

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1194 of 2017

IN
Miscellaneous Jurisdiction Case No. 1235 of 2017

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M/s Shri Laxmipati Balajee Construction, a partnership firm constituted under the Indian Partnership Act, having its office at MIG 290, Kankarbagh, Patna-800008, through its working partner, Anup Kumar

.... Appellant/s

Versus

1. The State of Bihar
2. The Superintendent Engineer, Rural Works Department, Works Division Masaurhi, Patna
3. The Executive Engineer, Rural Works Department, Works Division Masaurhi, Patna
4. The Assistant Engineer, Rural Works Department, Works Division Masaurhi, Patna

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Gautam Kejriwal, Advocate
Mr. Atal Bihari Pandey, Advocate

For the Respondent/s : Mr. Pushkar Narain Shahi, AAG-6

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-09-2017

As both these appeals under Clause 10 of the Letters Patent arise out of orders passed in CWJC No. 16152 of 2015 on 29.03.2017 and on 02.08.2017 in MJC No. 1235 of 2017 arising out of the same CWJC, we propose to dispose of both these appeals by this common order.

Petitioner was awarded a contract for execution of work relating to construction and maintenance of Road No. T09 under *Prime Minister Gramin Sadak Yojna*. In the execution of the said contract certain dispute arose by virtue of recession of the contract



under Clause 52.2 (a)(c)(e) and (h) of the agreement which included forfeiture of the security amount and the earnest money. Aggrieved with the same, the writ petition in question was filed. However, in the writ petition one of the ground was that the work could not be executed in time due to the fact that there was encroachment in the area in question and the same was not handed over to the petitioner in time.

Be that as it may, the learned writ Court went into various aspects of the matter and in the facts and circumstances of the case, found that with regard to the contract in question a fresh tender has been issued by the State Government on 16.01.2017 and which was also indicated by the petitioner by filing a supplementary affidavit in the writ petition on 08.01.2017. In the writ petition, petitioner submitted that he was willing to do the work if six months time is granted to conclude the work. Taking note of aforesaid, the learned Writ Court disposed of the matter in the following manner:-

“In the circumstances so discussed and in case the 4th tender issued by the respondents dated 16.1.2017, a copy of which has been placed on record vide Annexure-16 to the supplementary affidavit filed on behalf of the petitioner on 18.1.2017, has drawn in favour of any willing applicant, there can be no interference therewith and the quest of the petitioner would come to an end but in case even the 4th round



exercise has not given a fruitful result in favour of the department then in my opinion and as requested by the petitioner in paragraph 2 of the affidavit filed on 9.2.2016 asking for grant of six months time for completion of the pending work and even though the respondents have objected to such request but in the larger interest of the matter and considering that substantial money has been invested in the work, I am of the opinion that the petitioner be granted six months time for completion of the work and until such time, the order of cancellation impugned at Annexure-8 to the writ petition/ Annexure-G to the counter affidavit, may be kept in abeyance. Should the petitioner fail in completion of the work in six months time as per his undertaking before this Court, the interim protection granted to the petitioner shall stand recalled and the respondents more particularly, the respondent no.3 shall be at liberty to enforce the order put to challenge herein.

This Court, in the peculiar circumstances of the case as discussed, would thus direct the respondent No.3 i.e. the Executive Engineer, Rural Works Department that in case the 4th round exercise of inviting tender for completion of the work in question through the notice inviting tender present at Annexure-16 to the supplementary affidavit filed on 18.1.2017 has not resulted in award of tender in favour of any applicant, then the petitioner as per his undertaking before this Court, be allowed to complete



the work within a period of six months, as per the terms and conditions and the rate entered into between the parties vide Annexure-1 and in case the petitioner would fail in his undertaking, the respondents shall be within their jurisdiction to proceed for enforcement of the order dated 9.12.2014 put to question before this court, vide Annexure-8 to the writ petition/Annexure-G to the counter affidavit, but until such time, keep the said order in abeyance.

The writ petition is disposed of subject to the conditions stipulated above.”

In the meanwhile, on the ground that the fresh tender has gone in favour of another person, and, therefore, the judgment needs modification, the application for modification bearing MJC No. 1235 of 2017 was filed and the learned Writ Court held that the application for modification is misconceived and did not make any indulgence into the matter. Accordingly, now this appeal has been filed challenging both the orders under Clause-10 of the Letters Patent.

Having heard Shri Gautam Kejriwal, learned counsel for the appellant and Shri Patanjali Rishi, learned assisting counsel to AAG-6 for the respondents, we are of the considered view that once the contract has been rescinded and action as provided in the contract was initiated, the learned writ Court instead of going into various aspects canvassed before it, should have relegated the parties, particularly the applicant, to take recourse to the remedy under the



provisions of the Bihar Public Work Contract Disputes Arbitration Tribunal Act, 2008 (hereinafter referred as the 'Act').

Be that as it may, it seems that the learned Writ Court with an intention to grant one more opportunity to the petitioner to complete the work, passed the order as is reproduced hereinabove. But now once we are apprised of the fact that the contract has already been awarded to another person in the fresh tendering process, the scheme indicated by the learned Writ Court, does not seem workable. Now the only option available to the petitioner is to challenge the decision of rescinding of the contract by taking recourse of the remedy under the provisions of the "Act". In case the petitioner has any other grievance with regard to certification proceeding initiated, he may challenge the certification by a separate petition. That apart, in case the remedy available for arbitration under the State Act is not available, petitioner may take recourse to the remedies including the remedy under the Arbitration and Conciliation Act of 1980. The observations made by the learned Writ Court with regard to default on the part of the petitioner in executing the work, especially the order passed in M.J.C. are left open to be considered and decided by the Arbitrator. The arbitrator to decide the matter, in accordance with law under the Arbitration and Conciliation Act of 1980 without being influenced by the consideration and observations on merits of the



dispute, if any, made in the impugned order.

With the observations, the application is disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

S.Sb/-

AFR/NAFR	
CAV DATE	
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