

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.159 of 2025

In
Civil Writ Jurisdiction Case No.17496 of 2023

-
-
1. The Nagar Panchayat Nirmali through its Executive Officer, District - Supaul.
 2. The Executive Officer, Nagar Panchayat, Nirmali, District- Supaul, namely Shashi Kant, aged about 40 years, Male, Son of Surendra Prasad Singh.

... .. Appellant/s

Versus

1. Baba Debraha Enterprises a proprietorship Firm through its proprietor namely Rakesh Ranjan. Having its registered office at Khesra No. 2469, 1629, Gandhi Nagar, Rajeev Nagar, Patna and its corporate office at flat no. 704, Raut City, Apartment, Near Rudra Marriage Hall, Saguna Khagaul Road, Police Station Danapur, District - Patna through its authorized signatory namely Nimikesh Kumar Nirla (Male), Son of Nageshwar Prasad Jayswal, resident of 208, opposite Metagally, Post Office - Lok Nayaka Nagar, Hebbal, Mysore, Police Station - Metagally, District- Mysore, Karnataka.
2. The State of Bihar through the Secretary, Department of Industries, Government of Bihar, Patna.
3. The Secretary, Department of Industries, Government of Bihar, Patna.
4. The Secretary, Panchayati Raj Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Abhay Shankar Singh, Advocate Mr. Barun Kumar Singh, Advocate
For the Res. No.1	:	Mr. Sanjeev Kumar, Advocate Mr. Prabhashankar Mishra, Advocate Mr. Navneet Dubey, Advocate
For the State	:	Mr. Additional Advocate General-7

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-07-2025

The present appeal has been filed under Clause-X, Appendix-E of the Letters Patent of Patna High Court Rules by the appellants who are original respondent nos.4 and 5 in the



writ petition. The appellants are aggrieved by the direction issued by the learned Single Judge to make payment of Rs.28,45,790/- to the original petitioner.

2. The factual matrix of the present case is as under:

2.1 The present opponent no.1 is the original writ petitioner which had preferred the petition under Article 226 of the Constitution of India before the learned Single Judge in which the writ petitioner prayed that the writ of mandamus be issued commanding the respondents to make the payment in lieu of supply done pursuant to the work order dated 05.05.2022 to the tune of Rs.43,60,498/- along with interest @ 18% and other expenses incurred upon maintaining the materials at the site including refund of security deposit and refund of illegally deducted amount.

2.2 It is the case of the writ petitioner that the respondent no.5, i.e., the Executive Officer, Nagar Panchayat of a particular district floated expression of interest in the Gem Portal. The petitioner participated in the same and thereafter the respondent awarded the work order dated 05.05.2022. It is the case of the petitioner that, as per the said work order, the petitioner had to supply 48 pieces of Wheel Barrows and 6 pieces of Hooper Tippers. It is further the case of the petitioner



that the work order was generated on 05.05.2022 and on the basis of the said work order, the petitioner had purchased 6 pieces of Hooper Tippers and the other materials. Thereafter the concerned respondents have initially accepted 4 pieces of Hooper Tippers and 48 pieces of Wheel Barrows and an assurance was given to purchase the balance 2 Hooper Tippers. However, the respondents did not fulfil the said promise. In fact, as per the terms and conditions of the work order, the petitioner purchased all the 6 Hooper Tippers and also got registered all the 6 vehicles in the name of the Executive Officer, Nagar Panchayat, respondent no.5.

2.3 It is the further case of the petitioner that thereafter the petitioner made several representations before the respondent authorities and requested them to take the delivery of the remaining 2 vehicles and make the payment as per the work order, despite which no response was given by the respondent authorities. The petitioner, therefore, preferred the captioned writ petition before the learned Single Judge.

2.4 The learned Single Judge partly allowed the petition whereby the direction has been issued to the present appellants/original respondents to pay an amount of Rs.28,45,790/- incurred by the petitioner for purchase of the



vehicles as per the terms and conditions of the bid documents. So far as the other prayers of the petitioner are concerned, the learned Single Judge did not grant such prayers.

2.5 The original respondent nos.4 and 5, aggrieved by the aforesaid direction issued by the learned Single Judge, has preferred the present appeal.

3. Heard Mr. Abhay Shankar Singh, learned counsel for the appellants and Mr. Sanjeev Kumar, the learned counsel for the respondent.

4. The learned counsel for the present appellants would mainly contend that there are disputed questions of fact and, therefore, the learned Single Judge ought not to have entertained the petition by giving a direction to the present appellants to pay the amount as stipulated in the impugned order. The learned counsel at this stage has referred to the averments made in the counter affidavit filed on behalf of respondent nos. 4 and 5, more particularly paragraphs 8 and 9. After referring to the said averments, the learned counsel submits that the work order was generated on 05.05.2022 but as per the stock register, the supply was already made on 04.05.2022 even before the work order was generated. It has further been contended that only 4 pieces of Hooper Tippers



were supplied because there was no approval of 6 Hooper Tippers. The learned counsel further submits that, as per the letter dated 29.06.2019 issued by the Urban Development Department, Govt. of Bihar, only one Tipper was to be used for every 10,000 people and as per the census, 2011, the population of the concerned Nagar Panchayat was 20,189, whereas, as per the caste survey of 2023, total population in the concerned Panchayat was 27,354. Thus, as per the standard fixed by the concerned department, considering the population of less than 30,000 people, maximum purchase of Hooper Tippers permissible was only 3, despite which 4 Tippers were purchased. It is, therefore, contended that there is no need to purchase 2 more Tippers pursuant to the aforesaid policy of the concerned department of the State Government. The learned counsel, therefore, urged that the present appellants have not committed any illegality by refusing to take the delivery of remaining two vehicles though the bid was issued for purchase of 6 vehicles. It is also contended that, till date, the remaining two vehicles have not been supplied and, therefore, the learned Single Judge has committed an error while giving direction to the appellants herein to pay the amount of Rs. 28,45,790/-. Learned counsel, therefore, urged that the impugned order



passed by the learned Single Judge be set aside.

