

IN THE HIGH COURT OF JUDICATURE AT PATNA

M/s M. K. Enterprises

vs.

State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 23948 of 2018

17.05.2023

(HONOURABLE MR. JUSTICE P. B. BAJANTHRI &
HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Issue for Consideration

- Whether the District Magistrate had the jurisdiction or authority to cancel the agreement?
- Whether the cancellation violated the principles of natural justice?

Headnotes

Not providing opportunity to the petitioner before cancelling its contract amounts to violation of the principles of natural justice as well as it smacks of arbitrariness. On this account, the order dated 23.10.2018 of the District Magistrate is bad in the eyes of law. (Para 15)

Contract was awarded by the Purchase Committee headed by the District Magistrate, but nothing has been brought on record to show that the District Magistrate was himself competent to cancel the contract. (Para 16)

At this point of time the scheme under which the petitioner was awarded the contract has been closed and the official respondents are not in a position to revive the contract entered into by the parties. It is proper and justified to impose cost upon the official respondents which is quantified at Rs.2,00,000/- (two lacs) to be paid to the petitioner. (Para 17)

Case Law Cited

UMC Technologies (P) Ltd. v. Food Corporation of India, (2021) 2 SCC 551

List of Acts

No specific statute cited

List of Keywords

Solar Street Lights, Tender Cancellation, Natural Justice, Arbitrary Action, Jurisdiction of District Magistrate, Public Contract, Purchase Committee, Agreement Execution, Cost Imposed

Case Arising From

Order dated 23.10.2018 contained in Memo No. 262-1 whereby the District Magistrate, Saharsa has cancelled the agreement dated 08.08.2017.

Appearances for Parties

For the Petitioner: Mr. Lal Babu Singh, Advocate

For the Respondents: Mr. Deepak Sahay Jamuar, AC to AAG4

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23948 of 2018

M/s M. K. Enterprises, through its Proprietor Ashok Kumar Chopra, S/o Mangal Singh, Resident of House No. 396, Sector- 37, Amarnagar, District-Faridabad, State - Harayana -121003. Present Address- Exhibition Road Crossing, Near R.k Bhattacharya Road, P.S - Kotwali, District and Town Patna-800001

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Planning and Development Department, Government of Bihar, Patna.
2. The Principal Secretary, Planning and Development Department, Government of Bihar, Patna.
3. The Deputy Director, Planning and Development Department, Patna.
4. The District Magistrate, Saharsa.
5. The District Planning Officer, Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Lal Babu Singh, Advocate
For the Respondent/s : Mr. Deepak Sahay Jamuar, AC to AAG4

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 17-05-2023

In compliance of the direction contained in the first paragraph of the previous order dated 18.04.2023 by which the Joint Registrar (List), Patna High Court, Patna, was directed to initiate action against the officials who were all involved in not listing this matter on that day in spite of specific order dated 04.04.2023 whereby the District Magistrate, Saharsa, was directed to appear in person with complete record and to submit



action taken report on the next date of hearing, the Joint Registrar (List) has submitted that the matter has been placed before the learned Registrar General for necessary action in the matter.

2. Under the circumstances, the learned Registrar General is hereby directed to submit action taken report in the matter within three months.

3. Heard learned counsel for the petitioner and learned counsel for the respondents.

4. The present writ petition has been filed by the petitioner, claiming the following reliefs :-

“(i) For quashing of the order dated 23.10.2018 contained in Memo No. 262-1 whereby and whereunder the respondent no. 4, the District Magistrate, Saharsa has cancelled the agreement dated 08.08.2017.

(ii) For a direction to the respondents to extend the agreement period so that the petitioner could perform his contractual obligations as per agreement.

(iii) For a direction to the respondents to provide the petitioner the list of the places for installation of the Solar Lights.

(iv) For a direction to the respondents not to act upon the impugned order of cancellation of the agreement dated 23.10.2018 contained in Memo No. 262-1 as if it never existed.



(v) For a declaration that -

(a) The impugned order dated 23.10.2018 contained in Memo No. 262-1 is without jurisdiction and as such, is nullity in the eye of law.

