for a length of 300 metres.

4. The case of the appellants-State is that, in terms of the tender, estimate and agreement, the respondent was required to construct porcupines in two rows over a length of 300 metres. However, instead of executing the work in the prescribed manner, the respondent constructed porcupines in a single row over a length of 600 metres, thereby deviating from the

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approved estimate and the terms of the agreement. It is further the case of the appellants that the respondent was repeatedly instructed by the departmental authorities to execute the work in accordance with the agreement, but it failed to comply with such directions. The appellants also contend that the work was incomplete and of poor quality, that no corresponding entry was made in the Field Measurement Book and consequently, no bill could be passed for payment. It is their further case that, after issuance of a show-cause notice dated 09.12.2013 and consideration of the reply submitted by the respondent, the department passed the order dated 30.01.2014, contained in Memo No. 505, blacklisting the respondent under Rule 11(ka) (a) of the Bihar Contractor Registration Rules, 2007.

5. Per contra, learned counsel appearing for the respondent submits that the work was executed in accordance with the instructions of the departmental engineers. It is submitted that, owing to disturbances at the work site, the departmental engineers, after deliberation, directed the respondent to construct the porcupines in a single row over a length of 600 metres instead of constructing them in two rows over 300 metres. The work was completed within the stipulated period and was within the knowledge of the concerned

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Executive Engineer. It is further submitted that the quality-control report dated 10.07.2012 issued by the Chief Engineer found the quality of the work satisfactory. Subsequently, the Superintending Engineer, by his review report dated 16.03.2013, also appreciated the work executed by the respondent, found the single-row arrangement successful and effective in the prevailing river conditions, and recommended release of payment. Despite the aforesaid departmental findings, the appellants withheld the payment and proceeded to blacklist the respondent.

6. We have considered the rival submissions and perused the materials available on record. The principal issue which arises for consideration is whether the construction of porcupines in a single row over 600 metres, instead of in two rows over 300 metres, constituted an unauthorised deviation from the contractual terms so as to justify withholding of payment and blacklisting of the respondent. Learned counsel for the appellants has placed considerable reliance upon the estimate and the departmental letter bearing No. 506 dated 17.02.2012. It is contended that the estimate formed an integral part of the tender and the agreement and clearly stipulated construction of porcupines in two rows over a length of 300

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metres. According to the appellants, the respondent was, therefore, bound to execute the work strictly in accordance with the said specification.

7. There can be no dispute with the general proposition that the parties to a contract are bound by its terms and that a Court cannot rewrite the contractual obligations undertaken by them. However, before the aforesaid principle can be applied, it must first be established what the actual contractual obligation was and whether the particular specification sought to be enforced by the appellants formed part of the tender and the agreement executed between the parties.

8. The learned Single Judge, upon consideration of the materials available on record, specifically noticed that the requisite specifications were not shown to have been incorporated either in the agreement executed between the parties or in the tender notification. The learned Single Judge had also called upon the State authorities to furnish the relevant details, but no proper documents were placed before the Court to establish the alleged contractual requirement of construction in two rows.

9. The appellants, in the present appeal, have

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reiterated that the estimate formed part of the agreement. However, a mere assertion in the memorandum of appeal cannot take the place of the contractual document itself. The appellants were required to demonstrate from the relevant tender and agreement documents that the particular specification relied upon by them was an enforceable term of the contract. In the absence of such material being demonstrated, the finding recorded by the learned Single Judge cannot be said to be perverse or contrary to the record.

10. There is another significant aspect of the matter which cannot be overlooked. The respondent has consistently maintained that the change in the manner of execution was not made unilaterally or for its own convenience, but was necessitated by disturbances at the site and was undertaken upon the intervention and instructions of the departmental authorities. In this regard, the review report dated 16.03.2013 submitted by the Superintending Engineer assumes considerable significance. The said report, as noticed by the learned Single Judge, records that the work near village Purandaha was interrupted on account of insecurity, personal enmity and disputes between two communities. It further records that, upon intervention of senior officials and in coordination with the regional officials, the work

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was completed in a single row over almost double the original length and that the said arrangement was within the knowledge of the Executive Engineer. The review report further records that, having regard to the prevailing condition of the river, the single-row arrangement appeared to be successful, useful and effective. On that basis, the Superintending Engineer recommended that the payment of the respondent should not be withheld.

11. Thus, the departmental review does not support the appellants' assertion that the respondent had, on its own, departed from the contractual arrangement without the knowledge or intervention of the departmental authorities. Rather, the report indicates that the altered manner of execution was undertaken in the prevailing site conditions with the intervention of senior departmental officials and was subsequently found useful and effective by the competent departmental authority. The appellants have also contended that the respondent was repeatedly directed to execute the work in two rows and that it failed to comply with such directions. However, the respondent's specific case before the writ Court was that the communications dated 03.05.2012, 26.06.2012 and 09.07.2012 were received together on 13.07.2012, whereas the

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work had already been completed on 15.05.2012. The appellants have not demonstrated from the materials placed before the writ Court that the aforesaid communications were duly served upon the respondent before completion of the work or that the respondent deliberately disobeyed any subsisting direction of the competent departmental authority.