5. On the other hand, learned counsel appearing for the present opponent/original petitioner has vehemently opposed the present appeal. Learned counsel referred the observation made by the learned Single Judge in the impugned order. Learned counsel further referred the documents which are annexed with the memo of petition. He would mainly contend that bid was invited for supply of 6 Hooper Tippers. Learned counsel referred page -27, Annexure -2 of the compilation. It is contended that it has specifically been stated in the bid itself that the expenditure involved for this purpose has received the sanction of the competent financial authority and the funds are available under the proper head in the sanction budget allotment for the concerned financial year. It is further contended that initially on 06.05.2022 as per the work order, 4 Hooper Tippers were supplied to the concerned respondent for which the payment has been received by the petitioner. It is also pointed out from the record that, in fact, the petitioner, who is the supplier, has purchased the vehicles from the concerned manufacturer. The remaining 2 vehicles were also purchased by the petitioner/supplier. The petitioner has shown willingness to supply 2 remaining vehicles to the respondents, however, the



respondents did not take the delivery though requested time and again by several representations. Learned counsel has referred the representations made by the petitioner, copies of which are annexed with the memo of petition.

6. Learned counsel for the present opponent/original petitioner has contended before us that, in fact, the petitioner is ready and willing to supply 2 remaining Hooper Tippers to the concerned respondent authority within a period of one week from today. However, so far as maintenance of the aforesaid vehicles are concerned for a period of one year, as per the original terms and conditions of the tender, it has been contended that the petitioner was required to maintain the vehicles for a period of one year from the date of purchase and, in fact, the purchase was made in the year 2022, hence, the petitioner was not liable to maintain the vehicles after giving the delivery of the same to the concerned respondent.

7. We have considered the submissions canvassed by the learned advocates appearing for the parties. We have also perused the materials placed on record. We have also gone through the reasoning recorded by the learned Single Judge while passing the impugned order. It transpires from the record that respondent nos. 4 and 5 issued the tender bid document



which is placed on record at page 22. As per the said bid document, the petitioner participated in the said process. The petitioner was selected and, as per the work order, he was required to supply 6 Hooper Tippers by 15th May 2022. Annexure -2, page -27 is the contract dated 05.05.2022. It is not in dispute that, as per the said contract, clause 1.10.1 provides that the expenditure involved for the purpose has received the sanction of the competent financial authority. It has further been observed in clause 1.10.2 that the funds are available under the proper head in the sanction budget allotment for the concerned financial year. It is also not in dispute that pursuant to the said contract, the petitioner had given delivery of 4 Hooper Tippers to the concerned respondent on 06.05.2022. Tax invoices are placed on record at page -30 of the compilation. It is also not in dispute that the payment qua the said 4 vehicles has been made to the respondent/original petitioner. Thus, in the present matter, the dispute is with regard to the remaining 2 Hooper Tippers, the vehicles which are already purchased by the petitioner as a supplier from the concerned manufacturer on the basis of the bid document, and as per the contract awarded to the petitioner, the work order which has been given to the petitioner. It is specific case of the petitioner that the petitioner had purchased the



remaining 2 vehicles also and both the vehicles have been immediately registered in the name of the Executive Officer of the concerned Panchayat. We have gone through the counter affidavit filed by respondent nos. 4 and 5. Surprisingly, it is for the first time, the case of the respondent before this Court that, as per the letter dated 29.06.2019 of the Urban Development Department of the State Govt., one Tipper was to be used for population of every 10,000. The population of the concerned Panchayat is less than 30,000. Therefore, only 3 vehicles were required. We are of the view that the aforesaid contention is nothing but an afterthought. The respondent nos. 4 and 5 were aware of the aforesaid letter which was issued long back in the year 2019, despite which the bid was issued in the year 2022 for purchase of 6 vehicles. Even work order has been issued in favour of the petitioner and, in fact, 4 vehicles have been purchased by the appellants from the respondent/original petitioner.

8. At this stage, we would like to observe that the learned Single Judge has partly allowed the petition and the other reliefs prayed by the petitioner have not been granted in favour of the petitioner. Thus, the dispute is with regard to the payment of Rs. 28,45,790/- incurred by the petitioner for



purchase of the 2 Hooper Tippers from the concerned manufacturer. We are of the view that once the petitioner has purchased the vehicles pursuant to the bid issued by the respondent and as per the work order, the respondent was required to take the delivery of the said vehicles as per the terms and conditions of the bid document. There was no fault on the part of the petitioner and because of the fact that the respondent did not take the delivery of remaining 2 vehicles from the petitioner, the petitioner has suffered a loss.

9. We are, therefore, of the view that the learned Single Judge has not committed any error while issuing direction to the respondents to pay an amount of Rs. 28,45,790/- incurred by the petitioner for the purchase of the vehicles in question. However, at the same time, at this stage, we record that the learned counsel appearing for the present opponent/original petitioner has, under the instruction, submitted that the delivery of the remaining 2 vehicles in question would be given to respondent nos. 4 and 5 as per the bid document/work order within a period of one week. It is needless to observe that the original petitioner shall maintain the vehicles in question for a period of one year from the date of supply as per the original terms and conditions of the bid document.



10. In view of the aforesaid, the appeal is partly allowed to the aforesaid extent.

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

(Vipul M. Pancholi, CJ)

(Partha Sarthy, J)

Sanjay/Sunil

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.07.2025
Transmission Date	NA

