

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12202 of 2016

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Amarpur Construction Co. Pvt. Ltd. a registered company having its place of business at Amarpur, P.S. - Amarpur, District - Banka through one of its Director namely Santosh Kumar Kanodia Son of Sri Sahdeo Kanodia Resident of Village - Amarpur, P.S. - Amarpur, District - Banka.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Rural Works, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Rural Works, Govt. of Bihar, Patna.
3. The Engineer in Chief, Department of Rural Works, Govt. of Bihar, Patna.
4. The Chief Engineer - 2, Department of Rural Works, Govt. of Bihar, Patna.
5. The Superintending Engineer, Department of Rural Works, Purnea Circle, Purnea.
6. The Executive Engineer, Rural Works Division, Katihar.
7. The Assistant Engineer, Rural Works Department, Korha Sub-Division, Katihar.
8. The Junior Engineer, Rural Works Department, Korha Sub-Division, Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv.

For the Respondent/s : Mr. Shashi Shekhar Pd. Sinha, AC to GA-6

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 05-05-2017

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

In the present case, the petitioner has sought following relief:-

"1(a) For issuance of a writ in the nature of certiorari for quashing of the office order no. 10 dt. 02.06.2016 issued by the respondent no.5;

(b) For a consequential direction upon the respondents for releasing payment of the extra work admittedly done by the petitioner pursuant to the agreement no.6 SBD of



2013-14;

- (c) *For a declaration that once the respondent no.6, 7 and 8 being the Incharge of the work site directed the petitioner to execute work not included in the agreement with an assurance of payment of such work, the petitioner was duty bound in terms of Clause 12 of the agreement to execute the same;*
- (d) *For a declaration that the petitioner being duly bound to comply the orders of the respondent Executive Engineer under Clause 12 of the SBD would attract charges of breach of contract in case of refusal to do the extra work and as such the impugned order rejecting claim for payment for technical reasons is unreasonable, arbitrary and unsustainable in the eye of law;*
- (e) *For a declaration that the extra work directed by the respondent no. 6, 7 and 8 in the site order book and done by the petitioner amounted to novation of the existing contract and the consequential execution of such work by the petitioner and issuance of work completion certificate dt. 28.01.2016 by the respondent no. 6, 7 and 8 confirms the formality of novation of such contract;*
- (f) *For a declaration that in the facts and circumstances of this case the withholding of the genuine bill amount of the petitioner by the respondents is violative of the fundamental rights guaranteed under article 14 of the Constitution of India;*
- (g) *For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."*

In the present case, the petitioner was allotted work for construction of 5X24.75 M Span High Level RCC Bridge Khanpur



Ghat in Korha Block under NABARD 4515 at the cost of Rs. 7,78,65,440/-.

The controversy, in the present case, is relating to the disputed question of fact which can only be decided after taking proper evidence and assessment of the records placed before the regular court or the authority.

In that view of the matter, as there is a provision in the agreement under Clause 25(i) & (ii) which stipulates that the dispute will be resolved through Arbitration under the Arbitration and Conciliation Act, 1996, this Court is not inclined to decide this case on merit and, thus, let the matter be referred to the Arbitrator, who will be obliged to examine the records, if necessary, will also take oral evidence from both side and will decide the case on merit.

Learned counsel for the petitioner has proposed two names of Hon'ble Retired Judges of this Court.

This Court appoints Mr. Justice R.K. Dutta, a former Judge of this Court, as a sole Arbitrator.

Let this order be communicated to Mr. Justice R.K. Dutta along with the records of this case.

Both the parties are directed to remain present on the date fixed.

The remuneration will be charged in terms of the



amended provision of the Arbitration Act.

This writ application is, accordingly, disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2017
Transmission Date	NA

