

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17496 of 2023

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 Nirala (Male), aged about 32 years, Son of Nageshwar Prasad Jayswal, resident of 208, opposite Metagally, Post Office- Lok Nayaka Nagar, Hebbal, Mysore, Police Station- Metagally, District-Mysore, Karnataka.

... Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Industries, Government of Bihar, Patna.
2. The Secretary, Department of Industries, Government of Bihar, Patna.
3. The Secretary, Panchayati Raj Department, Government of Bihar, Patna.
4. The Nagar Panchayat Nirmali, through Executive Officer, District- Supaul.
5. The Executive Officer, Nagar Panchayat, Nirmali, District- Supaul.

... Respondents

Appearance :

For the Petitioner : Mr.Pravashankar Mishra, Adv.
For the Respondents : Smt. Binita Singh (Sc28)

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

8 18-11-2024

Heard the parties.

2. The present writ petition has been filed for the

following relief(s) :

i) To issue a Writ in nature of Mandamus commanding the respondents to make the payment of the 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.

ii) To any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.

3. It is the case of the petitioner that pursuant to the



expression of interest floated in the Gem Portal by the Respondent No. 5, i.e., the Executive Officer, Nagar Panchayat Nirmali, District- Supaul, the petitioner has participated in the same and was awarded the work order dated 05.05.2022. That as per the work order, the petitioner had to supply 48 pieces of Wheel Barrows and 6 pieces of Hooper Tippers. Learned counsel for the petitioner has stated that the work order was generated on 05.05.2022 and on the basis of the work order issued by the Respondent No. 5, the petitioner has purchased 6 pieces of Hooper Tippers and 48 pieces of Wheel Barrows. The Respondents have initially accepted only 4 pieces of Hooper Tippers and 48 pieces of Wheel Barrows and the petitioner was assured that balance two Hooper Tippers would be taken delivery soon. As per the terms and conditions of the work order, the petitioner has also registered all the six vehicle in the name of the Executive Officer, Nagar Panchayat Nirmali, District- Supaul, Respondent No. 5. When the petitioner did not get any response from the Respondent with regard to the delivery of the balance two Hooper Tippers the petitioner vide letter, dated 18.09.2022, has requested the Respondent to take delivery at the earliest, however, there was no response from the Respondent No. 5. Thereafter the petitioner has issued a letter,



dated 04.10.2023, requesting the payment of Rs.28,45,790/- for the expenses incurred in purchasing the two pieces of Hooper Tippers and also the expenses to the tune of Rs.2,10,000/- for keeping the security guard. When there was no response from the Respondents the petitioner was constrained to approach this Hon'ble Court by way of the present Writ Petition.

4. Per contra the learned counsel appearing on behalf of the Respondents has vehemently opposed the very maintainability of the present Writ Petition. Learned counsel has stated that though the petitioner was given work order for 6 pieces immediately thereafter the petitioner was apprised that the Nagar Panchayat Nirmali, District- Supaul, would be requiring only 4 pieces and cancelled the order for the balance two Hooper Tippers. Learned counsel has stated that the petitioner has already been paid the total amount for the 4 Hooter Tippers and 48 Wheel Barrows and nothing remains to be paid to the petitioner. Learned counsel has relied on Annexure R5/A in support of his contention that the order was only for four Hooper Tippers and total amount due has been paid to the petitioner and nothing remains to be paid. Learned counsel has therefore prayed this Court to dismiss the present Writ Petition.



5. A perusal of the documents filed by the petitioner as well as the Respondents reveal that the respondent-authority has placed a tender calling for six Hooper Tipper and 48 Wheel Barrows. The petitioner has participated in the said bid and being the successful bidder was awarded the work contract on 05.05.2022 (Annexure 2). The work order, dated 05.05.2022 reveals that an order for total number of six Hooper Tippers and 48 Wheel Barrows was placed and the petitioner on 06.05.2022 has raised an invoice for 4 Hooper Tippers and supplied the same to the Respondent. Thereafter the petitioner has been communicating with the Respondents for supply of the balance 2 Hooper Tippers and for that purpose he has raised invoice dated 01.06.2022. The petitioner has been communicating with the authorities for delivery of the balance two Hooper Tippers. Though the Respondents have taken a stand that basing on the population of the area their requirement was only for 4 Hooper Tippers and the petitioner was apprised of the same and was directed to supply only 4 Hooper Tippers cancelling the work order for the balance two, there is nothing on the record to substantiate the same. Though the Respondents have relied on Annexure 5/A, the same only reveals that the payment has been made for 4 Hooper Tippers and 48 Wheel Barrows and there is



nothing in the said document stating that the balance 2 Hooper Tippers have been cancelled and the petitioner has agreed. Further it is to be noted that the petitioner on 25th April, 2022, has purchased insurance for all the six vehicles and registered the vehicles in the name of the Executive Officer, Nagar Panchayat Nirmali, District- Supaul, on 5th July, 2022, itself. The authority in this particular case have placed the tender through the GeM Portal which is a market place for Government of India Portal and run by the Government of India purchase of the requirements of the Government. The tender was floated for 6 pieces of Hooper Tippers and work order was also issued for 6 pieces of Hooper Tippers. Further it is pertinent to note that in the work order issued (Annexure 5/A) under the heading. The orders placed by the respective State Government or its agency. Clause 1.10 of the said contract reads as under :

“1.10 Financial Certificate:

1.10.1 The expenditure involved for this purpose has received the Sanction of the competent financial authority.

1.10.2 The funds are available under the proper head in the sanction budget allotment for the concern financial year.

1.10.3 I have been fully authorized by the department to sign the supply order or incur the liability of the Goods being ordered



1.11 The bidder should submit a self declaration to the effect of bidder's official letter head that their agency have not been black listed by any agency whatsoever till date."

6. Once the authorities have floated the tender, placed an order and issued the work order and the vendor has acted on the same, the authorities subsequently cannot rescind from the contract more particularly after the expiry period envisaged in the contract. The authority subsequently cannot come-up with some excuse to avoid the payment of the amount due to the petitioner. In this particular case the Respondents have taken stand that they are obligated under the law to order only 4 pieces of Hooper Tippers basing on the population ratio, i.e., for 10,000 residents of Nagar Panchayat Nirmali, District- Supaul, one Hooper Tipper can be ordered and the population of Nagar Panchayat, Nirmali, Supaul, is approximately 33000. Though the actual requirement was only three Hooper Tippers, the authorities have taken delivery of four vehicles. Once an order is placed and vendor has acted on the same, the authorities cannot back-out. Further, it is to be noted that a per the Clause 1.10 of the contract, the authorities have categorically stated that financial sanction has been received therefore they cannot subsequently turn around and deny the payment of the amounts



due. The petitioner cannot be faulted for the lapses which has been committed by the respondent-authorities.

7. Having regard to the above mentioned facts and circumstances the Writ Petition is allowed. The Respondents are directed to pay the amount of Rs. Rs.28,45,790/- incurred by the petitioner for purchase of the vehicles as per the terms and conditions of the bid document. That in so far as the other prayer of the petitioner seeking interest, security charges etc. are concerned this Court is not inclined to grant the same and the same is rejected. The authorities shall pay the amount due to the petitioner within a period of four weeks from the date of receipt of a copy of this order. In case the amounts are not paid by the authorities within the stipulated time, the petitioner would be entitled for payment of simple interest at the rate of 7% from the date of raising the invoice till the date of actual payment.

8. With the above direction the Writ Petition stands allowed to the extent indicated.

(A. Abhishek Reddy , J)

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