

IN THE HIGH COURT OF JUDICATURE AT PATNA

M/s B. K. Enterprises

vs.

The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 6436 of 2017

5 May 2023

(Hon’ble Mr. Justice P. B. Bajanthri and Hon’ble Mr. Justice Arun Kumar Jha)

Issue for Consideration

Whether the termination of the contract and forfeiture of security deposits by the Bihar State Educational Infrastructure Development Corporation (BSEIDC) was legally sustainable in light of the petitioner’s alleged failure to complete the contractual work on time.

Headnotes

In terms of the agreement dated 14.03.2013, the petitioner was required to complete the contractual works within twelve months, but after lapse of about three years and ten months, he did not complete the said contractual work in spite of several directions/instructions as stated above. Thereafter, the respondent-department took the decision to terminate the agreement vide Letter No. 1225 dated 04.02.2016. Petitioner has failed to abide by the specific terms of agreement. The respondent department rightly took the decision to terminate the agreement existed into with the petitioner.(Para 6, 9)

Petition is dismissed. (Para 12)

Case Law Cited

None cited in the judgment.

List of Acts

No specific statutory enactments referred.

List of Keywords

Contract Termination; Forfeiture of Security Deposit; Performance Guarantee; Delay in; Execution; Administrative Discretion; Public Contract; Writ Dismissal; Judicial Restraint

Case Arising From

Order dated 04.02.2016 issued by the Chief Engineer, BSEIDC, rescinding Contract Agreement No. 43 SBD of 2011-12.

Appearances for Parties

For the Petitioner(s): None

For the State: Mr. Jitendra Kumar Roy, SC-13; Mr. Hitesh Suman, AC to SC-13

For BSEIDC: Mr. Girijesh Kumar, Advocate

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.6436 of 2017

M/s B. K. Enterprises, through its Managing Partner, Bipin Kumar, Son of Late Ganpat Chaudhary, Resident of Village- Dhanpura, P.S.- Ara Town, District- Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna
- 1.A The Bihar State Educational Infrastructure Development Corporation Limited through its Managing Director, Shiksha Bhawan, Bihar Rastra Bhasha Parisad Campus Acharya Sheopujan Sahay Path, Saidpur, Patna.
2. The Chief Engineer, Bihar State Educational Infrastructure Development Corporation Limited, Shiksha Bhawan, Bihar Rastra Bhasha Parisad Campus Acharya Sheopujan Sahay Path, Saidpur, Patna
3. The Executive Engineer, Patna (East) Division, Bihar State Educational Infrastructure Development Corporation Limited, Shiksha Bhawan, Bihar Rastra Bhasha Parisad Campus Acharya Sheopujan Sahay Path, Saidpur, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	None.
For the State	:	Mr.Jitendra Kumar Roy, SC-13 Mr. Hitesh Suman, AC to SC-13
For BSEIDC	:	Mr. Girijesh Kumar, Advocate

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

Date : 05-05-2023

Heard learned counsel for the respondents. However, none appeared on behalf of the petitioner.

2. In the instant petition, the petitioner is challenging the order contained in letter no.1225 dated 04.02.2016 issued by the Chief Engineer, Bihar State Educational Infrastructure



Development Corporation Limited, Patna by which Contract Agreement No.43 SBD of 2011-12 dated 14.03.2013 has been rescinded and the earnest money deposit, security deposit and performance guarantee of the petitioner have been forfeited.

3. Brief facts of the case are that an agreement between the petitioner and the respondents was executed on 14.03.2012 in respect of Group No.USS-06 for construction of Middle School, Tar, Upgraded Middle School, Devchanda and Middle School, Khutaha in the District of Bhojpur and as per the said agreement, the construction was to be completed within 12 months from the date of agreement. The construction work of Middle School, Tar and Upgraded Middle School, Devachanda was started on 25.02.2013 and 18.08.2012, respectively. However, construction work of Middle School, Khutaha was not started due to non-availability of land. When the construction work was not completed on time, the respondent authorities on several times directed the petitioner to complete the work. Lastly, vide letter dated 04.02.2016, the Chief Engineer rescinded the aforesaid contract and forfeited the earnest money deposit, security deposit and performance guarantee. Being aggrieved by the decision of the respondent authorities, the petitioner filed the present Writ.



4. The petitioner has challenged the aforesaid order mainly on the ground that the reason which has been assigned to rescind the work i.e. to cause delay in completion of work is not sustainable in the eyes of law as the work place was not made available to the petitioner in time, therefore, the delay could not have been attributed to the petitioner. Secondly, the petitioner was not given extension of time to complete the work even though he had filed an application for the same. Lastly, the petitioner was ready to complete the work if the grievance of the petitioner is reasonably considered.

