

(2022) 05 PAT CK 0054

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 8357 Of 2020

M/S Vijeta Projects And
Infrastructure Pvt. Ltd

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: May 17, 2022

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: S.D. Sanjay, Ashish Giri, Sumit Kumar, Anjani Kumar, Mukesh Kumar, Satya Prakash

Judgement

Petitioner has prayed for the following relief(s):-

(A) A writ in the nature of CERTIORARI or any other appropriate writ/s, order/s dcrection/s quashing the Letter No. 1231 dated 21.09.2020 issued

under the signature of the Chief Engineer, Irrigation Creation, Water Resources Department, Bhagalpur by which the Executive Engineer, Irrigation

Division, Sikandara has been directed to resign the agreements of the petitioner bearing no. 02SM/201748 and 02SBD/2019.20 and to blacklist the

petitioner and also to take action of encashment of bank guarantee if the advance money is not refunded by 05.10.2020.

(B) A writ in the nature of CERTIORARI or any other appropriate writ/s. order's direction/s quashing the Letter No. 83 dated 03.09.2020 under the

signature of the Executive Engineer. Irrigation Division. Sikandara by which it has been informed that vide letter no. 779 dated 31.08.2020 direction

has been received to resign the agreements of the petitioner and accordingly directed to appear for final measurement.

(C) A writ in the nature of CERTIORARI or any other appropriate writ/s, order/s direction's quashing the Letter No. 779 dated 31.08.2020 issued

under the signature of the Engineer-in-Chief. Irrigation Creation to the Chief Engineer, Irrigation Creation, Bhagalpur by which direction has been

given to resign the agreements bearing no. 02SBD/2017-18 AND 02SBD/2019-20 and recommend for blacklisting.

(D) A writ in the nature of MANDAMUS or any other appropriate writ order's direction's commanding the Respondents to permit the petitioner to

continue with the execution of the work in question without undue interference as more than 85% work has been completed.

(E) To pass appropriate interim . ex-parte interim relief during the pendency of the present writ petition preventing the respondent authorities from

taking any coercive step against the petitioner such as blacklisting. forfeiture / encashment of bank guarantees etc.. any recovery of advance money

and / or to allow the petitioner to continue with the work and prevent the authorities from readvertising the work in question and / or stay the operation

of order dated 21.09.2020.

(F) To pass any other appropriate relief/s to which the petitioner is found entitled to.

On 21.10.2020, initially when the matter was taken up, the Court had directed that no coercive steps shall be taken against the petitioner.

On 17.03.2021, the Court had observed as under:-

“The learned Senior counsel for the petitioner Shri S.D. Sanjay has submitted that the work/contract in question was earlier also allotted to a

contractor and an agreement was executed in the year 2010, however, the said agreement was terminated on account of non-completion of the work

by the said contractor and thereafter the petitioner was granted the contract/ work in question and an agreement was executed on 11.7.2017. It is

further submitted that the petitioner has completed about 80% of the work in question, however, on account of certain impediments the work could not

be completed in time but now the petitioner is ready to complete the remaining work within a reasonable period on the old rate and term, as prescribed

in the agreement in question dated 11.7.2017. In this connection, the learned Senior counsel appearing for the petitioner has referred to a report of the

Executive Engineer submitted to the Engineer-in-Chief, Irrigation Creation, Water Resources Department, Patna dated 11.09.2020, wherein

recommendation has been made to recall the decision regarding rescinding of the contract of the petitioner. It is thus submitted that the respondents be

directed to consider recalling the decision regarding rescinding of the contract of the petitioner and the petitioner be allowed to complete the remaining

work since the same would prevent wastage of public money.

Mr. Anjani Kumar, learned AAG-4, has submitted in response that instructions would be required to be sought from the respondents as to whether

they are ready to permit the petitioner to complete the remaining work since the agreement in question has been terminated vide order dated 31.8.2020

on account of breach of the terms and conditions of contract by the petitioner and on account of suppression of facts by the petitioner.

