

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5892 of 2014

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Satyendra Kumar Construction Pvt. Ltd. Through Its Director Satyendra Kumar Son Of Sri Bhagwan Das Resident Of 202, Hira Enclave, New Dak Bunglow Road, P.S- Kotwali, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar, Through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Chief Engineer, Water Resources Department, Bhagalpur, Bihar.
3. The Superintending Engineer, Irrigation Division No. II, Jamui, Bihar.
4. The Superintending Engineer, Planning and Monitoring Division 3, Water Resources Department, Bihar, Patna.
5. The Executive Engineer, Water Ways Department, Sheikhpura, Bihar.
6. The Engineer in Chief (Central) Water Resources Department, Irrigation Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan
Mr. Chandan Kumar
For the State : Mr. Sunil Kr. Mandal, S.C.-3
Ms. Neelam Kumari, A.C. to S.C.-3

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

10 18-04-2017 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

2. The petitioner has filed the present writ application seeking an appropriate writ/direction for quashing the Letter No. 201 dated 04.03.2014 issued by the Respondent No. 3 whereby and whereunder the application for grant of price escalation in terms of Clause 10 CC of the Standard Bidding Document has been rejected without assigning any reason and without direction for resumption of the work immediately and also



for holding that the price escalation is admissible to the petitioner for the works already performed by him under Clause 10 CA of the Standard Bidding Document.

3. The petitioner had made a further prayer in I.A. No. 2872 of 2014 for amendment of the prayer in the writ application and for including Annexure-9 as part of the order impugned in this writ application. The said interlocutory application was taken up and the prayer for amendment was allowed vide order dated 07.04.2014. In the said interlocutory application, this Court had allowed the application for amendment of prayer and had further directed that until further orders, no coercive steps shall be taken against the petitioner and in case, the respondents intend to issue fresh tender in the matter, then the same shall not be at the risk and cost of the petitioner.

4. Learned counsel for the petitioner submits that the main issues to be determined in this writ application is with regard to the entitlement of the petitioner for obtaining payment of his contractual dues as stated in the contract entered into himself and the State in accordance with Clause 10 CC of the Standard Bidding Document.

5. Learned counsel for the petitioner submits that there was a provision in the said Clause that the contract price shall be



adjusted in accordance with increase or decrease in rates and the price of labour, materials, fuels and lubricants in accordance with the principles stated therein. The Clause 10 CC of the Standard Bidding Document reads thus:-

“CLAUSE 10 CC Payment due to Increase/Decrease in Price/Wages after receipt of Tender (Time of Completion more than 18 months).

Contract price shall be adjusted for increase or decrease in rates and price of labour, materials, fuels and lubricants in accordance with the following principles and procedures and as per formula given in the contract data :

(a) The price adjustment shall apply for the work done from the start date given in the contract data upto end of the initial intended completion date or extensions granted by the Engineer and shall not apply to the work carried out beyond the stipulated time for reasons attributable to the contractor.

(b) Following expressions and meanings are assigned to the work done during each month:

R = Total value of work done during the month. It would include the amount of secured advance granted, if any, during the month, less the amount of secured advance recovered, if any, during the month. It will exclude value for works executed under variations for which price adjustment will be worked separately based on the terms mutually agreed.

(c) To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of this or other Clauses in the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such other rises or fall in costs.

6. He further submits that the contract could not be completed in due time on account of the same had been rendered non-performable on account of the continuation of Land Acquisition Proceedings which remained inconclusive till date. He thus submits that delay, if any caused, was not at the hands of the petitioner, but due to circumstances beyond the control of the petitioner for which he is entitled to avail the Clause 10 CC of the agreement. He further submits that since he has



completed substantial part of the work assigned to him, he should now be paid as per Clause 10 CC which relates to payment of contract price after adjusting for decrease and increase in rates and price of labours, materials, fuels and lubricants.

7. It has been further submitted by learned counsel appearing on behalf of the petitioner that the petitioner having completed the work to a substantial extent which would have been completed, but for the hindrance caused on account of the Land Acquisition Proceedings, should not be saddled with the risk and cost clause as the same was not occasioned on account of any delay from his end, but because of delay in determination of the Land Acquisition Proceedings which was part of the issue in the contract allotted to the petitioner. He further submits that even though the Land Acquisition Proceedings have not been completed, the respondents have issued fresh tender in which the Risk and Cost Clause has been awarded and the same has been fixed on the petitioner.

8. Learned counsel for the petitioner further submits that in view of the said order passed by this Court on 07.04.2014, the respondents could not have saddled the risk and cost clause on his shoulders as there was specific direction not to do so vide the aforementioned interim order.