5. On the other hand, learned counsel for the respondents submitted that in terms of the agreement, the petitioner was required to complete the said contractual work within twelve months, but after lapse of about three years and ten months, the petitioner did not complete the said contractual work in spite of several directions/instructions contained in Memo No.437 dated 16.01.2015, Memo No.1054 dated 26.12.2014, Memo No.65 dated 27.01.2015, Memo No.1360 dated 19.02.2015, Memo No.147 dated 09.03.2015, Memo No.7881 dated 01.09.2015, Memo No.9109 dated 07.10.2015, Memo No.663 dated 30.11.2015, Memo No.693 dated 21.12.2015 and Memo No.06 dated 06.01.2016. It has further been submitted that as even



after lapse of more than three years, the petitioner did not complete the work assigned to him, therefore, the respondent-department took the decision to terminate the agreement. The termination of agreement was communicated vide Letter No. 1225 dated 04.02.2016 and vide letter no.84 dated 17.02.2016, the Executive Engineer communicated the date for final measurement to the petitioner and the petitioner was stated to remain present on the date fixed for measurement. The learned counsel also submitted that this writ application is devoid of any merit and is liable to be dismissed.

6. Having considered the material available on record and further considering the pleadings and submissions, it appears that in terms of the agreement dated 14.03.2013, the petitioner was required to complete the contractual works within twelve months, but after lapse of about three years and ten months, he did not complete the said contractual work in spite of several directions/instructions as stated above. Thereafter, the respondent-department took the decision to terminate the agreement vide Letter No. 1225 dated 04.02.2016.

7. A counter affidavit has been filed on behalf of the respondent nos. 1 to 3. It is relevant to quote paragraph nos. 6 to 22.

“6. That it is stated that the construction was



slow and work was not completed on time, therefore, Executive Engineer, BSEIDC issued letter vide letter no.1056 dated 26.12.2014 and directed the petitioner to complete the work very soon on priority basis.

7. That the construction work was not started and completed on time therefore, Chief Engineer, BSEIDC issued show cause notice to the petitioner vide letter no.439 dated 16.01.2015 and ask why in light of clause 3.3 and clause 4.8 of the SBD and letter issued vide letter no.6098. dated 07.11.2014 by the Managing Director, BSEIDC Ltd. the petitioner would not be debarred in future for participating in the tender invited by the BSEIDC.

8. That it is stated that the construction was stopped for long therefore, Executive Engineer, BSEIDC vide letter no.63 dated 27.01.2015 directed the petitioner to start the construction work immediately and complete the work very soon.

9. That the construction work was not started and completed on time therefore, Chief Engineer, BSEIDC vide letter no.1360 dated 19.02.2015 directed the petitioner to start the unfinished work and complete the same immediately failing which action will be taken as per the terms of the agreement for which petitioner would be wholly responsible.

10. That the construction work was not started and stopped for long and petitioner not showing any interest in the Construction, therefore, Executive Engineer, BSEIDC recommended the Chief Engineer, BSEIDC vide letter no.145 dated 09.03.2015 to initiate the proceeding for debarring/ blacklisting the petitioner.

11. That in view of the several letters written by the officials of the BSEIDC to the petitioner the construction work was not started therefore, the petitioner was debarred from participating in the future tender vide letter no.8105 dated



08.09.2015 of the Chief Engineer, BSEIDC.

12. That despite abovementioned warning the construction work was not started by the petitioner, therefore, again letter issued by the Executive Engineer, BSEIDC to the petitioner vide letter no.661 dated 30.11.2015 and directed to start the Construction work within 10 days failing which he will recommend will the higher officials to act as per provisions of the agreement.

13. That despite abovementioned warning the construction work was not started by the petitioner, therefore, again letter issued by the Executive Engineer, BSEIDC to the petitioner vide letter no.696 dated 21.12.2015 and directed to start the Construction work within 10 days failing which he will recommend will the higher officials to act as per provisions of the agreement.

14. That the work was not started by the petitioner despite several reminders and instruction given by the BSEIDC, therefore, there is no option for the Executive Engineer, BSEIDC, to issue show cause to the petitioner vide letter no.554 dated 18.11.2016 to clarify why as per clause 3 (iii), 3 (iv) and 3 (v) of the agreement the contract will not rescind and further as per Clause 3 (vii) (a) why not to recommend the higher officials for forfeiting the Earnest Money, Security deposit and Performance Guarantee as per the SBD.