Having considered the rival contentions of the learned Senior counsels appearing for the parties, I deem it fit and proper to grant time to the

respondents to inform this Court as to whether they are willing to allow the petitioner to complete the balance work within a stipulated time frame, on

the old rates. If need be, the respondents may hold parleys amongst themselves as also with the representatives of the petitioner.

List this case on 12.04.2021.â€

On 9th May, 2022, we had passed the following order:-

â€œWe notice that interim protection was granted in favour of petitioner on 21.10.2020.

From the order of 17.03.2021, it appears that allegedly petitioner completed 80 per cent of the work.

On â€˜special mentionâ€™™ the matter stands listed before this Bench.

Having briefly heard learned counsel for the parties, we are of the considered view that today three options are available with the parties and each

one without prejudice to their respective rights and contentions:-

(a) A fresh show cause notice be issued by the appropriate authority to the petitioner to be responded to within the time bound period and decide expeditiously.

(b) The petition be heard on merits.

(c) The petitioner be allowed to complete the remaining work within the time bound period without any further pecuniary benefit on the same terms and conditions more so the consideration contained therein.

Let the learned counsel for the State obtain instructions.

List this case tomorrow i.e. 10.05.2022

Mr. Anjani Kumar AAG-4 states that at this point of time 3rd option is not open.

Mr. S.D. Sanjay, learned counsel for the petitioner under instruction states that 3rd option is acceptable to the petitioner.â€

On 11th May, 2022, we had passed the following order:-

â€œWe have perused the supplementary counter affidavit dated 10.05.2022 filed on behalf of Respondent Nos. 1 to 4.

Evidently, 67 per cent of the work stands completed by the petitioner. The remaining work, as indicated, needs to be completed at the earliest, more

so, to prevent further agony which may be caused to the general public, on account of torrential and continuous rainfall resulting into inundation of the

local area and after the monsoons, providing benefit of irrigation.

Without prejudice to the respective rights and contentions of the parties, we direct the petitioner to furnish an affidavit undertaking the time-frame

within which the remaining work can be completed, if so permitted by the respondents.

Our direction may not be construed to be an issuance of writ of mandamus or our indication of the work allowed to be continued by the petitioner. We

are undertaking such an exercise only to explore the possibility of an amicable settlement.

Our order dated 09.05.2022 stands reiterated.

List this case on 12th of May, 2022.â€

Again on 12.05.2022, we had passed the following order:-

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â€œWe notice that interim protection was granted in favour of petitioner on 21.10.2020.

From the order of 17.03.2021, it appears that allegedly petitioner completed 80 per cent of the work.

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are undertaking such an exercise only to explore the possibility of an amicable settlement.

Our order dated 09.05.2022 stands reiterated.

List this case on 12th of May, 2022.â€

In terms thereof, the petitioner has filed his supplementary affidavit dated 12.05.2022 by way of an undertaking, inter alia, stating as under:-

â€œ3. That, it is stated and submitted that there are two agreements executed by the Respondents with the Petitioner vide Agreement dated

11.07.2017 and Agreement dated 20.08.2019.

4. That it is indicated that since the work in question was rescinded as back as on 31.08.2020, it has been approximately more than one and half year

since the site had remain up-inspected/abandoned which must have led to the deterioration of the site and as such, the month of May, 2022 will be

exhausted in restoring the site condition itself.

5. That thereafter the month of June, July and August is monsoon period during which slow progress in work can be achieved since the approach to

the site itself becomes difficult. However the petitioner can immediately thereafter with the support of the Respondent Officials can complete the first

agreement work within two months i.e. September and October, 2022 provided the site is free from all encumbrances to which the Respondents can

assure to take all necessary action regarding such handing over of site at the earliest.

6. That thereafter, the remaining work in light of second agreement, the petitioner will be able to complete the same up to 30th June 2023 for which

the Respondents may undertake to provide necessary support and assistance to the petitioner in removing hindrances that may arise in the site

premises.

