

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10445 of 2016

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Kamladitya Constructions Pvt. Ltd. through its authorized signatory Abhay Kumar Mishra, son of Late Chandrama Mishra, resident of Shankat Mochan Nagar, New Police Line, P.S. Nawada, District- Bhojpur, Bihar

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Engineer-in-Chief, (South), Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Dehri, District- Rohtas
4. The Superintending Engineer, Durgawati Construction Circle, Dehri, District- Rohtas.
5. The Executive Engineer, Durgawati Right Bank Canal Division, Chenari (Rohtas), District- Rohtas, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan

For the Respondent/s : Mr. Shailesh Kumar,, A.C. to G.P.5

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

2 26-09-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The dispute raised herein by the petitioner relates to the alleged illegal deduction of Rs.70,69,585/- from the 10th Running Account Bill of the petitioner on 27.03.2016 with a direction for refund/return of the amount and for consequential direction.

The stand of the petitioner is that changes have been made by the Executive Engineer in the 10th Running Account Bill dated 27.03.2016 by reducing the bill amount from Rs.11,50,88,323/- to Rs.10,80,18,738/- which, according to the

learned counsel for the petitioner, was done without the consent of the petitioner.

The stand of the respondent is that mistakenly the petitioner was paid some excess amount, which matter was discussed with the representative of the petitioner, namely, Shyam Lal Choudhary and accordingly, the adjustment has been made. In support of the same, reliance has been placed upon the signature of the said Shyam Lal Choudhary on the 10th Running Bill Account as also on the measurement book as well as on the abstract of cost in token of his consent for adjustment of the said payment.

Learned counsel for the petitioner submits that no consent has been given by said Shyam Lal Choudhary for adjustment of the excess bill, as there is no signature of the representative of the petitioner on the cutting made, rather there is a signature on one of the pages but the same has been changed by the Executive Engineer himself.

It is evident that disputed issue of fact has arisen between the parties which cannot be considered by this Court in its writ jurisdiction. However, the petitioner cannot be deprived of its liberty to challenge the said action of the respondents which can only be challenged before the Bihar Public Works Contract

Arbitration Tribunal.

The matter is, accordingly, referred to the Bihar Public Works Contract Arbitration Tribunal for its decision. It is directed that both the parties shall appear before the Tribunal within a period of six weeks from today and thereafter the Tribunal shall decide the matter in accordance with law.

The writ application is disposed of with the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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