15. That the petitioner not shown any interest for construction of the work therefore, Executive Engineer, BSEIDC to issue show cause to the petitioner vide letter no.593 dated 28.11.2016 to clarify why as per clause 3(iii), 3 (iv) and 3(v) of the agreement the contract will not rescind and further as per Clause 3 (vii) (a) why not to recommend the higher officials for forfeiting the Earnest Money, Security deposit and Performance Guarantee as per the SBD.

16. That the petitioner not shown any interest



for construction of the work therefore, Executive Engineer, BSEIDC recommended vide letter no.670 dated 24.12.2016 to the Chief Engineer, BSEIDC to rescind the agreement no.41 SBD/2011-12 dated 14.03.2012 of the petitioner and for forfeiting his Security deposit and Performance Guarantee.

17. That the petitioner has completed only 30.1 % construction work of the abovementioned four School regarding which agreement was executed between petitioner and BSEIDC.

18. That as per letter issued by the Chief Engineer, BSEIDC vide letter no.2443 dated 24.03.2017 by which as per Contract Clause 3(iii) of the agreement no.41 SBD/2011-12 dated 14.03.2012 executed with the petitioner rescind the contract and direction given to the Executive Engineer to complete the measurement of the work done by the petitioner.

19. That as per letter no.116 dated 27.03.2017 issued by the Executive Engineer, BSEIDC the dated fixed for the final measurement of the work done by the petitioner.

20. That as per letter no.117 dated 27.03.2017 of the Executive Engineer, BSEIDC request has been made from the Director, Information and public relation department to publish the information in the Hindi and English news paper regarding the final measurement of the work.

21. That in the information has been published in Hindi news paper "Prbahat Khabar" dated 06.04.2017 regarding the final measurement.

22. That as per Notice Inviting Tender No.-21 year 2017-18 was published for completion of remaining work after completed the final measurement of the work already done."

8. It is also relevant to quote the order of termination of contract dated 04.02.2016, which is impugned herein:-



पत्रांक- BSEIDC/TECH/466/2015- 1225 पटना, दिनांक 04.02.16

प्रेषक,

ब्रजेश प्रसाद

मुख्य अभियंता

सेवा में

मेसर्स बी० के० इंटरप्राइजेज,

ग्राम- धनपुरा पो० आरा, थाना-आरा टाउन

जिला-भोजपुर, बिहार

विषय:- जिला भोजपुर अंतर्गत उत्कर्मित माध्यमिक विद्यालय ग्रुप सं० -
USS-08 एकरारनामा सं०-43 SBD/2011-12 दिनांक 14.03.13
को Contract के Clause 3 (iii) के प्रावधानों के अंतर्गत
विखंडित (Rescined) करने के संबंध में।

प्रसंग:- इस कार्यालय का पत्रांक-437 दिनांक- 16.01.15 पत्रांक- 1360
दिनांक 19.02- पत्रांक- 7881 दिनांक 01.09.15 एवं पत्रांक-
9109 दिनांक 07.10.15 कार्यपालक अभिय पटना (पूर्वी) प्रमंडल
का ज्ञापांक 65 दिनांक 27.01.15. पत्रांक- 147 दिनांक 09.03
ज्ञापांक 663, दिनांक 30.11.15. ज्ञापांक- 1054 दिनांक
20.12.14 प्रापांक-693 दिनांक-2 12.15 एवं पत्रांक 08, दिनांक
06.01.16

महाशय,

उपर्युक्त वर्णित कार्य को पूर्ण करने की अवधि 12 (बारह) माह
निर्धारित थी। लगभग (तीन) साल 10 (दस) माह का समय बीत जाने के
बावजूद भी कार्य पूर्ण नहीं किया गया है एवं कार्य लगभग 20 (बीस) माह
से बंद है।

उपर्युक्त प्रासंगिक पत्रों के द्वारा ससमय कार्य पूर्ण करने के लिए
बार-बार निर्देशित किया जाता रहा है परन्तु आपके द्वारा कार्य पूर्ण नहीं कराया
जा सका है।

1. इस कार्यालय के पत्रांक--437 दिनांक 16.01.15 द्वारा ससमय
कार्य पूर्ण करने हेतु स्पष्टीकरण पूछा गया।

2. कार्यपालक अभियंता पटना (पूर्वी) प्रमंडल के ज्ञापांक- 1054
दिनांक - 26.12.14 द्वारा कार्य की गति को तेज करते हुए सीधातिशीघ्र पूर्ण
करने हेतु निर्देशित किया गया।



3. कार्यपालक अभियंता, पटना (पूर्वी) प्रमंडल के ज्ञापांक- 65 दिनांक 27.01.15 द्वारा कार्य शीघ्र प्रारंभ कर कार्य की गति को तेज करने हेतु निर्देशित किया गया।

