

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8615 of 2014

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M/s ENARCH Consultant (Pvt.) Ltd., a company incorporated under the provisions of Companies Act, 1956 having its Corporate Office at B- 66, 2nd Floor, Sector- 63, NOIDA (U.P) through its Managing Director Rahul Gupta Son of Late Dr. J.P. Gupta Resident of E- 56, Sector- 41, P.S Sector- 39, NOIDA District Gautambudh Nagar 201301 (U.P)

... .. Petitioner/s

Versus

1. The Union of India, Ministry of Defense, Military Engineer Services, through the Engineer - in- Chief, E- in- Cs Branch, Integrated Hq. of MOD (Army), Kashmir House, Rajaji Marg, New Delhi.
2. The Chief Engineer, Central Command, having its Office at Head Quarters, Central Command, Lucknow
3. The Chief Engineer, Jabalpur Zone, Military Engineer Services, Post Box No. 84, Bhagat Marg, Jabalpur.
4. Project Manager, Project Cell, CCE (P) OTA, Military Engineer Services, Gaya.
5. The Garrison Engineer, Military Engineer Service, Gaya.
6. The Union of India, Ministry of Power, through the Secretary, Government of India, Shastri Bhawan, New Delhi

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Alok Kumar Agrawal Sushila Agarwal, Advocates
For the Respondent/s	:	Mr. Anjani Kumar Sharan, A.S.G.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date : 16-05-2018

Heard parties.

This application has been filed *inter alia* for grant of following reliefs:

“ i) For quashing the order of Termination order vide Letter No.752456/342/E8 dt. 14.3.2014 issued under the signature of Respondent Chief Construction Engineer, Officers Training Academy, Gaya contained in Annexure -23, as being wholly arbitrary, illegal and malafide;



ii) For a declaration that in terms of the Contract Manual the Respondent could not have passed the order for completing the balance work at the risk and cost of the Petitioner, as the same is not permissible in terms of Clause 11.11 of the same;

iii) For restraining the Respondents from proceeding further for completion of any contract with Risk & Cost against the Petitioner, as being wholly arbitrary and contrary the provisions of the Contract Manual;

iv) For a declaration that the impugned order of termination could not be a punitive measure as a consequence of any breach of contract by the petitioner and at best its effect could be of foreclosure of contract without any fallibility to either party till its determination by the award of the Arbitrator upon conclusion of the pending arbitration proceeding.

v.) For a declaration that the impugned unilateral order of termination of the contract of the petitioner by the Respondents even before adjudication of the breach by either party will not have the effect of disqualification of the petitioner in respect of any contract either for the purpose of same organization (MES) or any other organization;

vi) For restraining the Respondents from taking any other coercive steps against the Petitioner without conclusion and determination of the breach by the Arbitrator in the pending arbitration proceeding,



vi) For restraining the Respondents from not allowing the Petitioner to participate in any other tender due to the present dispute until its determination and disposal by the Arbitrator' and/or for any other relief(s) for which the Petitioner may be found entitled in the facts and circumstances of the present case.

The petitioner's case is that for a project of Rs.250 crores for construction of Officers Training Academy at Gaya by the respondents, the petitioner was appointed as project Consultant. However, later on, scope of work underwent several changes resulting in substantial increase in the cost to the actual extent of Rs.1148.32 crores but the respondents were of the view that the petitioner should complete the work on the same consultancy fee which was fixed for the original project report. It was resisted by the petitioner who ultimately invoked arbitration clause.

After six months of the petitioner's letter invoking Arbitration Clause, Mr. Sunil Chopra was appointed as Arbitrator who subsequently resigned on 28.03.2013. Thereafter, second Arbitrator Mr. S. K. Gupta was appointed on 18.04.2013. In the meantime, even when the arbitration was going on, as claimed by the writ petitioner, the respondents vide Annexure 21 issued notice threatening him to cancel the contract if the petitioner did



not accelerate the progress of work. Thereafter, on 14.03.2014, it is claimed by the petitioner that unilaterally the order of termination of contract was passed by the respondent-authority vide Annexure 23. It was observed therein that the contract agreement will be completed through other agency at the risk and cost of the petitioner. Petitioner approached the Arbitrator for staying the operation of termination order vide Annexure 24. Thereafter, fresh tender was issued for execution of contract. Then the present writ petition came to be filed by the writ petitioner in which order was passed by a Co-ordinate Bench of this Court on 16.05.2014 granting leave to the learned Assistant Solicitor General to file counter affidavit and by way of interim measure, it was ordered as under:

“Until further orders, the impugned order dated 14.3.2014 shall remain stayed to the extent that it treats the contract as cancelled on account of the fault of the petitioner and directs it to be got completed by other agency at the risk and cost of the petitioner.

This Court makes it clear that the respondents can proceed with a fresh tender in the matter but not at the risk and cost of the petitioner or treating the petitioner as a defaulter or having been in breach of the contract.”

The Arbitrator Mr. S. K. Gupta sought enlargement of time upto 31.12.2014 vide Annexure 27. Petitioner consented



to that. However, since the respondents did not agree for enlargement of time, the said Arbitrator resigned. Thereafter, third Arbitrator Mr. K. K. Gupta was appointed by the Respondent. When he passed order on 24.08.2015 to the effect that, if the writ petitioner fails to appear before him on 15.09.2015, he would proceed *ex parte* then an order came to be passed by this Court staying the proceeding before the Arbitrator till further order. However, the respondents were given liberty, in view of the objection raised by the writ petitioner against the existing arbitrator, that they can appoint any other Arbitrator, if they so desire.

At the time of hearing on 15.05.2018, when this Court made a query as to whether an Arbitrator should be appointed and the dispute should be referred to the Arbitrator by this Court, learned Assistant Solicitor General submitted that if the Court orders for that then the respondents would have no objection if a retired Judge of Hon'ble Supreme Court is appointed. Learned counsel for the petitioner also agreed to that.

Today, at the time of hearing, on consent given by the parties, this Court would appoint Hon'ble Mr. Justice C. K. Prasad, Former Judge of Supreme Court as an Arbitrator upon consent being given by him. The place of sitting would be



preferably at Patna. However, different place of sitting may also be chosen by the learned Arbitrator in consultation with the parties, if he so desires. Learned counsel for the parties have given their consent for the above.

Accordingly, the entire matter which was already referred to the Arbitrator along with the issue of termination of contract would form part of such proceeding.

The interim arrangement made vide order dated 16.05.2014 shall continue till any further order is passed by the learned Arbitrator in that regard.

This order has been passed on the consent having been given by learned counsel for the parties.

This disposes of the writ petition.

(Dr. Ravi Ranjan, J)

Spd/-Sanjay

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.06.2018
Transmission Date	NA

