

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5053 of 2016

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M/s Kumar A. S. Construction, Ashok Nagar, Bhatt Bigha, Gaya through its Managing Partner Smt. Pramila Singh, Wife of Shri Anuj Kumar Singh, Resident of Mohalla- Ashok Nagar, Bhatt Bigha, Gaya, Police Station-Rampur, District- Gaya.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Road Construction Department, Secretariat Building, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Secretariat Building, Government of Bihar, Patna.
4. The Chief Engineer, National Highway, Road Construction Department (Up-bhag), Government of Bihar, Patna.
5. The Superintending Engineer, National Highway Circle, Dehri-on-Sone, District- Rohtas at Sasaram.
6. The Executive Engineer, National Highway Division, Gaya, District- Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. P.K.Shahi, Sr. Advocate
Mr. Ashok Kumar Dubey, Advocate
Smt. Mamta Vijya, Advocate

For the Respondent/s : Mr. Shashi Shekhar Kumar Prasad, AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

3 05-09-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

The matter has come up under the heading 'For Orders On Petition' on the petition filed by the petitioner for stay of the orders impugned in the writ application. The pleadings of the parties are complete and the matter has therefore been heard on its merits for disposal at the stage of



admission itself.

The petitioner seeks quashing of the letter dated 27.07.2015 issued by the Executive Engineer, National Highway Division, Gaya, respondent no. 6, with respect to the action taken against the petitioner under Clause 60 of the Condition of Contract and Clause 40 of the Contract Data of the agreement after terminating the contract agreement of the petitioner being SBD-01 of the year 2012-13 dated 14.03.2013 and for quashing the two letters dated 01.08.2015 revoking the Bank Guarantees and for other consequential reliefs.

Pursuant to a tender notice issued by the Road Construction Department on 12.11.2012, the petitioner participated in the bid and was selected as successful bidder for construction of part of National Highway Road No. 83 from K.M. 107 to 125 for IRQP Work. The petitioner was allotted the said work for which work order was issued on 24.01.2013 and the department entered into an agreement with the petitioner on 14.03.2013. The date of completion of the work was fixed by 23.07.2013.

The contention of the petitioner is that the stipulated period for completion of the work was not sufficient; as such, half of the work was completed by 1st week of November, 2013



and, thereafter, the progress in work got slowed down due to non-availability of stone chips on account of closure of Manpur Mines in Gaya district for which a request was made to the authorities to make available stone chips or allow him to procure the same from the State of Jharkhand and it was further requested to revise the estimated cost in her representation, but to no avail. To the dismay of the petitioner, the price of bitumen also escalated by near about 38 % during the agreement period itself. Due to escalation in the price of bitumen, the petitioner was going to suffer a loss of Rs. 148. 94 lacs in completion of works. A representation dated 27.01.2015 was made by the petitioner for extension of time for completion of work till 31.03.2015 before the Superintending Engineer, National Highway Circle, Dehri-on-Sone. Thereafter, without making any such extension, by the impugned office order dated 27.01.2015, the contract of the petitioner was terminated.

It is pointed out by the learned counsel for the petitioner that despite the aforesaid impediment admittedly, the petitioner had completed 62 % of the works as per letter no. 105 dated 30.01.2015 of the Executive Engineer, the National Highways Division, Gaya and recommended for the extension of the contract of the petitioner till 31.03.2015.



In the aforesaid backdrop, it is submitted that the respondents were completely unjustified in cancelling the contract of the petitioner. It is urged that in view of the fact that so many issues raised by the petitioner were practically accepted by the respondents, it was not open to the respondents to have terminated the work, and at best, on account of the further agreement of the NHAI with IL&FS Engineering Construction Company for the completion of the work for the 4-Laning of Patna-Gaya-Dobhi (Km. 0.00 to Km. 127.20) section of the National Highway 83, out of which 18 kilometers was under the earlier contract with the petitioner, it could have been at best a case of closure of contract and not termination, leading to serious civil consequences for the petitioner.

In the given facts and circumstances, it is urged that the case is squarely covered by the decision of this Court in the case of M/s. NCC Ltd. Vs. The State of Bihar & others: 2013(1) PLJR 952, in which it has been categorically held that if important issues are raised, including the fault of the State-respondents which had led to the delay, it is not open to the respondents to sit in judgment over the matter and pass adverse orders against the contractor, rather the same should be adjudicated by an independent adjudicatory authority, whether a



Court or an arbitral tribunal.

Learned counsel for the State submits that the action of the respondents is justified as the petitioner could not complete the work within the stipulated time by 23.07.2013, and therefore the question of payment on the ground of substantial progress does not arise. It is further submitted that the other issues raised by the petitioner have also been properly discussed in the impugned order.

Upon consideration of the facts and circumstances of this case and the submissions of the learned counsels for the parties, this Court is of the view that the impugned order dated 27.07.2015 is in conflict with the stand of the same authority namely, the Executive Engineer, National Highways Division, Gaya, in his letter dated 30.01.2015 recommending for extension of time. The said letter dated 30.01.2015 brings up the correct position as it shows that aspect of the matter which the petitioner was insisting upon and it is difficult to accept the entirely contrary view expressed in the impugned order dated 27.07.2015.

In view of the aforesaid position, it is a clear case where the State-respondents ought not to have themselves passed adverse orders when the action of the State-respondents



themselves like closing of mine, etc. and other factors had led to the present situation.

In the aforesaid circumstances, the matter is referred to arbitration in view of the fact that there is an arbitration clause in the agreement under which one arbitrator each are to be appointed by the parties and the third arbitrator shall be State nominated Arbitrator.

Let the parties nominate their respective arbitrators and thereafter the State shall appoint the third Arbitrator. The arbitration shall thereafter proceed in accordance with the provisions of the Arbitration and Conciliation Act.

Until, the conclusion of the arbitration, unless directed to the contrary by the arbitral tribunal, the State-respondents shall not take any further coercive action against the petitioner.

(Ramesh Kumar Datta, J)

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