

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8481 of 2020

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M/s Sanjeev Kumar through its Proprietor namely Sri Sanjeev Kumar, aged about 49 years, (Male), Son of Sri Ram Baran Singh, Resident of Sakanvar Tola, Ward No.14, P.S.- Mokama Town, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Chief Engineer, Public Health Engineering Department, Patna Zone, Patna.
4. The Superintendent Engineer, Public Health Engineering Department, Patna Circle, Patna.
5. The Executive Engineer-cum-Project Manager, District Project Management Unit (DPMU), Patna.
6. The Assistant Engineer, Public Health Sub Division, Branch Patna East, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vikas Kumar, Advocate
For the Respondent/s : Mr.Lalit Kishore (Ag)

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CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 22-03-2022

1. The present writ petition has been filed for quashing the order dated 18.03.2020, issued by the respondent no. 5 i.e. the Executive Engineer-cum-Project Manager, District Project Management Unit, Patna, whereby and whereunder the agreement being SBD-10(WB)/2016-17 for execution of “Jamalpur Chaksarwar Single Gram Pipe Water Supply



Scheme” has been cancelled and a decision has been taken to forfeit the security deposit amount as also to make recovery on risk and cost basis from the petitioner for the cost to be incurred in construction of water tank. Though, the petitioner has also prayed for directing the respondents to make payment of the outstanding dues pertaining to the work executed by him, however the learned Senior counsel for the petitioner has only pressed the prayer of the petitioner regarding quashing of the order dated 18.03.2020, whereby and whereunder agreement in question has been rescinded.

2. The brief facts of the case are that the petitioner was awarded the agreement in question, pursuant to issuance of N.I.T., whereafter the petitioner had entered into an agreement with the respondent no. 5 on 09.01.2017. The work order was also issued on 09.01.2017 to the petitioner.

3. Shorn of the details, it would suffice to state that allegations and counter allegations have been levelled by the parties against each other with regard to the pace/ progress of the work required to be executed by the petitioner herein. While, it is the case of the petitioner that on account of serious impediments, the work could not progress in the manner it should have been, however, on the contrary, it is the allegation



of the respondents that firstly, the petitioner did not maintain the requisite pace of work and secondly, the petitioner did not construct the water tower according to the design and drawing approved by the competent authority, hence the petitioner was directed to construct the water tower in accordance with the design and drawing approved by the competent authority, vide letter dated 12.03.2020, failing which, recovery on risk and cost basis would be made from the petitioner. It appears that the petitioner had failed to comply with the said directions issued by the respondent-authorities, resulting in the Executive Engineer, PHED Division, Patna East, Patna issuing a show cause notice dated 29.02.2020 to the petitioner herein calling upon the petitioner to submit show cause reply within a week as to why the agreement be not terminated and the security amount be not forfeited. The petitioner is stated to have received the said notice dated 29.02.2020 only on 07.03.2020, during the period of Holi festival, hence the petitioner had made a request vide letter dated 13.03.2020 to allow further one week's time for filing its reply. Thereafter, the petitioner is stated to have filed a detailed show cause reply dated 17.03.2020, which is annexed as Annexure-16 to present writ petition, however the agreement in question has been rescinded by the impugned order dated



18.03.2020

4. The learned Senior counsel for the petitioner Sri P.K. Shahi, has submitted that a bare perusal of the impugned order dated 18.03.2020 would show that the same is cryptic, has not dealt with the show cause reply submitted by the petitioner company and merely in one line, the detailed show cause reply filed by the petitioner has been stated to be unsatisfactory. It is further submitted that the impugned order dated 18.03.2020 does not contain any cogent, clear and succinct reasons for rescinding the agreement in question. Thus, it is submitted that the impugned order dated 18.03.2020 is fit to be set aside and the matter is required to be remanded back to the respondent no. 5 for fresh consideration.

5. *Per contra*, though the learned counsel for the respondent State has supported the impugned order dated 18.03.2020 and has submitted that the petitioner has got an alternative remedy under Clause 25 of the Standing Bidding Document i.e. "*settlement of disputes and arbitration*", however, upon being confronted with the issue regarding the order impugned dated 18.03.2020 being cryptic, unreasoned and not depicting any consideration of the show cause reply submitted by the petitioner, the learned counsel for the respondents is at a



loss to defend the same.

6. We have heard the learned counsel for the parties and perused the materials on record. As far as objection of the respondents regarding maintainability of the present writ petition on account of availability of alternative remedy for settlement of the disputes is concerned, we find that since the order impugned has been passed *sans* the compliance of the Principles of Natural Justice, the alternative remedy available to the petitioner under Clause 25 of the Standard Bidding Document would not be a bar to this Court exercising its inherent jurisdiction under Article 226 of the Constitution of India and entertaining this writ petition. It is a trite law that in cases where the action of the respondents is illegal, is in violation of the principles of natural justice and in cases where fundamental rights have been violated, a writ petition would definitely be maintainable, even in contractual matters. In this regard, we would gainfully refer to some of the Judgments rendered by the Hon'ble Apex Court in the case of **(i) *Gunwant Kaur v. Municipal Committee, Bhatinda*, reported in (1969) 3 SCC 769;** **(ii) *Harbans lal Sahnia v. Indian Oil Corporation Ltd.*, reported in (2003) 2 SCC 107;** **(iii) *ABL International Ltd. vs. Export Credit Guarantee Corporation*, reported in**



