

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9391 of 2013

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1. M/S Dhananjay Construction Pvt. Ltd. Through Its Managing Director,
East Gandhi Maidan, Jehanabad, Bihar

2. Vijay Narayan Singh S/O Sri Nand Deo Singh Managing Director, M/S
Dhananjay Construction Pvt. Ltd., Resident Of East Gandhi Maidan, Town,
P.S. & District:- Jehanabad, Bihar

.... Petitioner/s

Versus

1. The Union of India Through The Secretary, Ministry Of Railway, New
Delhi

2. The General Manager East Central Railway, Hajipur, Bihar

3. The Divisional Railway Manager, East Central Railway, Mugalsarai,
U.P.

4. The Senior Divisional Engineer (II), East Central Railway, Mugalsarai,
U.P.

5. The Assistant Divisional Engineer, East Central Railway, Gaya, Bihar

6. The Senior Section Engineer, Work (Special), East Central Railway,
Gaya, Bihar

7. The Assistant Engineer, East Central Railway, Gaya, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar

For the Railways : Mr. Anshuman Singh

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

9 11-09-2017 Heard learned counsel for the petitioner and learned counsel
appearing on behalf of the Railways.

The petitioner seeks to assail an order dated 29.12.2012
(Annexure-17) issued under the authority of the Senior Divisional
Engineer (II), East Central Railway, Mughal Sarai (U.P.) whereby
and whereunder the work agreement No. MGS/BT/Agt/1103/Sr.
DEN(II)/2009-10 dated 30.10.2009 assigned to the petitioner has
been terminated in violation of the principle of natural justice and
without giving any show-cause or any opportunity of hearing. The



petitioner has further prayed for quashing the fresh tender notice published in daily newspaper 'Hindustan' on 19.12.2012 (Annexure-18).

It is informed by the petitioner as well as the Respondents that the second tender notice requisition has since been taken and the work order issued in favour of subsequent tender. The work has also been executed and completed and, therefore, the prayer as made in that behalf is no longer relevant and has become infructuous. However, he prays that the petitioner's money which he had invested towards completion of the initial work done by him may be paid to him and the earnest money so deposited when he was granted the tender may also be refunded. The petitioner further prays that any amount which may be due to him on account of variation of work and also cost escalation may be determined and paid to him. He further prays that amounts which were detected from his previous bills, particularly the 11th on account bill, may also be considered and paid back to him.

Learned counsel appearing on behalf of the Railways submits that whatever may be the petitioner's grievance, the petitioner has a remedy under Clause 64 of the General Conditions of Contract (G.C.C.) Act. Thus without resorting to the provisions of the Arbitration Clause and without making any such effort, the



petitioner preferred to file the present writ application. He further submits that as per Clause 2 of the agreement, the performance of the aforesaid contractor, the Railway Administration was required to pay to the contractor at the rates and the manner as provided in the provisions and instruction made with terms and conditions of the contract. Moreover under Clause 3 one of the parties of the contract was given the liberty to deduct the amount as may be asserted in the manner as provided in the contract agreement.

Be that as it may, this Court is reluctant to go into the deeper issues involved in the case. However, since the petitioner has raised his grievance and the remedy of arbitration still remains available to him, it will be appropriate and in the interest of justice to revert the matter back to the authorities so that appropriate steps may be taken for considering the matter in the arbitration as per the arbitration clause available to the petitioner. The appropriate dates shall be fixed within a period of four weeks from the date of receipt/production of a copy of this order and it shall be open to the petitioner to raise all his grievances which include the refund of his earnest money, reconsideration of the deductions made on his account bills and also re-measurement and payments of bill which may be remaining to the petitioner.

With the aforementioned directions, the present writ



application stands disposed of.

(Anjana Mishra, J)

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