

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21763 of 2014

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Mrs. Trishul Engicon Pvt. Ltd. through its Managing Director, Sanjay Kumar Singh, Anmol Orchil Mall, 3rd Floor, Office No. 6, Opposite A.N.College, Boring Road, Patna.

.... Petitioner/s

Versus

1. The Union of India through the General Manager, E.C. Railway, Hajipur.
2. The Chief Engineer (Cons) South East in the office of the CAO/Cons/SE/Mahendru Ghat, Patna.
3. The Chief Administrative Officer (Const.) E.C. Railway, Mahendru Ghat, Patna.
4. The Deputy Chief Engineer (Construction), E.C.Railway, Dhanbad.
5. The Deputy Chief Engineer (Construction)/South/E.C. Railway, Mahendru Ghat, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. G.Bose, Sr. Advocate.

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 05-01-2015 Heard learned counsel for the parties as with regard to the following reliefs prayed in this writ application:

"1(i) The contract vide agreement no. ECR/CAO/Con/AGT/South/177 dated 10.01.2014 has been terminated without any show cause or notice passed by the respondent no. 4 (Deputy Chief Engineer (Con). EC. Railway, Dhanbad) and the date of measurement of work was fixed as 19.11.2014.

(ii) The order of the Chief Engineer/Con/SE posted at CAO's office at Mahendru Ghat by which it has been communicated that the performance of the petitioner's company had not applied for extension of currency of contract along with the extension of validity of performance guarantee.

(iii) Another termination order issued by the Deputy Chief Engineer/Con/Dhanbad on the allegation of Clause-62 of the general condition of contract and standard specifications."

2. Mr. Anil Kumar Sinha, learned counsel appearing on behalf of the Railways, has raised a preliminary objection that in

presence of arbitration clause, the writ application itself will not be maintainable.

3. Learned counsel for the petitioner in reply has submitted that the impugned order has been passed in an arbitrary manner and thus even in presence of inter parte agreement containing arbitration clause the writ petition can be heard on merit.

4. This Court finds that there is sufficient force in aforesaid preliminary objection inasmuch as the petitioner and the Railways are bound by *inter parte* agreement in respect of the work in question which has been sought to be cancelled by the impugned order and that agreement itself contains a provision for arbitration. This writ application thus for the time being, must be held to be ill-advised and misconceived and infact also pre-mature in view of law laid down by Apex Court in the cases of Bisra Stone Lime Co. Ltd.. Vs. Orrisa State Electricity Board reported in AIR 1976 S.C. 127, Rukmanibai Gupta Vs. Collector, Jabalpur and others reported in 1980(4) SCC 556 and Tata Finance Ltd. Vs. Ajaya Kumar Biswal reported in (2000) 9 SCC 238..

5. The only additional ground raised by Mr. G. Bose, learned senior counsel appearing on behalf of the petitioner, is that till a decision is taken by the arbitrator, the petitioner may be

allowed to continue with the work in fact, can also be considered by the arbitrator in terms of Section 9 of the Arbitration and Conciliation Act by way of granting any interim relief.

6. This Court, however, must immediately clarify that if the arbitration proceeding is to be held as per the terms and conditions of the agreement any interim order also has to be passed strictly in keeping with the terms and conditions of the same agreement.

7. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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