

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1579 of 2014

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1. Phular Construction Private Limited Through Umesh Kumar Singh S/O Sri Nand Kishore Singh Village - Khabra Near Railway Gumti No. 5, Maujhalia Aadarsh Nagar, Road No. 3, P.S. Sadar, District - Muzaffarpur

.... Petitioner/s

Versus

1. The Union Of India Through Chairman, Railway Board, New Delhi
2. The General Manager, East Central Railway, Hajipur (Vaishali), Bihar
3. Financial Advisor And Chief Account Officer (Con), Mahendru Ghat, Patna
4. The Chief Engineer (Con/East) E.C. Railway Mahendru Ghat, Patna
5. The Executive Engineer (Con.), East Central Railway, Hajipur (Vaishali), Bihar
6. The Deputy Chief Engineer (Con/3), East Central Railway, Hajipur (Vaishali)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Mohan Mishra, Adv.
For the Respondent/s : Mr. Bindhyachal Singh, Adv.
Mr. Manish Prakash, Adv.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date: 03-02-2016

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

2. The present writ petition has been filed for quashing the order of termination dated 31.05.2011 contained in Memo No. W/Con./815/HJP-3/CA-05/60 and also the order passed by Dy. Chief Engineer/Con/II/HJP, East Central Railway, Hajipur dated 28.06.2013 whereby and whereunder the respondents have terminated the contract and also withheld the amount of security money, performance guarantee; as well as to hold and declare that the non payment of security money and

withholding of performance guarantee by order dated 28.06.2013 is unconstitutional and arbitrary.

3. Learned counsel for the petitioner submits that the order of termination dated 31.05.2011 and so also the subsequent order of termination dated 28.06.2013 are wholly illegal for want of requisite notices contemplated in the standard General Conditions of Contract and more particularly in view of Clause 62(1) thereof.

4. Learned counsel for the respondent Railways appears and opposes the writ petition on grounds that the petitioner cannot be allowed to agitate the present grievance before this Court over again, and the writ petition is not maintainable. It is pointed out that the petitioner had earlier approached this Court in C.W.J.C. No. 2292 of 2012 which was disposed of in the following terms:-

" In the circumstances, this writ application is disposed of with a direction to the respondents to pay the admissible amount of the bill of the petitioner as per measurement in accordance with law as well as consider and pass orders in respect of payment of earnest money and security deposit positively within three months from the date of receipt/production of a copy of this order. If the authorities of the Railways intend to withhold any amount of the petitioner under any head, they shall intimate the petitioner about the same with specific reasons thereof within that very

period.”



5. Having heard the parties and on careful consideration of the materials on record, this Court is not inclined to interfere in the matter. As regards the order of termination dated 31.05.2011, the same was made subject matter of challenge in C.W.J.C. No. 2292 of 2012 aforesaid. A perusal of the order of this Court discloses that the relief sought with regard to termination of contract was not pressed and hence this Court fails to appreciate the petitioner's attempt in over again questioning the legality of the said termination order in the present writ petition. The petitioner is also questioning the order dated 28.06.2013 under some misconception as if the same were an order of termination. Such order merely records the fact of termination of the contract by the earlier order dated 31.05.2011, and proceeds to dispose of the matter relating to release of security deposit etc. pursuant to the order of this Court in C.W.J.C. No. 2292 of 2012.

6. As regards the issue relating to forfeiture of the security deposit and performance guarantee, after some arguments learned counsel for the petitioner seeks permission to withdraw the relief sought in the writ petition to that extent with liberty to approach such appropriate forum as may be available to it in accordance with law for redressal of grievances in this behalf.

7. Permission is accorded and the writ petition, in so far as it concerns the issue relating to forfeiture of security deposit and performance guarantee, stands dismissed with the aforesaid liberty.

(Vikash Jain, J)

Md. Ibrarul/-

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