

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1365 of 2009

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1. M/S Dhananjay Construction Pvt. Ltd., East Gandhi Maidan, Town, P.S. and District Jehanabad, through its Managing Director, Vijay Narayan Singh
 2. Vijay Narayan Singh, son of Sri Nand Deo Singh, Managing Director, M/s Dhananjay Construction East Gandhi Maidan, Town, P.S. and District Jehanabad

.... Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, G.M.Building, Hajipur, Bihar
2. The Chief Administrative Officer (Construction), Eastern Central Railway, Mahendrughat, Patna- 800004
3. The Chief Engineer (Con) N-1, East Central Railway, Mahendrughat, Patna- 800004, Bihar
4. The Deputy Chief Engineer/ Con/II, East Central Railway, Samastipur, Bihar
5. The Dy. Chief Engineer (Con)-I, East Central Railway, Hajipur
6. The Executive Engineer/ CON/ Works/ East Central Railway, Baruni
7. The Financial Advisor and Chief Accounts Officer (Construction), Eastern Central Railway, Mahendrughat, Patna- 800004

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sriram Krishna, Adv.

For the Respondent/s : Mr. Binod Jee Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 08-01-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:

“(i) To quash Annexures 13 and 14 issued by respondent no.4, notices given for rescinding the contract at the risk and cost of the petitioner.

(ii) To quash and set aside Annexure 15 by which tender notice has been published in the daily newspaper on 12.11.2008 inviting tender on the risk and cost of the petitioner.

(iii) To command and direct the respondents not to withheld the amount payable to the petitioner on the

ground of risk and cost purchased for execution of remaining work by other contractor.

(iv) To command and direct the respondents to calculate the work done bill on the basis of market rate of the materials as the delay caused is totally attributable to the respondents who made delay of several months in removing the over head wire causing great financial loss to the petitioner.

(v) To command and direct the respondents to return the earnest money security deposit to the petitioner immediately with interest from the date of deposit till the date of payment.

(vi) To command and direct the respondents to take final measurements of all work done in presence of the petitioner or their representative and pay the same without reducing the agreed rate of the earth work and according to market rate of other works.”

Learned counsel for the petitioners submits that for none of the fault on the part of the petitioner they stand punished in form of withholding of their amount payable by the Railways in terms of an inter-party agreement. He has sought to explain that if the project was not completed, the petitioners could not have been held responsible for it because those reasons were actually created on account of non-cooperation of the Railway authorities. He has also tried to highlight that even after cancellation of the contract of the petitioners, the Railway authorities are insisting that the petitioners should complete the contract but without making any

revision of the rates. In nut shell Mr. Sriram Krishna, learned counsel for the petitioners, has tried to make out a case of admitted claim and the Railway becoming liable to pay the amount claimed by the petitioners in this writ application.

On the other hand, learned counsel for the respondents having filed a counter affidavit have sought to dispute the stand taken by the petitioners. According to them, the authorities of the Railway were not at fault for non-completion of the work of the petitioners. The local law and order situation is not the concern of the Railways and therefore, if the petitioners failed to complete the contract, they would become liable for certain deductions/ forfeiture of the security amount as per the terms and conditions of the agreement.

In the considered opinion of this Court both the parties have certain justification in defence of their respective claim but then this much becomes clear that there is a dispute with regard to completion of the work in question. For such an eventuality the inter-party agreement between the petitioners and the respondents Railways had provided an arbitration clause. The writ application having been filed in the year 2009 and the counter affidavit having been filed in the year 2010, when this writ application has been taken up today in the year 2015, the interest of justice would

subserve if the petitioners are allowed to raise all their dispute as sought to be pressed in this writ application by moving before the named Arbitrator. If the petitioners, therefore, file their claim before the named Arbitrator, he will enter into the reference and decide the claim of the petitioners as also any counter claim of the Railways in accordance with the provisions of the Arbitration and Conciliation Act, 1996 which in fact is also part and parcel of the arbitration clause in the inter-party agreement of the petitioners and the respondent Railways.

It is made clear that since this writ application had remained pending for all this period of more than five years, the respondent Railway will not raise issue of limitation and allow the Arbitrator to give his award on the merits of the claim as also counter claim of the Railways.

This Court hopes and believes that the Arbitrator will dispose of the arbitration proceeding expeditiously and preferably within a period of six months from the date of his entering into reference for arbitration.

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

(Mihir Kumar Jha, J)

surendra/-

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