4. इस कार्यालय के पत्रांक- 1360 दिनांक - 19:02:15 द्वारा कार्य को प्रारंभ कर पूर्ण करने हेतु निर्देशित किया गया।

5 कार्यपालक अभियंता के पत्रांक- 147 दिनांक 09 03:15 द्वारा कार्य में कोई भी रुचि नहीं दिखाने पर इनको Debar / काली सूची में डालने हेतु अनुशंसा की गई।

6. इस कार्यालय के पत्रांक- 7881 दिनांक 01.09 15 द्वारा अंतिम रूप से 10 (दस) दिनों के अंदर कार्य को प्रारंभ करने अन्यथा एकरारनामा को विखंडित (Rescined) करने हेतु कार्रवाई के संबंध में लिखा गया, जिसके संबंध में आपके द्वारा कोई भी उत्तर अप्राप्त है।

7. इस कार्यालय के पत्रांक-9109, दिनांक 07-10-2015 द्वारा बार-बार निर्देशित करने के बावजूद कार्य प्रारंभ नहीं करने के कारण बाध्य होकर Defaulter घोषित करते हुए जगली निविदा में भाग लेने से (Debar) करने का आदेश निर्गत किया गया।

8 कार्यपालक अभियंता पटना (पूर्वी) प्रमंडल के ज्ञापांक- 063 दिनांक 30.11.15 द्वारा कार्य को 10 (दस) दिनों के अंदर प्रारंभ करने हेतु अनुरोध किया गया जिसका आपके स्तर से न तो कोई उत्तर दिया गया और न ही कार्य को प्रारंभ किया गया।

9. पुनः कार्यपालक अभियंता, पटना (पूर्वी) प्रमंडल के ज्ञापांक- 093, दिनांक - 211215 द्वारा अंतिम रूप से 10 (दस) दिनों के अंदर कार्य को प्रारंभ करने अन्यथा एकरारनामा की शर्तों के अनुसार अग्रत कार्रवाई हेतु उच्चाधिकारियों को प्रतिवेदित करने के संबंध में पत्र लिखा गया। इसके बावजूद आपके द्वारा न तो कार्य को प्रारंभ किया गया और न ही कोई उत्तर दिया गया।

10. कार्यपालक अभियंता पटना (पूर्वी) प्रमंडल के पत्रांक-06 दिनांक 06.01.16 द्वारा कार्य प्रारंभ नहीं करने एवं पत्रों का कोई उत्तर नहीं देने के फलस्वरूप बाध्य होकर एकरारनामा को विखंडित (Rescined) करने हेतु अनुशंसा की गई।

उपर्युक्त प्रासंगिक पत्रों द्वारा समय कार्य पूर्ण करने के लिए आपको बार-बार अनुरोध / निर्देशित किया जाता रहा है परन्तु आपके द्वारा समय कार्य करने में कोई रुचि नहीं ली गयी।

अतः उपरोक्त तथ्यों एक जनहित लोकहित एवं कार्यहित में संविदा के कडिका 3 (ii), (iv) एवं (V) के अंतर्गत Contract Agreement



संख्या 43 SBD of 2011-12 दिनांक- 14.03.2013 को 'तत्काल प्रभाव से संवेदक के Risk and Cost पर विखंडित (Rescined) किया जाता है। साथ ही संवेदक के विरुद्ध Contract के कडिका (Vii) (a) तहत Earnest Money Deposit, Security Deposit तथा Performance Guarantee जन्त करने के साथ-साथ संविदा के अन्य सुसंगत कडिकाओं के अधीन अन्य कार्रवाई की जायेगी।

विश्वासभाजन

Sd/

मुख्य अभियंता

09. From the above discussions, we do not think that the impugned order needs any interference if the petitioner has failed to abide by the specific terms of agreement. The respondent department rightly took the decision to terminate the agreement existed into with the petitioner. Thus, the petitioner has failed to make out any case so as to interfere with the order dated 04.02.2016 passed by the Chief Engineer.

10. It is well settled principle of law that the constitutional courts are expected to exercise restrain in interfering with the administrative decisions and they ought not to substitute their views substituting that of the administrative authority.

11. In the light of aforementioned facts and circumstances of the case, in our opinion, no illegality or irregularity has been committed by the respondents in passing the impugned order rescinding the contract and the reasons



assigned for the same are well justified, which do not require interference by this Court.

12. Accordingly, this writ petition stands dismissed.

13. Pending application, if any, stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	18.04.2023
Uploading Date	05.05.2023
Transmission Date	N.A.

