

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17167 of 2016

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M/s Vishal BUILTECH (India) Pvt. Ltd., a company incorporated under the Indian Companies Act, 1956 having its Registered Office at LG-1 & 2, Majestic Plaza, West Boring Canal Road, Patna-1, through its Director Sri Tarun Kumar son of Sri Kartik Kumar, resident of Majestic Plaza, West Boring Canal Road, Patna-1.

.... Petitioner

Versus

1. The State of Bihar, through the Secretary, Road Construction Department, Govt. of Bihar Vishweshraiya Bhawan, Bailey Road, Patna.
2. The Secretary, Road Construction Department, Govt. of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna.
3. The Joint Secretary (Technical Cell), Road Construction Department, Govt. of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna.
4. The Engineer-in-Chief, Road Construction Department, Govt. of Bihar Vishweshraiya Bhawan, Bailey Road, Patna.
5. The Chief Engineer (Traffic), North Bihar Wing, Road Construction Department, Government of Bihar, Darbhanga.
6. The Superintending Engineer, Road Construction Department, Road Circle, Saharsa.
7. The Executive Engineer, Road Construction Department, Road Division, Supaul.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Y.V. Giri, Sr. Advocate. Mr. Raj Kishore Prasad, Advocate.
For the Respondents	:	Mr. Amit Prakash, GA-13 Mr. Ravi Bhardhwaj, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 21-11-2017

The present writ petition has been filed for quashing the order communicated by the respondent Engineer-in-Chief vide his letter no. 6343 dated 20.09.2016 (as contained in Annexure-25), whereby and whereunder the petitioner has been informed that Clause-10CC of the Agreement No. 05 SBD/2009-10, which is in the format of Standard Bidding Document, will not apply in the case of the



petitioner in view of Clause-4.1.2 of the Office Order No. 95 issued vide Memo No. 3505 dated 21.04.2015 as enclosed with the said letter.

2. Mr. Amit Prakash, learned counsel for the respondents, at the very outset, raises a preliminary objection regarding the maintainability of the writ petition submitting that the petitioner has alternative remedy before the Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna for redressal of its grievances.

3. Mr. Y.V. Giri, learned Senior counsel appearing on behalf of the petitioner, submits that the present case involves a challenge to the impugned order which is arbitrary and does not involve any disputed question of fact.

4. This Court is of the view that alternative remedy is not an absolute bar and judicial review may be available in matters involving arbitrariness and where the facts are undisputed.

5. Mr. Y.V. Giri raises a short submission to assail the impugned order dated 22.09.2016 (Annexure-25), according to which Clause 10CC of the Agreement providing for payment on account of a revision in price or wages after receipt of tender would not be applicable in terms of a Departmental Office Order as contained in Memo No. 3505 dated 21.04.2015. It is submitted that it is not in dispute that the entire work had been completed by the petitioner well before issuance of the aforesaid office order dated 21.04.2015 and reliance on the same as the solitary ground for denying the benefit of



price revision is wholly arbitrary and illegal. In other words, Clause-10CC was operative during the currency of the contract and, could not unilaterally be altered by the respondents to take effect retrospectively after conclusion of the contract.

6. Learned counsel for the respondents, on the other hand, submits that the benefit of price escalation under Clause-10CC was not applicable in terms of the work carried out beyond the stipulated time for reasons attributable to the contractor.

7. Having heard learned counsel for the parties and on consideration of the materials on record, this Court finds merit in the writ petition. It is not in dispute that Clause-10CC was in operation during the entire duration of the contract until the work was completed and the contract came to an end. The benefit of Clause-10CC as claimed by the petitioner is sought to be withdrawn retrospectively in terms of the office order dated 21.04.2015 which came to be issued after completion of the work by providing that Clause-10CC would not be applicable. Apart from the illegality of such action on the part of the respondents, it is significant that learned counsel for the respondents has sought to rely on Clause-10CC itself to submit that the petitioner would not be entitled for price escalation inasmuch as the work had been carried out beyond the stipulated time for reasons attributable to the contractor. Such submission of the respondents based on the content of Clause 10CC is thus in conflict with the Office Order dated



21.04.2015 relied upon by the respondents, according to which Clause 10CC is not applicable at all.

8. In the above view of the matter, the impugned order dated 22.09.2016 (Annexure-25) is hereby quashed and the matter is remitted to the Principal Secretary, Road Construction Department, Government of Bihar, Patna to take a fresh decision on the representation of the petitioner dated 26.02.2015 (Annexure-24) filed in pursuance of the order of this Court dated 05.02.2015 in C.W.J.C. No. 2287 of 2015. The said representation shall be disposed of expeditiously and in any event preferably within a period of six weeks from the date of receipt/production, in accordance with law, of a copy of this judgment after grant of opportunity of hearing to the petitioner.

9. The writ petition stands allowed as above.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	24.11.2017
Transmission Date	N.A.