(b) The respondent District Magistrate has absolutely no jurisdiction to cancel the agreement.

(c) The respondent District Magistrate, Saharsa was obliged only to consider the grievance of the petitioner mentioned in the writ petition vide CWJC No. 4239 of 2018 in the light of the order passed by this Hon'ble Court dated 17.09.2018 and cancellation of the agreement which was never the issue in the said writ petition is without jurisdiction and the impugned order dated 23.10.2018 is designed to overreach the order of the Hon'ble Court.

(d) The respondents cannot be allowed to raise issue of rate after execution of the agreement between the parties and the rate, the terms and conditions of the agreement are binding on the parties.

(e) No notice was served upon the petitioner as to cancellation of the agreement and as such, the impugned order dated 23.10.2018 is in violation of principles of natural justice and fair play.

(f) The impugned order dated 23.10.2018 is arbitrary and malafide and designed to frustrate the direction of this Hon'ble Court



vide order dated 17.09.2018 passed in CWJC No. 4239 of 2018.

(vi) For any other relief or consequential reliefs to which the Petitioner may be found entitled to in the facts and circumstances of this case”.

5. The short facts, according to the petitioner, are that the respondents floated advertisement for supply and installation of Solar Semi High Mast Street Lights (hereinafter referred to as "Solar Lights") in 10 units in Sonbarsa, 9 units in Patarghat, 9 units in Banma Ithari. Pursuant to the aforesaid advertisement, the petitioner participated in the tender along with other five bidders. Thereafter, on 03.07.2017 a meeting of purchase committee /tender committee was held under the Chairmanship of the respondent District Magistrate in which the petitioner was qualified in technical bid and subsequently, he was also qualified in financial bid and, accordingly, the petitioner was selected for the work of installation of Solar Lights as the petitioner has quoted the rate of Rs. 3,85,000/- per unit which was found the lowest. Thereafter, vide letter no.842-2 dated 08.08.2017, the respondent no. 5 has communicated the petitioner that he has been selected for the aforesaid work and directed the petitioner to enter into the agreement. Accordingly, on 08.08.2017, agreement was executed between the petitioner



and the respondent no. 5 for supply and installation of 28 Four Arm Solar Semi High Mast Light in Saharsa at the rate of Rs. 3,85,000/- per unit. After execution of the agreement, the petitioner gave orders for manufacturing and supply of raw materials/equipments from Philips Company for Rs. 36,00,000/- (Thirty Six Lacs) for the present work. The petitioner made request several times to the respondent District Planning Officer orally as well as in writing to provide him the list of places for installation of Solar Lights, but unfortunately, the respondent failed to provide the list of places. In place of providing list of places for installation of Solar Lights, the respondent District Planning Officer sent a letter dated 06.02.2018 to the petitioner stating therein that an instruction in this regard has been sought from the department and action would be taken after obtaining such instruction from the department. When the respondent failed to provide the list of places for installation of Solar Lights, the petitioner was constraint to file CWJC No. 4239 of 2018 in this High Court and prayed for issuance of writ in the nature of mandamus directing the Respondent No. 3 to provide list of places to install Solar Semi High Mast Street Lights at District - Saharsa for the reason an agreement to this effect has already been



entered into between petitioner and respondent no. 3 way back on and installation was only pending due to not providing such list of places. Further for issuance of writ/writs in the nature of mandamus to extend the agreement period for further three months for the reason the time of agreement due the fault on the part of the respondent no. 3. Also for the issuance of writ/writs commanding the respondent authority in the alternative to compensate this petitioner against the investment and loss incurred due to not performing his work to the tune of Rs. 36 Lacs suffered due to negligence of the respondents. The aforesaid CWJC No. 4239 of 2018 was disposed of vide order dated 17.09.2018 by this Court with a liberty to the petitioner to file a representation before the Respondent No. 2 (respondent no.4 herein) regarding his grievances mentioned in the writ petition within a period of two weeks and the respondent no. 2 was directed to dispose of the same by a reasoned and speaking order within a period of four weeks thereafter. Thereafter, on 28.09.2018, the petitioner filed a representation before the respondent no. 4 in the light of the aforesaid order dated 17.09.2018 and requested to direct the respondent District Planning Officer to provide him the list of places for installation of Solar Lights. The petitioner also requested to



grant extension of time in the agreement. But unfortunately the respondent District Magistrate without taking into consideration of the grievance of the petitioner mentioned in the writ petition cancelled the agreement vide Memo No. 262-1 dated 23.10.2018 annexed as Annexure-9. Being aggrieved by the action of the respondent authority, the petitioner filed the present Writ.