9. Accordingly, the petitioner prays that he may be paid for whatever work he has already conducted and he is willing to co-operate in any final measurements being conducted by the proper authorities of the department. He thus submits that after making final measurements, the petitioner's bills may be calculated and he may be paid after giving him the benefit of the Clause 10 CC of the Standard Bidding Document.

10. A detailed counter affidavit has been filed by the respondent-State in which they have clearly stated that the petitioner, as per the agreement entered into by him was not entitled to the benefit of Clause 10 CC and the same would be applicable only after he had entered into the agreement.

11. It has been submitted by the learned counsel that the petitioner was not entitled to either Clause 10 CA or Clause 10 CC, but was only bound by the Clause 10 C of the Standard Bidding Document. Thus, his claim is not tenable under law.

12. Learned counsel for the State however submits that in view of the fact that the Land Acquisition Proceedings have not been concluded, the authorities are willing to make payment of the petitioner's dues in accordance with the bidding documents and not standard Clause 10 CC as is being prayed for in the writ application. It has been submitted that the petitioner was only



entitled to the benefits of Clause 10 CA, but the contract period was extended and, therefore, at best, if at all eligible, the petitioner can get only the benefit of Clause 10 C and Clause 10 CA of the Standard Bidding Document. It is thus submitted by learned counsel for the State that any payment to the petitioner can be made only in accordance with the agreement arrived at between the parties and since there was no agreement, the petitioner cannot avail the provisions of Clause 10 CC of the Standard Bidding Document. The petitioner could be paid only as per the entitlement and the contract that he had entered into. He thus submits that the writ application is without any merit and the petitioner cannot be extended any further relief and payments have to be made only in accordance with the original agreement.

13. Learned counsel for the State further submits that any benefit of Clause 10 CC of the Standard Bidding Document can be extended in favour of the petitioner after the matter is considered and forwarded by the appropriate authority and placed before the State Cabinet. He submits that only after approval from the Cabinet, further payments can be released in favour of the petitioner.

14. Learned counsel appearing on behalf of the petitioner in response to the aforementioned submissions advanced by the



learned counsel for the State submits that the payments with regard to the part already concluded by him, have been received, but only to the extent as is admissible in the contract entered into him. He, however, submits that he has raised this plea for further payments under Clause 10 CC of the Standard Bidding Document on account of the fact that the contract period had been extended several times as stated in the documents. He further submits as per the provisions of the Clause 10 CC of the Standard Bidding Document that if the contract is advanced further then the concerned contractor can be entitled to payment under Clause 10 CC of the Standard Bidding Documents. It is under such circumstances alone that the petitioner is claiming further payments after due consideration of all facts and circumstances because of non-conclusion of Land Acquisition Proceedings the petitioner could not complete the contract, as awarded to him, within the time framed in the said bid document.

15. Having heard learned counsel for the petitioner and learned counsel appearing on behalf of the State and after due consideration of the pleadings of the parties, this Court comes to the finding that the contract period had been extended not on account of the petitioner's laches which led to non-conclusion of the work but on account of Land Acquisition Proceedings which



remained conclusive even as on date. It is only under such circumstances that the petitioner was praying for the payments as per the escalation Clause under Clause 10 CC of the Standard Bidding Document. It is, however, evident that if, at all, a fresh tender was issued, the saddling of Risk and Cost Clause on the petitioner is also in the teeth of the interim order passed by this Court.

16. Considering the interim order passed by this Court, no Risk and Cost Clause could be imposed on the petitioner as the contract had been rendered unperformable on account of the own fault of the respondents and not the present petitioner. Thus, this Court finds that the impugned actions of the Respondents are clearly illegal and arbitrary and holds that the Risk and Cost Clause cannot be saddled on the shoulder of the petitioner as stated in Anenxure-11 which is a letter from the Chief Engineer contained in Letter No. 197, Sheikhpura dated 03.04.2014 and Annexure-9 in which the petitioner has been informed that other than Clause 10 CC of the Standard Bidding Document no other claim is maintainable.

17. Thus, order dated 04.03.2014 contained in Annexure-9 and also the Letter No. 197, Sheikhpura dated 03.04.2014 (Annexure-11), being wholly arbitrary are set aside.



18. This Court, however, leaves it open to the State-respondents to place before the Cabinet for measurements of the works already concluded by the petitioner and further directs that the escalation clause which is being claimed by the petitioner be duly considered and awarded as absolute as the delay had occurred on account of circumstances which were attributable to the State authorities and not the present petitioner.

19. It is made clear that the authorities shall consider the claims of the petitioner and place the same before the State Cabinet at the earliest preferably within a period of three months from the date of presentation of a copy of this order and/or the filing of the representation by the petitioner.

20. The petitioner is also directed to co-operate with the State and participate in the measurements to be made so that the time frame as fixed by this Court is adhered.

21. In the result, this application is allowed with the aforementioned directions.

(Anjana Mishra, J)

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