

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18028 of 2011

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Foundation Engineers, 12/1, Patliputra Industrial Estate, Patna - 800013 through its
Partner Rajesh Kumar @ Rajesh, son of Late Ganga Prasad, resident of 9 Galaxy-1,
Road No. 3, Mohalla & P.S.- Patliputra Colony, Patna

.... Petitioner/s

Versus

1. The Union of India, through the Secretary Railway Board, Ministry of Railway,
Government of India, New Delhi
2. The Principal Chief Engineer, East Central Railway, Hajipur
3. The ADRM, East Central Railway, Mughalsarai Division, Mughalsarai
4. The Senior Divisional Engineer (Ii), East Central Railway, Mughalsarai Division,
Mughalsarai-232101, District- Chandaul (U.P)
5. The Assistant Engineer, East Central Railway, Gaya
6. The Senior Section Engineer (Bridge), East Central Railway , Mughalsarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Advocate.
Mr. Yogesh Kumar, Advocate.
For the Respondent/s : Mr. Anil Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 15-10-2015

The present writ petition has been filed for setting
aside the order contained in Letter No. MGS/BT/138/Sr.DEV(II)
dated 23.08.2011 issued by the Senior Divisional Engineer (II),
East Central Railway, Mughalsarai (Respondent No. 4) whereby
contract with the petitioner's firm with respect to Tender No. 2 of
Tender Notice No. 16 of 2010-11-Engg.MGS has been rescinded.

2. It is submitted on behalf of the petitioner that
pursuant to the Letter of Intent issued in its favour, it was
prepared to commence the work but however discrepancies and
variation in quantity to the extent of 700 to 800% were

experienced, thus impeding commencement and progress of the work.

3. Learned counsel for the respondents, on the other hand, submits at the outset that the writ petition may not be entertained in view of the alternative remedy by way of arbitration being available to the petitioner in terms of Clause-64 of the General Conditions of Contract of the Railways. It is further submitted that even though a formal agreement has not yet been entered into, the L.O.I. itself operates as a contract to be merged with the agreement in due course, as evident from para-8 of the letter dated 26/29-4-2011 (Annexure-2). Moreover, no fault can be found with the action of the respondents in rescinding the contract in view of the petitioner having failed to deposit the Performance Guarantee within the permissible time despite having repeated reminders.

4. A Division Bench of this Court had occasion to consider the matter of this nature in LPA No. 1411 of 2009 [The Union of India vs. M/s. Jai Maa Shardey Construction] disposed of on 19.01.2011, noticing the petitioner's submission that there cannot be a binding rule by which the party would be forced to avail the arbitration clause in absence of any agreement. In that backdrop, it was held that the "letter of acceptance has to be treated as part of the agreement. In that view of the matter, there is no agreement in writing but the letter of acceptance has

to be read as part of the agreement”. It was therefore held that in such circumstances, the writ petition was not maintainable.

4. In view of the dictum of the Division Bench in the decision referred to above, the present writ petition is dismissed as not maintainable. The petitioner shall be at liberty to agitate the matter in arbitration in terms of the agreement.

(Vikash Jain, J)

Md. Ibrarul/-

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