6. The learned counsel for the petitioner submitted that the aforesaid letter dated 23.10.2018 of the respondent District Planning Officer is very unfortunate as once the agreement has been executed between the parties, the only action for the parties is to perform the contractual obligations as per agreement and there is no occasion of seeking instruction after execution of the agreement with regard to the terms and conditions of the agreement. The learned counsel further submitted that on account of non-providing of list of places for installation of Solar Lights, the petitioner could not install the Solar Lights as per agreement as the obligation of the petitioner was completely depended upon the reciprocal obligation of the respondents and without allocation and demarcation of the places, the petitioner could not perform his contractual obligations. In the meantime, the stipulated period for the work



expired due to laches on part of the respondents. The learned counsel further submitted that this Court while disposing of CWJC No. 4239 of 2018 directed the petitioner to file representation regarding his grievance mentioned in the writ petition and the respondent District Magistrate was directed to dispose of the representation regarding grievance of the petitioner mentioned in the writ petition and as such, the respondent no. 4 was only required to consider the grievance of the petitioner mentioned in the writ petition, but unfortunately, the respondent District Magistrate without any jurisdiction cancelled the agreement which was absolutely no issue in the writ petition. The learned counsel further submitted that the respondent District Magistrate has no jurisdiction to cancel the agreement as it was neither an issue in the writ petition vide CWJC No. 4239 of 2018 nor the District Magistrate has got any jurisdiction to cancel the agreement. The District Magistrate is not a party in the agreement nor the agreement provides any power or jurisdiction to the District Magistrate to cancel the agreement. The learned counsel further submitted that no notice was given to the petitioner as to cancellation of the agreement and as such, the cancellation of the agreement is in violation of principles of natural justice and fair play. The



learned counsel further submitted that the order of cancellation of agreement is malafide, arbitrary and designed to frustrate the direction/order of this Court dated 17.09.2018 passed in CWJC No. 4239 of 2018. The learned counsel further submitted that the agreement was cancelled by the respondent District Magistrate taking into consideration the rate of other districts in connection with installation of Solar Lights. The ground of cancellation of agreement is also arbitrary and malafide as the respondents have not got any jurisdiction for taking into the consideration the rate of other districts particularly in the present circumstance when the rate is agreed by the parties including the respondents and the agreement has already been executed at that rate and after agreement the issue of rate cannot be raised rather the rate agreed and mentioned in the agreement is binding on the parties. The learned counsel further submitted that the rate quoted by the petitioner was found to be the lowest and most responsive and duly considered by the purchasing committee/tender committee headed by the respondent District Magistrate himself and thereafter, on that rate the petitioner was selected and agreement was executed and therefore, the rate agreed by the parties are binding on the parties and the action of cancellation of the agreement on the



ground of comparison of rate with other District is highly arbitrary, unreasonable and without jurisdiction. The learned counsel also submitted that the ground of cancellation of agreement is beyond the terms and conditions of the agreement and there is no provision in the agreement to justify the cancellation of the agreement.

7. On the other hand, the learned counsel for the respondents while justifying the action of the respondents submitted that the petitioner has quoted higher rate for supplying of Solar Lights while compared to other districts as in other districts the rates were quoted at Rs.2,96,000/-, Rs.2,73,000/- and Rs.1,74,000/- whereas the petitioner had quoted the rate of Rs.3,85,000/- and for this reason, the respondent-authority has cancelled the agreement only with reference to Clause 7 of the N.I.T. Hence, no interference is required by this Court in this matter.