7. That in this background it is submitted that on the basis of the above time schedule so provided this Honâ€™ble Court may kindly consider passing

appropriate orders in terms of Option-(c) so provided vide order dated 09.05.2022.â€

The undertaking is accepted and taken on record. However, this is independent of and subject to the respective rights and contentions of the parties.

In this view of the matter, we direct Respondent No. 2, namely the Principal Secretary, Water Resources Department, Government of Bihar, Patna to

have the matter examined and express his opinion thereupon.

List this case on 16th of May, 2022.â€

Shri S.D.Sajay, learned senior counsel, assisted by Shri Ashish Giri, learned counsel, who appears on behalf of the Contractor-petitioner, reiterates the

undertaking furnished, vide several affidavits, of executing the work within the period stipulated therein. Shri Sanjay states that with respect to second agreement, the work would be completed positively before March, 2023.

The State has filed second supplementary counter affidavit dated 16.05.2022, inter alia, stating as under:-

â€œ3. That instead of giving paragraph wise reply in detail, this counter affidavit is confined to the material facts of the case necessary for its

adjudication at this stage. However, the answering respondent craves leave his right to file supplementary counter affidavit if and when required and

order passed by this Honâ€™ble Court.

4. That the averments made in the instant writ application which are not specifically admitted and are beyond/contrary to the records of the case are

hereby denied.

5. That this supplementary counter affidavit is being filed in pursuance of order dated 12.05.2022 passed in the present case.

6. That it is stated that the respondents have already expressed their stand in their counter affidavit and supplementary counter affidavits and it was

submitted that the case may be finally heard considering the necessity and urgency of early completion of construction of earthen dam for safety of

life and property of people residing in the surrounding areas and for providing irrigation facility.

7. That it has also been submitted that the â€Kundghat Reservoir Schemeâ€™ is very significant for providing irrigation facility to about 2035 hectare

agricultural land which is a drought prone region. But due to order of interim protection, the work has been stopped for last one and half years and

constriction of earthen dam on river Bahuar is incomplete as only 67% of the total work was executed by the petitioner and thereafter the work was

stopped. The State Govt. has already spent huge public money(approximately Rs. 108.00 crore) for construction of this dam.

8. That under the aforesaid circumstances, this Honâ€™ble Court may be pleased to pass appropriate order considering the facts and circumstances of the case.â€™

Accepting the undertaking furnished by the petitioner, we examine the issue on merits.

We noticed that the impugned order dated 31st August, 2020 whereby petitioner's agreement stands rescinded is not only â€™highly crypticâ€™ but also â€™unreasonedâ€™, apart from being passed without adherence to the principles of natural justice.

In a four line communication without any assigning reasons, the respondent authorities have rescinded the contract, by simply stating that the contract, in question, is being rescinded and the contractor blacklisted. Why so ? and for what reason ? is left to the best judgment of the person pursuing the same. Undisputedly, passing of such an order entails civil consequences.

As such, present petition is disposed of in the following terms:-

(a) Order dated 31.08.2020 whereby the agreement stands rescinded and contractor blacklisted (Annexure-6 Page-49) is quashed and set aside.

(b) Consequential orders dated 03.09.2020 (Annexure-8 Page-51) and 21.09.2020 (Annexure-11, Page-56) are also quashed and set aside.

(c) It is open for the authorities to take appropriate action in accordance with law, if so required and desired. However, should it choose to do so. The entire process shall be completed expeditiously and in full compliance of principle of natural justice.

(d) The statement and the undertaking of the petitioner is accepted and taken on record and should the authorities not take any action of rescinding the contract, the same shall be binding. Consequence of breach would entail initiation of proceedings for contempt.

(e) Needless to add, if the petitioner were to execute the work, it has to be on the same terms and conditions only in terms of the original agreement(s).

(f) Needless to add, all parties shall fully co-operate in the early completion of the work, which, undoubtedly, is in the interest of the State.

Interlocutory application(s), if any, shall also stand disposed of.