(2004) 3 SCC 553; (iv) Cholan Roadways Ltd. vs. G. Thirugnanasambandam, reported in *(2005) 3 SCC 241; (v) Popcorn Entertainment & Anr. vs. City Industrial Development Corporation*, reported in *(2007) 9 SCC 593; (vi) Food Corporation of India & Ors. vs. Seil Ltd. & Ors.*, reported in *(2008) 3 SCC 440; (vii) M/s NCC Ltd. vs. State of Bihar & Ors.*, reported in *2013 (1) PLJR 952*; and *(viii) Joshi Technologies International Inc. vs. Union of India & Ors.*, reported in *(2015) 7 SCC 728*.

7. Now, advertent to the merits of the present case, it is apparent from a bare perusal of the impugned order dated 18.03.2020, issued by the respondent no. 5, rescinding the agreement in question that the issues raised by the petitioner company, in its detailed reply dated 17.03.2020 have neither been dealt with nor considered by the respondents in the impugned order dated 18.03.2020 and merely in one line, it has been stated that the show cause reply of the petitioner is unsatisfactory, apart from the fact that no cogent, clear and succinct reasons have been furnished in support of the decision to rescind the agreement in question, which is an indispensable component of a decision making process, thus the order dated 18.03.2020 stands vitiated in the eyes of law, hence we have no



option but to quash the order dated 18.03.2020, passed by the respondent no. 5, especially in view of the said issue being squarely covered by the principles of law laid down by the Hon'ble Apex Court in the case of ***Oryx Fisheries Private Limited v. Union of Indian and others***, reported in (2010) 13 SCC 427, paragraphs no. 25, 26, 32, 35, 36, 39, 40 and 41 whereof are reproduced herein below :-

"25. Expressions like "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in Khem Chand v. Union of India [AIR 1958 SC 300], of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in Khem Chand [AIR 1958 SC 300] held that the concept of "reasonable opportunity" includes various safeguards and one of them, in the words of the learned Chief Justice, is : (AIR p. 307, para 19)

"(a) An opportunity to deny his guilt and establish his innocence, which he can only do



if he is told what the charges levelled against him are and the allegations on which such charges are based;”

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.

35. Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show-cause notice itself.

36. The appellant gave a reply to the show-cause notice but in the order of the third respondent by which registration certificate of the appellant was cancelled, no reference was made to the reply of the appellant, except saying that it is not satisfactory. The cancellation order is totally a non-speaking one. The relevant portion of the cancellation order is set out:

“Sub. : Registration as an Exporter of Marine Products under the MPEDA Rules, 1972.



Please refer to Show-Cause Notice No. 10/3/MS/2006/MS/3634 dated 23-1-2008 acknowledged by you on 28-1-2008 directing you to show cause why the certificate of registration as an exporter, No. MAI/ME/119/06 dated 3-3-2006 granted to you as merchant exporter should not be cancelled for the following reasons:

- 1. It has been proved beyond doubt that you have sent sub-standard material to M/s Cascade Marine Foods, LLC, Sharjah.*
- 2. You have dishonoured your written agreement with M/s Cascade Marine Foods, LLC, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent of the value of the defective cargo sent by you and have now evaded from the responsibility.*
- 3. This irresponsible action has brought irreparable damage to India's trade relation with UAE.*

Your reply dated 4-2-2008 to the show-cause notice is not satisfactory because the quality complaint raised by M/s Cascade Marine Foods, LLC, Sharjah have not been resolved amicably. Therefore, in exercise of the power conferred on me vide Rule 43 of the MPEDA Rules, read with Office Order Part II No.



1840/2005 dated 25-11-2006, I hereby cancel Registration Certificate No. MAI/ME/119/06 dated 3-3-2006 issued to you. The original certificate of registration issued should be returned to this office for cancellation immediately.

In case you are aggrieved by this order of cancellation, you may prefer an appeal to the Chairman within 30 days of the date of receipt of this order vide Rule 44 of the MPEDA Rules.”

(emphasis supplied)

39. On the requirement of disclosing reasons by a quasi-judicial authority in support of its order, this Court has recently delivered a judgment in Kranti Associates (P) Ltd. v. Masood Ahmed Khan [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] on 8-9-2010.

40. In Kranti Associates [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below : (SCC pp. 510-12)

“(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions



affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts.



This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of



judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor(1987) 100 Harv. L. Rev. 731-37.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] , EHRR at p. 562, para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 : 2001 ICR 847 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

41. *In the instant case the appellate order contains reasons. However, absence of*



reasons in the original order cannot be compensated by disclosure of reason in the appellate order."

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, we deem it fit and appropriate to quash the impugned order dated 18.03.2020, passed by the respondent no. 5 i.e. the Executive Engineer-cum-Project Manager, District Project Management Unit, Patna and remit the matter back to the respondent no. 5 for fresh consideration, in accordance with law. It is made clear that in case, any adverse order is passed by the respondent no. 5, the petitioner shall be free to avail the alternative remedy available to it.

9. The writ petition stands allowed on the aforesaid terms.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.03.2022
Transmission Date	NA