8. Having considered the material available on record and further considering the submissions of the parties, it is admitted position that the parties have entered into the agreement on 08.08.2017 for supply and installation of 28 Four Arm Solar Semi High Mast Light in the district of Saharsa at the rate of Rs.3,85,000/-per unit. Thereafter, it appears, the



petitioner requested several times the authorities to provide him the list of places for installation of Solar Lights. But, when the respondent failed to provide the list of places, the petitioner filed CWJC No. 4239 of 2018 in this High Court, which was disposed of by this Court vide order dated 17.09.2018 with a liberty to the petitioner to file a representation before the Respondent No. 2 (respondent no.4 herein) regarding his grievances mentioned in the writ petition within a period of two weeks and the respondent no. 2 was directed to dispose of the same by a reasoned and speaking order within a period of four weeks thereafter. In terms of aforesaid liberty, the petitioner filed a representation on 28.09.2018. But the respondent District Magistrate rejected the representation of the petitioner and also cancelled the agreement vide Memo No. 262-1 dated 23.10.2018. It is to be noted that the respondents should have filed review petition, if their intention was to cancel the tender and other proceedings. On the other hand, they have cancelled the tender process abruptly.

9. On 18.04.2023, this Court has passed the following orders :

“This matter was mentioned to be taken. Hence, Court Master was asked to secure the file. Joint Registrar (List), Patna High Court, Patna, is



hereby directed to initiate action against the officials who are all involved in not listing this matter today in spite of specific order dated 04.04.2023 whereby the District Magistrate, Saharsa, was directed to appear in person with complete record. It is to be taken note of that personal appearance's matter is required to be given priority in listing. Action taken shall be reported on the next date of hearing.

02. Pursuant to the previous order dated 04.04.2023, Mr. Vaibhav Chaudhary, District Magistrate, Saharsa, is present in the Court to assist in the matter.

03. Prima facie, the petitioner has made out a case. His work order has been cancelled after execution of agreement only with reference to Clause-7 of the Notice Inviting Tender (N.I.T.) read with the clause imposed in the agreement. The sole reason for cancellation of work order in the favour of the petitioner is that he has quoted higher rate insofar as supplying of Solar Lights while compared to other Districts. It is reliably learned that in other district the rates were quoted at Rs.2,96,000/-, Rs.2,73,000/- and Rs.1,74,000/-, whereas the petitioner had quoted Rs. 3,85,000/-. No doubt it is on a higher price, but at the same time, in all fairness, the petitioner was a successful bidder and agreement has been executed. The concerned authority instead of cancelling should have given a proposal for supply of solar lights at par with other districts.

04. Learned counsel for the petitioner is hereby



directed to get instruction from petitioner/his client as to whether is he willing to supply Solar Lights on par with other districts like at the rate of Rs.2,96,000/- or not? Similarly, whether the official-respondents could accommodate the petitioner in supplying solar lights at the rate of Rs.2,96,000/- on par with the similarly situated districts, the successful bidder in another District is stated to have supplied solar lights at the rate of Rs.2,96,000/-.

05. We have also noticed that Annexure-9 annexed with the writ petition is a document dated 23.10.2018, which bears the signature of District Magistrate, Saharsha and it appears the order contained in this document has been passed with reference to Civil Writ Jurisdiction Case No. 4239 of 2018. Now certain documents have been placed for perusal of this Court by the District Magistrate, Saharsha, who has been directed to appear in person and this document, which contains the same order, has been signed by a Committee bearing members as District Magistrate, Deputy Development Commissioner and District Programme Officer. But the contents are all same. The District Magistrate, Saharsha, is directed to verify this issue by filing a personal affidavit and clarify prior to next date of hearing.

06. Re-list this matter on 02.05.2023.

07. It is made clear that no further time would be granted as the matter is pending consideration for last five years.”



10. In terms of aforesaid order dated 18.04.2023, the petitioner has filed a supplementary affidavit on 28.04.2023. In paragraph nos. 3, 4 and 5 whereof, it has been stated as follows :

“3. That it is relevant to mention here that the specifications of the materials and works are different in each district for supply and installation of solar lights. The specifications of the present work have already been given in the agreement itself. The petitioner quoted his rate at the rate of Rs. 3,85,000/- per unit on the basis of the specifications of the work which was agreed by the parties and accordingly the agreement was executed. The rate may differ as per specifications in different districts.

