

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1330 of 2011

With

Interlocutory Application No.3760 of 2012

And

Interlocutory Application No.3551 of 2013

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M/S Sharma and Company having its office situated at Exhibition Road,
Behind Abhishek Plaza, Ratnawali Vidya Mandir Lane, P.S. - Gandhi
Maidan, Town and District - Patna through its one partner Harish Chandra
Sharma, S/O Late Kameshwar Singh

.... Petitioner/s

Versus

1. Union of India through its Secretary, New Delhi
2. National Building Construction Corporation Ltd. Lodhi Road, New
Delhi, through its Chairman
3. Chief Managing Director, National Building Construction Corporation
Ltd., Lodhi Road, New Delhi
4. Additional General Manager, V-6, Vijay Nagar, Ras Bihari Path,
Rukunpura, Patna
5. Deputy General Manager cum Engineer in Chief, V-6, Vijay Nagar, Ras
Bihari Path, Rukunpura, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinay Raj
For the Respondent no.1 : Mrs. Kanak Verma
For the Respondent nos.2to5: Mr.Satish Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

6 11-05-2015 Heard the parties.

The petitioner, a partnership firm, is aggrieved by the order/communication dated 22.12.2010 (Annexure-10) issued under the signature of the respondent no.5, whereby the contract of the petitioner for construction/up-gradation of road under Pradhan Mantri Gram Sadak Yojna in Sheikhpura District from Namderganj to Ramjanpur has been cancelled for the reasons recorded in that communication/order and earnest money deposit and security deposit have been forfeited in terms of Clause 52 of the aforesaid agreement.

Learned counsel appearing on behalf of the petitioner has very fairly conceded that, after rescinding the aforesaid

contract, remaining contractual works were allotted to a third person and now works have been completed. However, according to him, forfeiture of earnest money deposit and security deposit by the respondents are not justified in the factual matrixes stated in the writ petition. According to him, at least this part of the order and claim of the petitioner about finalization of pending bills are required to be re-considered by the competent authority of the respondent Corporation.

The matter has been contested by the respondents. Learned counsel appearing on behalf of the respondents submits that in the agreement/contract itself inbuilt mechanism has been created for redressal of such dispute between the contractor and the respondent Corporation. According to him, if the petitioner is at all aggrieved by the impugned action of the respondent Corporation and its functionaries, then the same ought to have been raised before the Standing Empowered Committee, as provided under Clause 24 of the Standard Bidding Document for Pradhan Mantri Gram Sadak Yojna (PMGSY).

After having heard the parties, this Court is of the opinion that the petitioner has got an alternative and efficacious remedy in view of inbuilt mechanism created under the contract itself, as referred to above. This Court is also of the opinion that the claims raised on behalf of the petitioner are based on certain disputed questions of facts and such disputed questions of facts are required to be examined and decided conclusively by the statutory authorities and only thereafter the power of judicial review under Article 226 of the Constitution of India may be invoked.

In above view of the matter, the present writ petition is disposed of with a liberty to the petitioner to file a comprehensive representation before the respondent no.5 with all supporting

documents, raising all the pleas, which have been raised in the present writ petition.

If such a comprehensive representation is filed on behalf of the petitioner within a period of one month from today with a certified copy of the present order, then the respondent no.5 shall be obliged to refer that representation/claims of the petitioner to the Standing Empowered Committee, who, in turn, shall be obliged to consider and decide the claims by a reasoned and speaking order at an early date preferably within a period of three months from the date of filing of such complaint/comprehensive representation by the petitioner.

If on consideration of the materials, the Standing Empowered Committee or any other competent authority of the respondent Corporation comes to a conclusion that the claims raised on behalf of the petitioner, in the given circumstances, are admissible, then the consequential order(s) shall also be issued for grant of such admissible claims to the petitioner without any unnecessary further delay.

It is clarified that this Court has not gone into the merits of the claims raised on behalf of the petitioner in the present writ petition and the same is left to be decided by the competent authority, as referred to above, strictly in accordance with law.

The writ petition stands finally disposed of with the observations and directions made above. The I.A.No. 3760 of 2012 and I.A. No.3551 of 2013 shall also accordingly stand disposed of.

Arvind/-

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(Birendra Prasad Verma, J)