

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1255 of 2017

Arising out of

C.W.J.C. No. 5892 of 2014

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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.

... .. Appellant/s

Versus

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

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anjani Kumar, AAG-4

For the Respondent/s : Mr. Prabhat Ranjan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-01-2018

Delay of 111 days in filing of this appeal is condoned. I.A. No. 6619 of 2017 stands allowed and disposed of.

Having heard learned counsel for the parties, we find that in the writ petition in question the dispute pertained to the claim made by the petitioner, respondent herein, for grant of



escalation cost available under Clause 10CC of the General Terms and Conditions of the agreement.

The learned Writ Court has gone into various aspects of the matter, found that the delay in completion of the contract, which was for a period of 18 months, is attributable to the action of the State Government and, therefore, the escalation clause 10 CC would apply and granted relief to the petitioner.

Having heard learned counsel for the parties at length, we find that in doing so, the learned Writ Court has committed grave error which amounts to re-writing the agreement between the parties. In the agreement entered into between the parties there is a specific clause and terms of the agreement which excludes applicability of clause 10 CC to the work in question. Once by a specific agreement, application of clause 10 CC was excluded then by holding that the benefit of Section 10 CC, a general condition, shall be applicable to the petitioner in view of the delay in conclusion of the contract which was attributed to the State Government, in our considered view, allowing the writ petition and directing a mandamus was not permissible. This was beyond the scope and jurisdiction of the Writ Court under Article 226 of the Constitution. It amounts to compelling one of the unwilling parties to enter and accept a



term of the contract which did not form part of the original contract. All these issues should have been left to be considered by an appropriate dispute redressal system as was envisaged in the contract i.e. the arbitration clause. The learned Writ Court has in fact stepped into the shoes of the arbitrator and adjudicated the dispute as if it was exercising the jurisdiction of an arbitrator.

Taking note of all these facts, on this ground alone, this appeal is liable to be allowed. We allow the same, quash the order passed by the Writ Court on 18.04.2017 in C.W.J.C. No. 5892 of 2014 and dispose of the matter in the following manner:-

In case the petitioner raises a dispute before the appropriate arbitration tribunal constituted under the Arbitration and Conciliation Act or the State Act i.e. The Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 within a period of four weeks from today, the Arbitration Tribunal shall proceed to decide the matter in accordance with law. The petitioner may move an application seeking benefit under Section 9 of the State Act before the Arbitration Tribunal and the Tribunal shall proceed to decide the same in accordance with law. Till appropriate orders on the same are not passed by the



Tribunal, coercive action for recovery of the amount from the petitioner shall be kept in abeyance. Allowing of this appeal shall not come in the way of the petitioner in participating in the further tender process which has been issued by the department for the same work.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	24.01.2018
Transmission Date	