4. That however, the petitioner is ready to execute the work at the rate of Rs. 2,96,000/- in terms of the order passed by this Hon’ble Court on 18.04.2023 and in view of huge investment of the petitioner in the present work.

5. That in the facts and circumstances and in terms of the order dated 18.04.2023 of this Hon’ble Court the petitioner is ready to execute the work at the rate of Rs. 2,96,000/-”.

11. In terms of the aforesaid order, the District Magistrate, Saharsa has also filed personal affidavit dated 29.04.2023. In para 4, it has been stated as follows :

“4. That in this regard it is stated that annexure no. 09 which was issued on dated 23.10.2018 signed by District Magistrate, Saharsa with reference to C.W.J.C No. 4239/2018 and similarly a document



was produced for perusal of lordship by District Magistrate Saharsa during hearing on 18/04/2023 bearing signature of the District Magistrate, Deputy Development Commissioner, District Planning Officer Saharsa having the same contents. Here it is humbly submitted that in official working process. Letters or Orders are prepared in two heads namely office Copy and Final Copy. Office copy is signed by all the concerned officials and assistants, whereas Final Copy is signed by the concerned Final authority. The letter produced for perusal of the lordship was the office copy having signature of the District Magistrate, Deputy Development Commissioner, District Planning Officer Saharsa. Whereas document bearing single signature is Final Copy which has signature of only one officer i.e. District Magistrate, Saharsa”.

12. It appears that the petitioner is willing to supply Solar Lights at the rate of Rs.2,96,000/- per unit. But the District Magistrate, Saharsa, who was present before this Court on the last occasion, submitted that the scheme for installation of solar lights was closed by the State Government in the year 2020 itself, so it can not be possible to accommodate the petitioner in supplying solar lights at the rate of Rs.2,96,000/-, since the tender was floated under the Chief Minister Area Development Scheme after the MLA of the Assembly concerned recommended for installation of total 28 Four Arm Solar Lights.



13. Having regard to the facts of the case, it is not in dispute that the petitioner was successful bidder for installation of Four Arm Solar Lights and was awarded the contract by the District Magistrate of Saharsa district who chaired the purchase committee meeting. Thereafter, the agreement was entered into by the petitioner and the District Planning Officer and the said agreement contained the stipulation that any dispute arising out of the compliance of the terms of the agreement would be settled before the District Magistrate-cum-Chairman, Purchase Committee, Saharsa. Thereafter, some dispute arose over pricing as it was found by the respondent authority that there was much variance in the price of the solar light to be installed in different districts. Prior to that, the petitioner moved before this Court by filing CWJC No.4239 of 2018, which was disposed of vide order dated 17.09.2018 directing that the petitioner might file a representation before the respondent no.2 within a period of two weeks from the date of the order and the respondent no.2 was further directed to dispose of the same by a reasoned and speaking order within a period of four weeks thereafter. It further appears that the said writ petition was filed with a prayer to direct the District Programme Officer, Saharsa to make available the list of sites where the solar lights were to be



installed. However, the District Magistrate, Saharsa recorded his finding that there was much difference between the rates for installation of solar lights in different districts and if the same was allowed to the petitioner, it would cause heavy revenue loss to the State. In these circumstances, the District Magistrate, Saharsa proceeded to cancel the contract and rejected the representation of the petitioner.

14. Perusal of the order dated 23.10.2018 makes it amply clear that the petitioner was not afforded any opportunity of hearing prior to cancellation of its contract since the petitioner made representation regarding providing it with sites for installation of solar lights as is apparent from the first paragraph of the order dated 23.10.2018 which is reproduced below for reference.

