

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2434 of 2012

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M/s Interface Industrial Systems, a proprietorship firm having its office at 213-Ashoka Place, Exhibition Road, Patna through its proprietor Sri Hemant Kumar Das son of Sri Awadhesh Kumar Das, Resident of 504, White House, Block-A, Budha Marg, P.S. Kotwali, Town and District Patna

.... Petitioner

Versus

1. The Union of India through the Ministry of Urban Development Govt. of India, New Delhi through Its Secretary
2. The Central Public Works Department, Ranchi Central Electrical Division, Doranda Ranchi-834002
3. The Superintending Engineer (E) Patna Central Electrical Circle CPWD, 7th Floor, Indira Bhawan, West Boring Canal Road, Patna - 800001
4. The Executive Engineer (E) Ranchi Central Electrical Division, Doranda Ranchi-834002

.... Respondents

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Appearance:

For the Petitioner: Mr. Gautam Kejriwal
Mr. Zahid Hussain,
Mr. Mohit Agrawal
Mr. Rahul Srivastava
Ms. Aishwarya Riti, Advocates
For the Respondents: Mr. Awadesh Kumar Pandey, Advocate
Mr. Ravinder Kumar Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-10-2016

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for quashing of the letter dated 04.02.2011 issued vide reference no. 23(20)/R/PCEC /2011/09 by the respondent Superintending Engineer (E) Patna Central Electrical Circle CPWD, whereby compensation has been levied under Clause 2 of the agreement on account of delay caused by the



petitioner in executing the contract completely within the stipulated period; for directing the respondents to refund a sum of Rs. 2,99,355/- (Rupees Two Lacs Ninety Nine Thousand Three Hundred and Fifty Five Only) illegally deducted on account of compensation levied as aforesaid from the final bill of the petitioner; for directing the respondents to further pay the balance of the admitted dues to the tune of Rs. 3,73,074/- which has been withheld; and for connected reliefs.

3. Learned counsel for the petitioner submits that an amount of Rs. 2,99,355/- has illegally been withheld by the Superintending Engineer (respondent no. 3) in terms of the impugned order dated 04.02.2011 (Annexure-13) purportedly by way of compensation levied for delay of 4 months 53 days in completion of work by resorting to Clause 2 of the Agreement. It is submitted that pursuant to the show cause notice dated 02.09.2009, the petitioner filed its reply dated 03.09.2009 assigning various reasons in respect of non-completion of the work. It is further submitted that the Executive Engineer had also submitted his report dated 09.10.2009 received in the office of the Superintending Engineer on 03.11.2009, opining that a period of 180 days could be considered to be beyond the control of the petitioner owing to disturbances on various counts, such as non-availability of budget, work site being a high security zone and the General Elections in India. It is submitted that the impugned order dated 04.02.2011 has been passed more than a year thereafter, and

that too without giving reasons for not accepting the circumstances assigned for the delay. It is therefore submitted that the impugned order has been passed in a mechanical manner and is a non-speaking order without affording reasons for rejection of the show cause reply of the petitioner.

4. Learned counsel for the petitioner further submits that the amount withheld by way of performance guarantee is also refundable to the petitioner as admittedly the work in question has been completed and as such the amount of Rs. 3,73,074/- has been admitted to the extent of Rs. 1,73,750/- as evident from paragraph 8(i) of the counter affidavit filed on behalf of the respondents.

5. Learned counsel for the respondents appears and has been heard. It is submitted that the petitioner had accepted the final payment made by the respondents in full and final settlement to its dues and hence, the petitioner is not entitled to raise any claim for further payment.

6. Having heard the parties and on a careful consideration of the materials on record, this Court is of the view that as regards the impugned order dated 04.02.2011 determining the petitioner's liability to pay an amount of Rs. 2,99,355/- due to its delay in completion of the work, the same has been passed without assigning any reason for not accepting the plea of the petitioner as raised in its show cause reply. The mere observation therein that delay with regard to certain periods

falling from 21.11.2008 to 21.04.2009 and 01.05.2009 to 22.05.2009 was not justified without however giving reasons for concluding that the petitioner was responsible for the delay for that period, cannot be held to be sustainable and renders the impugned order in the nature of a non-speaking one.

7. In that view of the matter, the impugned order dated 04.02.2011 (Annexure-13) is hereby set aside with a direction to the Superintending Engineer (E), Patna Central Electrical Circle CPWD, 7th Floor, Indira Bhawan, West Boring Canal Road, Patna (respondent no. 3) to pass orders afresh in accordance with law after consideration of the petitioner's show cause reply and after grant of opportunity of hearing to the petitioner.

8. As regards the petitioner's claim for refund of the amount withheld on account of the performance guarantee not having been revalidated, it stands admitted in paragraph 8 of the counter affidavit along with Annexure-F that the amount on this account stood at Rs. 1,73,750/- and deducted from the final bill of the petitioner. Considering that the petitioner had finally completed the work in question, there would be little justification to continue retention of the amount deducted from the petitioner's bill for its failure to revalidate the performance guarantee during the period of the work. It is also well-settled that merely because the contractor has issued no dues certificate or given a full and final discharge receipt, it would not stand

in his way in raising a claim subsequently , in view of the decision of the Apex Court in *R.L. Kalathia and Company vs. State of Gujarat, (2011) 2 SCC 400*.

9. This Court is therefore of the view that the petitioner having completed the work finally would be entitled to refund of the amount deducted from its bill on account of its failure to revalidate the performance guarantee. The respondents are accordingly directed to refund the admitted amount of Rs. 1,73,750/- in the account of the petitioner within a period of six weeks from the date of receipt/production of a copy of this judgment.

10. The writ petition stands disposed of with the aforesaid observations and directions. The remaining reliefs mentioned in the writ petition are not pressed by learned counsel for the petitioner and are accordingly dismissed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	06.10.2016
Transmission Date	N.A