12. In any event, the subsequent review report dated 16.03.2013, which specifically takes note of the circumstances in which the work was executed and recommends release of payment, is a material departmental document which could not have been brushed aside merely on the basis of the appellants' subsequent allegation of unauthorised deviation. The contention of the appellants regarding absence of entries in the Field Measurement Book also does not, by itself, justify denial of payment for work which has been physically executed and subsequently examined by the departmental authorities. It is true that measurement and verification of the work are necessary for processing a contractor's bill. However, the absence of an entry in the Field Measurement Book cannot be treated as conclusive proof that no work was executed, particularly when the department's own review report acknowledges the execution of the work, assesses its effectiveness and recommends payment to

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the respondent.

13. The appellants were required to examine the work executed, verify the quantity and determine the amount payable in accordance with the contractual terms. A deficiency in the departmental measurement records cannot be used to defeat an otherwise established claim for payment, especially when the department itself had the responsibility to maintain and verify such records.

14. We also find that the learned Single Judge has taken note of the quality-control report dated 10.07.2012 issued by the Chief Engineer, which found the quality of the work satisfactory. The review report dated 16.03.2013 further records that the single-row arrangement was successful, useful and effective in the prevailing river conditions.

15. The appellants have alleged that the work was incomplete and of poor quality and have also referred to an inspection by the departmental flying squad. However, the existence of such allegations cannot, by itself, displace the findings contained in the aforesaid departmental reports. The appellants have not demonstrated any cogent material which would render the findings of the quality-control report and the subsequent review report unreliable or establish that the work

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executed by the respondent was wholly unacceptable.

16. So far as the order of blacklisting dated 30.01.2014 is concerned, it is well settled that blacklisting a contractor entails serious civil consequences and has a direct bearing upon its right to participate in future government contracts. Such an order must, therefore, be supported by a legally sustainable basis and must satisfy the requirements of fairness and proportionality.

17. In the present case, the principal allegation against the respondent is that it deviated from the prescribed manner of execution by constructing the porcupines in a single row over 600 metres instead of in two rows over 300 metres. However, as noticed above, the appellants have not satisfactorily established that the specification sought to be enforced was an unambiguous and binding contractual condition. Further, the departmental review report records the circumstances in which the work was executed, acknowledges the intervention of senior officials and recommends payment after finding the work successful and effective.

18. In such circumstances, the mere fact that a show-cause notice was issued and a reply was submitted by the respondent would not, by itself, establish the legality of the

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ultimate decision to blacklist it. The substantive basis for taking such an extreme action must also be sustainable. Once the principal allegation of unauthorised deviation is not established from the contractual documents and is further rendered doubtful by the subsequent departmental review, the action of blacklisting the respondent cannot be sustained merely on the basis of the appellants' assertions.

19. The reliance placed by the appellants upon the judgment of the Hon'ble Supreme Court in the case of ***Rajasthan State Industrial Development and Investment Corporation and Another v. Diamond and Gem Development Corporation and Another***, reported in ***(2013) 5 SCC 470***, does not advance their case any further.

20. There can be no quarrel with the proposition that contractual terms are required to be interpreted in accordance with their language and that a Court cannot create a new contract between the parties. However, the aforesaid principle does not dispense with the requirement of first establishing the actual terms of the contract. In the present case, the learned Single Judge has not rewritten the agreement or substituted a different contractual obligation. The learned Single Judge has examined whether the appellants had established the particular

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specification on the basis of which the respondent was sought to be penalised and has also considered the subsequent departmental assessment of the work.

21. The decision relied upon by the appellants, therefore, does not warrant interference with the findings recorded by the learned Single Judge.

22. On an overall consideration of the materials, we find that the learned Single Judge has taken note of the relevant contractual dispute, the absence of proper documentary material establishing the specific requirement relied upon by the appellants and more importantly, the departmental review report dated 16.03.2013 recommending release of payment after finding the work successful and effective.

23. The appellants have not been able to demonstrate any perversity in the appreciation of the materials by the learned Single Judge or any error of law warranting interference in the present appeal. We are, therefore, not persuaded to take a view different from the one taken by the learned Single Judge.

24. Accordingly, the present Letters Patent Appeal stands dismissed. The judgment dated 30.08.2024 passed in *C.W.J.C. No. 18226 of 2013* is hereby affirmed.

25. Pending interlocutory applications, if any, also

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stand disposed of.

(Prabhat Kumar Singh, J)

(Rana Vikram Singh, J)

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