

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5072 of 2016

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M/s Nandita Construction, a Proprietor Concern having its place of business at Ratana, P.O.: Bijauli, P.S.: Mufassil, District- Aurangabad through its Proprietor, Raju Kumar Singh, S/o Shri Harendra Kumar Singh, Resident of Ratanua, P.O.:Bijauli, P.S.: Mufassil, District Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Secretariat, Patna.
2. The Chief Engineer, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Aurangabad.
4. The Superintending Engineer, North Koyal Canal Circle, Aurangabad, District- Aurangabad.
5. The Executive Engineer, North Koyal Canal Division-I, Aurangabad, District- Aurangabad.
6. The Assistant Engineer, North Koyal Canal Sub- Division, Madanpur, Aurangabad, District- Aurangabad.
7. The Junior Engineer, North Koyal Canal Sub- Division, Madanpur, Aurangabad, District- Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Agrawal, Advocate
For the Respondent/s : Mr. Anil Kumar Sinha- GA9
Mr. K.Ravish, AC to GA-1

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 23-08-2016

I.A. No. 6755 of 2016:

The interlocutory application has been filed for amendment in the relief portion of the writ application so as to quash the letters dated 26.2.2016 and 17.5.2016 issued by the Executive Engineer, North Koyal Canal Division No.1, Aurangabad by which the petitioner has been threatened for rescinding of the

contract, encashment of the security deposit and for blacklisting of the petitioner.

On a consideration of the facts and circumstances of the case, the prayer for amendment is allowed.

I.A. No. 6755 of 2016 is, accordingly, allowed.

Heard learned counsel for the petitioner and learned Government Advocate No. 1 for the State.

The writ application has been filed seeking quashing of the letters dated 16.2.2016 and 17.5.2016 issued by the Executive Engineer, North Koyal Canal Division No.1, Aurangabad, Respondent No.5 by which the petitioner has been threatened for rescinding of the contract and also for encashment of the security deposit and for blacklisting of the petitioner, and further, for other consequential directions.

In short the case of the petitioner is that he was given a contract for bed cleaning for de-silting of North Koyal main canal as also for repair work at two points within the same. It is submitted that while executing the work, it was found that the depth that was estimated was much more than what had been stated in the estimate and the same has increased the scope of work to a substantial extent which aspect of the matter is also admitted by a Five-Member Committee headed by the Engineer-in-Chief(Central), Water



Resources Department and which included two Chief Engineers, a Superintending Engineer and the Executive Engineer concerned and accordingly, due to increase in the different heads of contracted work and for taking action in that regard, a direction has also been issued to the Chief Engineer. Further, it is the stand of the petitioner that instead of taking any further action in that regard the petitioner has been issued the aforesaid show cause notice which is completely mala fide and contrary to the fact prevailing on the ground.

Learned Government Advocate No. 1, on the other hand, submits that the petitioner did not even take up the repair work which was connected with the cleaning work. The said statement does not appear to be correct in view of the scope of the work given.

Moreover, the main stand of the petitioner is that the matter is squarely covered by the decision of this Court in the case of M/s. NCC Ltd. Vs. The State of Bihar & Ors.: 2013(1) PLJR 952 in which it was held that where the allegations are that the officials of the State are equally responsible for the delay in the work then it is not open to the respondents to unilaterally decide the matter sitting in judgment over it, rather the same should be decided by an independent adjudicator, whether Court or Arbitral Tribunal.

In the above circumstances, since the matter involves various disputed questions which must be dealt with by

Arbitral Tribunal, it is referred to the Bihar Public Works Contract
Dispute Arbitration Tribunal, Patna.

In the above view of the matter, the writ application
is allowed and the impugned letters dated 16.2.2016 and 17.5.2016
are quashed.

Let the parties appear before the Tribunal with their
respective claims within a period of four weeks from today.

(Ramesh Kumar Datta, J)

S.Pandey/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.09.2016
Transmission Date	