

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3339 of 2019

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M/s Alectra Construction Ltd Through its Director aged about 38 years, S/o-
Anil Kumar Singh, Ward no 3, new Colony, Dharampur, Dist- Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar The Principal Secretary, Road Construction Department,
Bihar, Bishweshariaya Bhavan, Bailey Road, Patna
2. The Engineer -in-Chief, Cum Add. Commissioner cum Special
Secretary, Road construction Department, Bihar Bishweshraiya
Bhavan, Bailey Road, Patna.
3. The Executive Engineer R.C.D. Road Division No.-1, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Usha Kumari, Advocate
For the Respondent/s : Mr. AC to GP 22

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 01-07-2019 The petitioner in this case is aggrieved and

dissatisfied with the order as contained in impugned order No.

5998 (E) dated 24.10.2017 passed by the Principal Secretary,

Road Construction Department, Government of Bihar as

communicated to the petitioner under the signature of the

Engineer-in-Chief- cum – Additional Commissioner -cum-

Special Secretary, Road Construction Department, Patna vide

Annexure ‘5’ to the writ application by forwarding letter dated

27.12.2018 of the Executive Engineer, Road Division No. 1,

Muzaffarpur.

By the impugned order the Principal Secretary has

taken a view that in terms of SBD Clause 10-B(IV), his



mobilization advance and plant and machinery advance shall bear simple interest at the rate of 14.5 % which is the prime lending rate on which the R.B.I. is providing finances to the other banks. He has accordingly, directed that in respect of the works in question the rate of interest as provided in Schedule F shall be calculated @ 14.5%.

Learned counsel for the petitioner submits that Clause 10-B(IV) clearly provides that the mobilization advance and plant and machinery advance shall bear simple interest and should be equal to the prevailing rate of interest charged by the bank as mentioned in contract deed schedule F and shall be calculated from the date of payment to the date of recovery, both days inclusive, on the outstanding amount of advance. It is submitted that Clause 10-B (iv) and Schedule 'F' rate must be read together to mean and understand that the interest rate should be equal to the prevailing rate of interest at the time of advance. He has brought on record a copy of Schedule 'F' with the rejoinder in relation to a work in the same year, it mentions the rate of interest applicable as 10 % P.L.R. (SBI), therefore, according to him in the same year the prevailing rate of interest charged by the bank as mentioned in contract schedule 'F' of another work should be taken. Learned counsel submits that it



has a reason because the interest has to be calculated from the date of payment/advance made to the contractor till the date of recovery, thus, if in the year 2012 the advance was made to the petitioner, the rate of interest cannot be taken at 14.5% for one work and @ 10 % for another work.

It is submitted in the rejoinder that in fact the respondent department has been charging simple interest at the rate of 10 % from the petitioner in the same year under SBD clause in RCD, Samastipur Division, therefore, it is not possible that the same respondent can charge in Muzaffarpur Division at the rate of 14.5% interest against advance of mobilization and plant machineries when provision of simple rate of interest as bank prevailing rate is to be charged. He has also taken a stand that the respondent in all over Bihar has been charging bank interest at the rate of 10 % from the contractors but in this case the respondent the then Executive Engineer wrote 14.5 % in schedule F after signature of the petitioner due to undue advantages without knowledge of the petitioner.

On the other hand learned counsel representing the State has opposed the writ application on the ground firstly that the petitioner has an alternative remedy before the Bihar Public Works Contract Arbitration Tribunal, Patna and instead of



following the same, the petitioner has moved this Court under writ jurisdiction. It is further submitted that the rates of interest is being charged as per the agreement which is binding on both the parties. Although in the counter affidavit photocopies of the agreement showing the rate of interest has been sought to be enclosed as Annexure 'A' to the counter affidavit but instead of enclosing the copy of agreement, one page of the impugned order has been enclosed as Anneuxre 'A' to the counter affidavit, therefore, what has been stated as Annexure in the body of the counter affidavit has not been brought on record. This approach in filing the counter affidavit cannot be accepted and the counter affidavit is fit to be rejected on this ground alone.

Having heard learned counsel for the petitioner and the State, this Court finds that the only ground on which the petitioner is contesting the present case is that the respondent department has been charging simple interest at the rate of 10 % from the petitioner in same year under SBD Clause in RCD, Samastipur Division. In order to prove his contention, he has brought on record Annexure '6' with the rejoinder. If the contention of the petitioner is correct, then his contention is wroth taking note of and consideration. He has further made a statement that the respondent in all over Bihar has been



charging bank interest at the rate of 10 % from all other contractors but in this case the respondent the then Executive Engineer wrote 14.5 % in Schedule 'F' after signature of the petitioner due to undue advantages and without knowledge of the petitioner.

In view of the aforesaid contention raised before this Court, in the interest of justice this Court is persuaded to direct the Principal Secretary, Road Construction Department, Government of Bihar to consider the aforesaid aspects of the matter and in case it is found that at the relevant time in all other contracts in all over Bihar interest at the rate of 10 % is being charged from all other contractors then the contention of the petitioner that the then Executive Engineer wrote 14.5 % in Schedule F in place of 9 % is to be given due consideration. The Principal Secretary shall, thus, call for the documents of the similar contracts awarded in the same year either to the petitioner or other contractors in the department and thereafter, shall take a fresh decision considering the aforesaid issues within a period of sixty days from the date of receipt/production of a copy of this order. The impugned order is, therefore, set aside. The writ application is allowed to the extent indicated above.



It is made clear that the matter is being remitted to the Principal Secretary, RCD, Government of Bihar without going into the merits and contentions and it will be open for him to take an appropriate view of the matter based on the materials available on the record.

(Rajeev Ranjan Prasad, J)

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