समाहरणालय, सहरसा

(जिला योजना कार्यालय, सहरसा)

आदेश

एम०के० इन्टर प्राईजेज, एग्जीबिशन रोड, पटना द्वारा माननीय उच्च न्यायालय में CWIC No. 4239/2018 दाखिल किया गया। रिट याचिका में आवेदनकर्ता द्वारा अनुरोध किया गया है कि आवेदनकर्ता एवं जिला योजना पदाधिकारी, सहरसा के बीच निष्पादित एकरारनामा के आधार पर जिला योजना पदाधिकारी, सहरसा को चार बाँह वाले सोलर स्ट्रीट लाईट अधिष्ठापन हेतु चयनित स्थलों की सूची उपलब्ध कराने हेतु निर्देशित किया जाय।

माननीय उच्च न्यायालय द्वारा उक्त रिट याचिका का निष्पादन करते हुए दिनांक 25.09.2018 को निम्नांकित आदेश पारित किया गया है:-

Accordingly, it is directed that the petitioner may file



a representation before the respondent no. 2 within a period of two weeks from today and the respondent no. 2 shall dispose of the same by a reasoned and speaking order within a period of four weeks thereafter.

The writ petition is disposed of on the aforesaid terms.

उक्त आदेश के अनुपालन में आदेश पारित किया जा रहा है।

माननीय विधायक श्री रत्नेश सादा के द्वारा, चार बाँह वाले सोलर स्ट्रीट लाईट अधिष्ठापन हेतु की गई अनुशंसा के आलोक में दिनांक 20.05.2017 को निविदा आमंत्रित की गई। दिनांक 03.07.2017 को निविदा का निष्पादन किया गया, जिसमें एम०के० इन्टरप्राइजेज, एक्जीबिशन रोड, पटना का दर मो 0-385000/- (तीन लाख पचासी हजार) न्यूनतम पाया गया। निविदा में न्यूनतम दर होने के आधार पर दिनांक 08.08.2017 को एम०के० इन्टरप्राइजेज, एक्जीबिशन रोड, पटना के साथ एकरारनामा किया गया। परन्तु कार्यादेश निर्गत नहीं हुआ।

कार्यादेश निर्गत होने के पूर्व ज्ञात हुआ कि समान विशिष्टताएँ के चार बाँह वाले सोलर स्ट्रीट लाईट का दर बक्सर जिला में मो 0-296663 /- (दो लाख छियानवे हजार छः सौ तिरसठ), कैमूर (भभुआ) में 272000/- (दो लाख बहत्तर हजार) रु० एवं समस्तीपुर जिला में 171954/- (एक लाख एकहत्तर हजार नौ सौ चौवन) रु० निर्धारित है। जबकि सहरसा में न्यूनतम दर मो 0-385000/- (तीन लाख पचासी हजार) पाया गया। विभिन्न जिला के दरों में अत्यधिक अन्तर के कारण प्रधान सचिव योजना एवं विकास विभाग, बिहार पटना से पत्रांक 1044-2/ जि०यो० दिनांक 17.10.2017 द्वारा मार्गदर्शन की मांग की गयी। इस पत्र की प्रति एम०के० इन्टर प्राइजेज, एक्जीबिशन रोड, पटना को भी प्रेषित की गयी। तत्पश्चात विभाग से मार्गदर्शन प्राप्त नहीं होने के उपरान्त अधोहस्ताक्षरी के स्तर से पत्रांक 1161-2 / जि०यो० दिनांक 20.11.2017 से पुनः मार्गदर्शन की मांग की गई।

इसी बीच एम 0 के 0 इन्टर प्राइजेज, एक्जीबिशन रोड, पटना द्वारा चार बाह वाले सोलर स्ट्रीट लाईट अधिष्ठापन हेतु चयनित स्थलों की सूची की मांग की जाती रही, जिस संबंध में उन्हें पत्रांक 1214-2 / जि०यो० दिनांक 30.11.2017 द्वारा विभाग से मार्गदर्शन मांगे जाने, संबंधी सूचना दी गयी। पूर्व में भी विभाग से मांगी गयी मार्गदर्शन संबंधी पत्र की प्रति एम०के० इन्टर प्राइजेज, एक्जीबिशन रोड, पटना को दी गयी थी।

