

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15064 of 2010

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S.P. Malik & Co. Pvt. Ltd., a private limited company having its registered office at 34A, Metcalf Street, 4th Floor, Kolkata-700 013 through its Director Jagmohan Kapoor, son of Late S.P. Kapoor

.... Petitioner

Versus

1. East Central Railway, Hajipur, District Vaishali through its General Manager
2. The General Manager, East Central Railway, Hajipur, District - Vaishali
3. The Chief Administrative Officer (Construction), East Central Railway, Mahendru Ghat, Patna, District - Patna
4. The Chief Engineer/Con/N.E., East Central Railway, Mahendru Ghat, Patna, District - Patna
5. The Deputy Chief Engineer/Construction/I, East Central Railway, Hajipur
6. Executive Engineer/Con, East Central Railway, Hajipur
7. Bridge Inspector (BRI)/Con/SPJ, East Central Railway, Samastipur
8. Assistant Engineer (AEN/Con/MFP), East Central Railway, Hajipur

.... Respondents

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Appearance :

For the Petitioner : Mr. Raju Giri, Advocate

For the Respondents : Mr. Devendra Kr. Sinha, Sr. Advocate
Mr. Bijoy Kr. Sinha,
Mr. Bindhayachal Singh, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 12-04-2018

The present writ petition has been filed for the following
reliefs –

“(i) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to make payments of Rs. 1,04,48,132.20 i.e. the escalated price incurred in relation to supply of steel, labour, materials, fuel etc. by the petitioner company while completing the contract work of “fabrication, supplying and erection/launching of 35.5m welded open web steel girder for bridge no. 12, 23 and 31 in connection with construction of new line between



Muzaffarpur-Sitamarhi section” pursuant to agreement bearing no. ECR/CAO/Con/WT/384 dated 29.10.2007, which the petitioner has calculated on the basis of, “Railways Standard Price Variation Formula”, as enumerated under Clause 34D of the Conditions of Tender and Instruction to Tenderer(s) (Chapter-III of the Agreement).

(ii) To issue an appropriate writ/order/direction, holding that Clause 34D of Conditions of Tender and Instruction to Tenderer(s) (Chapter-III of the Agreement) is applicable to the petitioner’s case as the contract got extended under Clause 17A(ii) of the GCC-2001 (letter of acceptance) was issued on 21.8.2007 and the contract work got completed on 31.12.2009.

(iii) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to make payment of Rs. 37,86,463.00 towards interest which the petitioner had to bear on the capital borrowed by him from Central Bank of India and others to complete the aforesaid contract, due to failure of respondent Railways to grant secure advance, which in terms of Clause 36.1 of the Conditions of Tender and Instruction to Tenderer(s) (Chapter-III of the Agreement) they were obliged to grant.

(iv) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to make payments of Rs. 16,22,205.00 with interest to the petitioner, which the petitioner had to bear towards extra establishment cost at site due to prolongation of contract beyond the original



stipulated date of completion of contract.

(v) To further issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to make payments of Rs. 26,94,510.00 with interest which the petitioner company had to bear towards extra cost of equipments and vehicle hire charges due to prolonged contract period from 21.6.08 to 31.12.09.

(vi) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to refund earnest money and security deposit amounting to Rs. 37,41,507.00 with statutory interest.

(vii) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to make payments of Rs. 10,35,299.00 with statutory interest to the petitioner, which is the admitted left over payment in terms of the final bill prepared on the basis of the measurement recorded by the Engineer of the Railway.

Or

Alternatively may appoint an Arbitrator to adjudicate reliefs no. (i) to (iv) and may further direct the arbitration to be completed within period of four months from the date of appointment of an Arbitrator.

(viii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case."

2. At the very outset, learned counsel, Mr. Raju Giri, appearing on behalf of the petitioner states on instructions that the petitioner would be invoking arbitration clause as touched upon in the



alternative prayer no. (vii) of the writ petition. In that view of the matter, the other reliefs sought in the present writ petition need not be pressed.

3. Mr. Devendra Kumar Sinha, learned senior counsel for the respondent-Railway appears and has been heard.

4. Having regard to the nature of the prayer of the petitioner, the writ petition stands dismissed with liberty to the petitioner to invoke the arbitration clause of the relevant Agreement for redressal of its grievances.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14.04.2018
Transmission Date	N.A.

