

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.551 of 2018

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M/s Siemens Construction Corporation (a Partnership Firm) through its Managing Partner, Mr. Rakesh Ranjan, B-29, Abhiyanta Nagar, Ashiyana- Digha Road, Near Post Office, Patna-25, a permanent Head Office- House No. 59, Road No. 11 Hill View Colony Dimna Mango Jamshedpur, Jharkhand

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary cum Appellate Authority, Road Construction Department, Govt. of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief, Road Construction Department, Govt. of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna.
3. The Chief Engineer, N.H. Wings, Bihar, Patna, Vishweshraiya Bhawan, Bailey Road, Patna.
4. The Executive Engineer, Road Construction Department, N.H. Division, Gulzarbag, Patna.

.... Respondents

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Appearance :

For the Petitioner	: Mr. Y.V. Giri, Sr. Advocate Mr. S.B. Singh Mr. Sumit Kumar Jha Mr. Rajat Kumar Tiwary, Advocates.
For the Respondents	: Mr. Raj ballabh Pd. Yadav, AAG-11

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 26-06-2018

I.A. No. 3376 of 2018

This interlocutory application has been filed with the prayer for amendment of the relevant portion of the prayer in the writ petition by adding the following prayer –

“To issue a writ of certiorari for quashing the order of blacklisting as contained in Annexure-11 of the hearing of the present writ application be further pleased to quash the order



as contained in Annexure-11."

2. Having regard to the nature of the prayer, the interlocutory application is allowed and the same shall be treated as forming part of the writ petition.

C.W.J.C. No. 551 of 2018

3. The main writ petition has been filed for the following reliefs –

"(i) For quashing the order contained in letter no. 7132 (E) dated 15.12.2017 issued by Engineer-in-Chief, Cum Additional Commissioner Cum Special Secretary, RCD, Bihar, Patna whereby he has stated that the appeal filed by the petitioner has been rejected as per legal opinion , although the proper appeal was filed by the petitioner before the Appellate authority cum Principle Secretary, RCD, who was only competent to entertain and consider the appeal but unfortunately the Engineer-In-Chief has rejected the prayer illegally for which he had no jurisdiction, hence the aforesaid order may be set aside on the ground of jurisdiction, and further be pleased to quash the order contained in letter no. 686 dated 06.06.2017 issued by Executive Engineer, RCD, N.H. Division, Gulzarbag, Patna (respondent No. 4) by which he has rescinded the work agreement No. SBD 23 of 12-13 at the instance of the said Chief Engineer, RCD without considering the reply of petitioner, overlooking that it was the same respondents who have earlier rescinded the contract and after being satisfied with reply of the petitioner had recalled rescind order vide order dated 17.06.2016 and the reason which was earlier assigned by the petitioner for the delay of the completion of work was still subsisting, but ignoring the same



once again they have rescinded the contract agreement, which smells malafide, and bias, hence the same requires to be quashed.

(ii) For declaring impugned rescind order dated 06.06.2017 is bad in law as without any fault of the petitioner the agreement cannot be terminated, particularly when the petitioner has completed more than 90% work and delay was caused due to lackness of the respondents by not removing local hurdles which was well narrated in the writ application as well as appeal, and only for the said balance work i.e., about 10%, that too left due none providing clear site for construction of culverts and one bridge, which is well known to the respondents, but instead of resolving the local hurdles/dispute by respondents they have rescinded the agreement, which is not sustainable in law as to provide clear site is the responsibility of the respondent department, for which the petitioner cannot be punished.

(iii) For directing the respondent to foreclose the contract allotted to the petitioner, as if the work is awarded to any contractor in the meanwhile, and to restrain the respondent from executing the balance work at the risk and cost of petitioner firm, when he was always ready to finish the work subject to clear site be given by the respondents, in which they failed, hence there is no justification to award the tender for the rest of work at the risk and cost of the petitioner.

(iv) For declaring the impugned order to be against the principles of natural justice, as both the orders are passed without considering reply/representation of the petitioner firm.

(v) For quashing the order of rescind and its consequential order if any, as despite the appeal filed and which was



pending, they have passed the said order overlooking that Principles of Lispendance may apply, and also when in appeal and stay petition the appellate authority demanded the fresh work programme from petitioner for construction of rest of the works which he submitted at the earlier quoted rate, and then he has advised the petitioner to start the work in the presence of the respondent Ex. Engineer, but the work agreement was rescinded which is surprising and no order on appeal was passed by the Principal Secretary rather the Engineer-in-Chief had rejected the appeal without discussing a single word on appeal or its grounds and without even having such jurisdiction. As he could have communicated the order if any passed by the respondent no. 1, but he has no jurisdiction to reject the appeal as per legal opinion and as per direction saying that it is not maintainable.

(vi). For directing the respondents concerned and other concerned to cancel the new work order till disposal of the case.

(vii) For granting any other relief/s to the petitioner firm to allow to complete the rest work at quoted rate for which the petitioner be found entitled in the eye of law."

4. At the very outset, this Court takes note that the petitioner had adequate remedy before the Bihar Public Works Contracts Disputes Arbitration Tribunal, particularly in view of the questions of fact involved for redressal of its all the grievances raised in the present writ petition.

5. In the above view of the matter, the writ petition is



disposed of granting liberty to the petitioner to approach the Arbitration Tribunal aforesaid. The petitioner undertakes to approach the Arbitration Tribunal within a period of one month from today, in which event, the Arbitration Tribunal would have regard to the present proceeding being pursued by the petitioner, while considering any issue relating to condonation of delay, if applicable

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.07.2018
Transmission Date	N.A.