पुनः पत्रांक 36-1 दिनांक 06.02.2018 एवं 86-1 दिनांक 13.03.2018 द्वारा मार्गदर्शन हेतु प्र 0 सचिव, योजना एवं विकास विभाग को स्मारित किया गया।

योजना एवं विकास विभाग, बिहार पटना की दिनांक 19.02.2018 एवं 20.02.2018 को सम्पन्न क्षेत्रीय पदाधिकारियों की बैठक में लिये गये निर्णय के अनुसार सोलर स्ट्रीट लाईट के अधिष्ठापन संबंधी योजना पर अग्रेतर कार्यवाई



स्थगित रखने का निदेश दिया गया।

विभाग से मांगी गयी मार्गदर्शन में संयुक्त सचिव, योजना एवं विकास विभाग, बिहार पटना के पत्रांक 1088 दिनांक 06.03.2018 द्वारा सूचित किया गया कि विभागीय पत्रांक 1929 दिनांक 20.04.2015 के द्वारा निर्गत निर्देश के आलोक में कार्रवाई की जाय। उक्त पत्र में अन्य जिलों एवं इस जिले के दर में भिन्नता के संबंध में अपेक्षित अग्रेतर कार्रवाई के संबंध में स्थिति स्पष्ट नहीं की गयी है।

विभाग द्वारा दिये गये निर्देश में दर भिन्नता के संबंध में स्थिति स्पष्ट नहीं होने के कारण पुनः पत्रांक 80-1/ जि.यो. दिनांक 13.03.2018 द्वारा स्पष्ट मार्गदर्शन की मांग की गयी जो सम्प्रति अप्राप्त है।

इस बीच ए०ए०जी-4 द्वारा CWJC No.4239/2018 दाखिल होने की सूचना दी गई एवं इससे संबंधित SOF दाखिल करने का निर्देश प्राप्त हुआ।

माननीय उच्च न्यायालय में मामला विचाराधिन होने के कारण अग्रेतर कार्रवाई स्थगित रही।

उपरोक्त तथ्यों से स्पष्ट है कि समान विशिष्टताएँ के चार बाँह वाले सोलर स्ट्रीट लाइट की किमत बक्सर जिला में मो० -296663 /- (दो लाख छियानवें हजार छः सौ तिरसठ), कैमूर (भभुआ) में 272000/- (दो लाख बहत्तर हजार) रु० एवं समस्तीपुर जिला में 171954/- (एक लाख एकहत्तर हजार नौ सौ चौवन) रु० है। एम० के० इन्टरप्राइजेज एग्जीविशन रोड, पटना द्वारा सहरसा जिले के लिए प्रस्तुत दर मो०-385000/- (तीन लाख पचासी हजार) रु० है। इस प्रकार सहरसा जिले एवं अन्य जिलों के दर में काफी भिन्नता है। इस स्थिति में एम०के० इन्टरप्राइजेज एग्जीविशन रोड, पटना द्वारा प्रस्तुत दर पर चार बाह वाले सोलर स्ट्रीट लाइट क्रय में बड़े पैमाने पर राजस्व की हानी होगी। यह कार्य वित्तीय अनुशासन के अनुरूप भी नहीं होगा तथा भविष्य में वित्तीय अनियमितता का आधार बन सकता है। एम०के० इन्टर प्राइजेज, एग्जीविशन रोड, पटना के साथ दिनांक 08.08.2017 को निष्पादित एकरारनामा में प्रावधानित है कि एकरारनामा के अनुपालन में उत्पन्न विवादों का निपटारा अधोहस्ताक्षरी के समक्ष किया जाएगा। विभिन्न जिलों एवं सहरसा हेतु प्रस्तुत दर में काफी भिन्नता होने के कारण एकरारनामा में वर्णित शर्तों के आलोक में एम०के० इन्टरप्राइजेज, एग्जीविशन रोड, पटना एवं जिला योजना पदाधिकारी, सहरसा के बीच दिनांक 08.08.2017 को निष्पादित एकरारनामा को रद्द किया जाता है तथा एम०के० इन्टरप्राइजेज एग्जीविशन रोड, पटना द्वारा प्रस्तुत आवेदन को खारिज किया जाता है।

इसकी सूचना संबंधित को दी जाय।

ह० /-

जिला पदाधिकारी

सहरसा

दिनांक: 23/10/18

ज्ञापक 262-1/ जि.यो.



