

(2014) 01 PAT CK 0117
In the Patna High Court
Case No : C.W.J.C. No. 5950 of 2013

Munna Prasad Gupta

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Citation : (2015) 1 PLJR 2

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Advocate : Amrendra Kumar Pathak, Advocates for the Appellant; A.K. Upadhyay, Advocates for the Respondent

Judgement

Ramesh Kumar Datta, J.—Heard learned counsel for the petitioner and learned counsel for the State. The petitioner seeks quashing of the impugned order dated 20.12.2012 of the Member Secretary-cum-Executive Engineer, District Water and Sanitation Committee, Kaimur (Bhabhua) as also the order dated 10.12.2012 of the Deputy Development Commissioner, Kaimur (Bhabhua) on the basis of which the said order has been passed.

2. The petitioner being the Secretary of the NGO had entered into an agreement on 13.5.2006 with the State-respondents represented through the District Water and Sanitation Committee, Kaimur (Bhabhua) for the work under the Rajiv Gandhi National Water Supply Mission which included, inter alia, educating and giving guidelines with regard to sanitation and also making construction of personal toilets, community toilets and other sanitation related works and, accordingly, the work order in that regard was also issued.

3. It is the stand of the petitioner that the petitioner in terms of the availability of work in the concerned village had constructed sufficient number of toilets and the work of the petitioner was appreciated, so much so that when in the neighbouring Panchayat of Mahuary, the NGO working was removed, a number of revenue villages had been allotted to the petitioner for carrying on the works, in

the meeting of the Water and Sanitation Committee held on 4.10.2012 under the Chairmanship of the Deputy Development Commissioner.

4. It is also the stand of the petitioner that along with other villagers he made a complaint before the Chief Secretary, Bihar on 8.11.2012 against the Deputy Development Commissioner regarding corruption in the Department. However, instead of action being taken against the officials, the Deputy Development Commissioner out of anger due to the complaint filed by the petitioner directed the Executive Engineer on 10.12.2012 to terminate the contract and cancel the work order of the petitioner and accordingly the impugned order dated 20.12.2012 was passed.

5. Learned counsel for the petitioner submits that the petitioner as an NGO has done substantial work in the matter of educating the people of the concerned Durgawati Block and also made construction of a large number of latrines in terms of the scheme depending upon the willingness of the local people to get the same constructed and his work has been appreciated by the respondent authorities also including the Deputy Development Commissioner by allotting other revenue villages on 4.10.2012. However, without issuing any show cause notice and without giving any opportunity to the petitioner for being heard, the impugned order dated 20.12.2012 was passed by the Executive Engineer on the basis of the direction given on 10.12.2012 by the Deputy Development Commissioner.

6. It is further submitted by the petitioner that the action is further unlawful as the conditions "Ga" and "Gha" of para-10 of the agreement have no applicability in the matter and thus without any valid reasons the agreement has been terminated.

7. Learned counsel for the State is unable to show that the principles of natural justice were complied in the matter considering the nature of the dealings between the parties, which appear to be a long term allotment of a particular block or revenue villages for the purposes of educating the people regarding sanitation and constructing latrines, except to rely upon the letter dated 1.12.2012 which is stated to have been sent by the Executive Engineer to the Deputy Development Commissioner and a copy of the same is stated to have been sent to the petitioner also. The same is an internal communication between Government officials, being the member of the District Committee and Chairman of the District Committee, and a mere reference to copy being sent to the petitioner does not mean that it can be considered as a show cause when it is not even in the form of a show cause.

8. Moreover, this Court finds sufficient force in the submission of learned counsel for the petitioner that the grounds on which the agreement has been terminated is not germane on a consideration of those grounds.

9. From the nature of the agreement and the type of work to be done the agreement dated 13.5.2006 is not an ordinary agreement for execution of any

particular work and the work being of continuing nature and involving long term relationship between the parties, it was not open to the respondents to have terminated the agreement without issuing show cause notice to the petitioner and giving opportunity to the petitioner to reply to the same.

10. The writ application is, accordingly, allowed.

11. The impugned orders dated 20.12.2012 and 10.12.2012 are both quashed. It shall however, be open to the respondents to proceed afresh in the matter in accordance with law.