

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1971 of 2013

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1. M/S Bright India Construction through its Partner Md Faizur Rab Son of Late Md Khalilur Rab Resident of Village - Hayaghat Bilashpur, P.S. - Hyaghat, District - Darbhanga

.... Petitioner/s

Versus

1. The Union of India through Chairman, Railway Board, New Delhi
2. The Divisional Railway Manager (Engineering), East Central Railway, Samastipur
3. The Assistant Divisional Railway Manager (Engineering), E.C. Railway, Samastipur
4. The Senior Divisional Engineer (Co-Ordination), East Central Railway, Samastipur
5. The Assistant Divisional Engineer-II, East Central Railway, Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha-3, Adv.

For the Respondent/s : Mr. Mahesh Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-02-2016

The petitioner has filed the writ petition seeking a direction to the respondent authorities of the railways to make payment of the pending bills for the work executed by him pursuant to an agreement entered in between the petitioner and the railways for construction of a RCC water tank of 50,000 gallons capacity at the Jhanjharpur Railway Station at an approximate value of Rs. 49,85,190/-. The copy of the agreement is present at Annexure-1. It is the complaint of the petitioner that while the work in question was being carried out that a complaint was filed against the petitioner of using substandard steel bars for construction of the water tank. Following the complaint that the work was directed to be stopped in midway with no further

instructions. The petitioner thus filed the present writ petition on 21.1.2013 seeking a direction to the respondents to make payment of the bills for the work already carried out.

A counter affidavit is filed on behalf of the railways and in which it is stated that a sum of Rs. 12,19,818/- has already been paid to the petitioner in the month of June, 2012 but since the petitioner had not submitted the particulars of the executed item that further payment has not been given. It is mentioned that the sample of the steel bars used by the petitioner was sent for testing in the National Test Laboratory, Kolkata, Salt Lake City, Kolkata and the samples have failed to meet the requirement of IS 1786-2008. It was further stated at paragraph 21 of the counter affidavit that despite such position if the petitioner is willing to complete the left over work by using standard quality material and files an application for extension in terms of Clause 17 of the General Conditions of Contract, 2008, then the payments would be made accordingly. An objection has also been raised by the respondents relying upon Clause 63 and 64 of the General Conditions of Contract which provides for settlement of dispute by way of arbitration.

In between the period some correspondences was entered in between the petitioner and the Divisional Railway Managing Engineer, Samastipur asking the petitioner to witness the final



measurement. According to the petitioner, the measurement took place in the presence of Senior Section Engineer-I, the Assistant Divisional Engineer and the petitioner but despite the measurement no further amount was released and in the meanwhile, an order has been passed by the Senior Divisional Engineer-I, Samastipur, dated 15/16.9.2015 whereby in exercise of powers vested under Clauses 61 and 62 of the General Conditions of Contract, the contract itself has been rescinded.

It is considering the contrasting stand of the respondent-Railways who while requiring the petitioner to complete the project, at the same time also proceeded to carry out final measurement and thereafter to cancel the contract itself, that the counsel for the railways was directed to clarify their stand and following which a supplementary counter affidavit has been filed by the respondents. Surprisingly even when admittedly payments have been made to the petitioner as accepted in the counter affidavit and even when the order of cancellation of contract present at Annexure-7 of the interlocutory application is not founded on any such ground of use of substandard materials and even while an offer is being made by the railways requiring the petitioner to complete the contract, that the balance payments for the work executed by the petitioner is being withheld on grounds of use of sub standard material which charge is being denied



by the petitioner who submits that the material has been used after being verified and cleared by the Site Incharge. Although Mr. Sunil Kumar Ravi learned counsel for the railway with reference to Annexure-G to the supplementary counter affidavit filed today has tried to submit that some steps have been taken by the railways for proceeding against the concerned personnel but that cannot be a ground to doubt the quality work of the petitioner for the material was used after being cleared by the departmental officials themselves. It is stated at the bar by Mr. Satish Chandra Jha, learned counsel for the petitioner that 90% of the work of the RCC tank stands completed except the roofing of the tank. Although the matter has remained pending since 3 years and counter affidavit and supplementary counter affidavit has been filed but there is nothing on record to support the alleged charge of use of sub standard material or any damage to the tank. In my opinion, once the materials used by the petitioner stands certified by the officers of the railway, he cannot be cornered on such charge. In fact there is again nothing on record to show whether any notice was served on the petitioner for using any sub standard materials .

In the circumstances discussed and considering that Clause 61 of the General Conditions of Contract itself mandates a service of notice on the contractor before any determination of contract which



admittedly has not been served on the petitioner, this Court is in no doubt that the order of cancellation of contract is de hors the very clauses of the General Condition of Contract which forms the basis of its issuance. On this limited account, the order of cancellation of contract passed by the Senior Divisional Engineer dated 15/16.7.2015 impugned at Anenxure-7 of the interlocutory application is set aside.

Since it is informed at the bar that substantial work has been completed by the petitioner involving public money and considering that the respondents themselves have engaged into series of correspondences requiring the petitioner to complete the work, I am of the opinion that the project requires to be taken to its logical conclusion and cannot be abandoned midway. The respondent Senior Divisional Railway Engineer-I, Samastipur should give serious thought to the public interest involved and afford a reasonable opportunity to the petitioner to complete the work. It goes without saying that the specifications of the material to be used for the remaining construction should be spelt out to the petitioner who shall accordingly carry out the remaining work in terms of the contract.

A prayer for revision of the contractual rate is being prayed for by Mr. Jha for completion of the balance work as according to him the passage of time has resulted in escalation of material cost. In my opinion that the project stands delayed primarily on account of charge

of alleged use of sub standard materials by the petitioner and since the correspondences reflect that the respondents but for such charges, are willing to give opportunity to the petitioner to complete the project by using materials with standard specifications, the request made for revision of rate would merit consideration by the respondents, in the changed circumstances and due to passage of time.

Since measurement has been carried out, the admissible payment for the work done by the petitioner should be made to him within 3 months from the date of receipt/production of a copy of this order and within the same period a decision as regarding permission to the petitioner for completion of the work be also taken by the Senior Divisional Railway Engineer, 1, Samastipur.

The writ petition and the interlocutory applications are accordingly disposed of.

(Jyoti Saran, J)

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