प्रतिलिपि:-एम०के० इन्टरप्राइजेज एक्जीविशन रोड, पटना को सूचनार्थ प्रेषित ।

प्रतिलिपि :- जिला योजना पदाधिकारी, सहरसा को अग्रेतर कार्रवाई हेतु सूचनार्थ प्रेषित ।

प्रतिलिपि :- क्षेत्रीय योजना पदाधिकारी, कोशी प्रमंडल, सहरसा को सूचनार्थ प्रेषित ।

प्रतिलिपि :- संयुक्त सचिव, योजना एवं विकास विभाग, बिहार पटना को सूचनार्थ प्रेषित ।

ह० /-

जिला पदाधिकारी

सहरसा

दिनांक: 22/10/18

15. Not providing opportunity to the petitioner before cancelling its contract amounts to violation of the principles of natural justice as well as it smacks of arbitrariness. The Hon'ble Apex Court in the case of **UMC Technologies (P) Ltd. v. Food Corpn. of India, (2021) 2 SCC 551**, in paragraph 13, held as under :

“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned



specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Custodian General, Evacuee Property [Nasir Ahmad v. Custodian General, Evacuee Property, (1980) 3 SCC 1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard”.

On this account, the order dated 23.10.2018 of the District Magistrate, Saharsa is bad in the eyes of law.

16. There is another aspect of the matter which is whether the District Magistrate has got power to cancel the agreement. Admittedly, the contract was awarded by the Purchase Committee headed by the District Magistrate, but nothing has been brought on record to show that the District Magistrate was himself competent to cancel the contract. During the course of hearing, certain documents were produced from the official file which shows the another document dated 23.10.2018, having same contents as Annexure-9, was having signatures of the District Magistrate, Deputy Development



Commissioner and the District Planning Officer, Saharsa. By filing his personal affidavit, the District Magistrate, Saharsa has tried to pass the preparation of two documents bearing different signatures in the official working process submitting that letters or orders are prepared in two heads namely, office copy and final copy. Office copy is signed by all the concerned officials and assistants whereas the final copy is signed by the concerned final authority and in this manner discrepancy has been tried to be explained. If this reasoning of the District Magistrate is to be accepted, there must be mentioning of this fact that the office copy was signed by the three officials whereas the final copy was signed by the final authority, in the present case, the District Magistrate. No such explanation is forthcoming. However, this discrepancy is not of our concern for the present since we are dealing with the issue whether the District Magistrate has competence to cancel the contract. No doubt the clause of the contract provides for settlement of dispute by the District Magistrate as the Chairman of the Purchase Committee, but the present case is not for the resolution of any dispute by the settlement authority, rather it is cancellation of contract and if the contract was awarded by the district purchase committee, it ought to be cancelled by the same committee in absence of any



specific provision to this effect. But in no way, the District Magistrate was empowered to cancel the contract.

On both the counts, the order dated 23.10.2018 is not sustainable.

17. However, as already discussed, at this point of time the scheme under which the petitioner was awarded the contract has been closed and the official respondents are not in a position to revive the contract entered into by the parties. So, no useful purpose would be served even if the order dated 23.10.2018 is set aside. At the same time, the respondent no.4 by arbitrary and illegal act forced the petitioner in such a hapless condition that he has no option but to approach this Court for redressal of his grievance on two occasions. Under these circumstances, it is proper and justified to impose cost upon the official respondents which is quantified at Rs.2,00,000/- (two lacs) to be paid to the petitioner within a period of three months from today, failing which further cost quantified at Rs.1,00,000/- (one lac) will be paid by the respondent no.4 to the petitioner. Imposition of cost is warranted for the reasons that the petitioner was successful bidders, agreement was executed, the petitioner had invested on materials and he was compelled to file two writ petitions.

18. With the aforesaid observations and directions, this



writ petition stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	02.05.2023
Uploading Date	17.05.2023
Transmission Date	N.A

