

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13563 of 2019

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M/S Niranjana Enterprises Sakhi Bigha, Near New G.T. Road Dehri-on-Sone,
P.O. Dalmianagar, Rohtas, Bihar- 821305 through its Partner Rajeev Ranjan
Singh aged about 39 years, Male, S/o Late Lalan Singh, Resident of Mohalla-
Sakhi Bigha, Near New G.T. Road Dehri on Sone P.O. Dalmianagar, Rohtas,
Bihar.

... .. Petitioner

Versus

1. Chief Electrical Engineer Construction, East Central Railways,
Mahendrughat, Patna, Bihar.
2. Deputy, Chief Electrical Engineer/Construction Chopan, Uttar Pradesh.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Sandeep Kumar, Advocate Mr.Uday Pratap Singh, Advocate Mr.Rohit Raj, Advocate
For the Railway	:	Mr.Kumar Priya Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 24-07-2019 Heard learned counsel for the petitioner and learned
counsel representing the Railways.

Parties have exchanged their pleadings in all details
and as agreed at the bar, this case had been kept for hearing and
final disposal.

Petitioner in the present case has moved this Court for
setting aside of the termination notice as contained in letter
dated 24.06.2019 issued by respondent no. 1 in the matter of the
agreement bearing No. EL/C/S/MHX/ETE/10-17-18 dated
26.06.2018. Petitioner has further prayed for any other
appropriate writ/writs in the nature of mandamus directing the
respondents not to proceed in this matter further by creating



third party right in any form.

Let it be recorded at the first instance that this being a case of rescindment of contract and there being an arbitration clause available in the agreement, this Court made it clear to learned counsel for the petitioner that this being a writ court it would not like to go into the merit of the dispute because for that the arbitration clause is very much there and the parties can invoke the same for resolution of the dispute. But then learned counsel for the petitioner persuaded this Court to examine his submissions only to the extent that it is a case of termination of contract without proper service of notice in terms of Clause 62 of the Standard Conditions of Contract which is in fact a statutory contract and further that in this case the response of the petitioner has not at all been considered is an admitted fact.

In view of the submissions made and the limited ground urged before this Court, this Court has confined itself to the consideration of the submission of the petitioner only to the extent that (1) whether the notice in terms of Clause 62 of the Standard Conditions of Contract was duly served upon the petitioner; and (2) in case it is found to be served whether in the facts of the present case where it is admitted that his response dated 26.06.2019 has not been considered, the impugned



termination notice dated 24.06.2019 as contained in Annexure '8' to the writ application is liable to be set aside.

To consider the aforesaid issues, this Court is not required to go into the factual aspects of the matter save and except to say that the respondents not being satisfied with the progress of work first sought to serve a seven days notice dated 16.05.2019 as contained in Annexure '10' attached with the supplementary affidavit on behalf of the petitioner. This was in terms of Clause 62(1)(2) of the General Conditions of Contract, thereafter the petitioner was issued a 48 hours notice dated 19.06.2019 dispatched on 21.06.2019 indicating the mind of the respondents to terminate the contract of the petitioner.

The contention of the petitioner is that while the seven days notice was not received by him and for that reason no explanation could be offered to the same, the notice dated 19.06.2019 was dispatched only on 21.06.2019 which would be apparent from the counter-foil of the receipt showing dispatch of envelope pasted on the backside of the envelope received by the petitioner. It shows that the notice dated 19.06.2019 was dispatched only on 21.06.2019 at 13:21 hours from Bankipore post office. The same was received by the petitioner on 24.06.2019. It is his further case that the petitioner had received



an e-mail dated 21.06.2019 at 12:05 hours which contained 48 hours notice. The petitioner states that his father died on 15.06.2019 and he was busy in the Shradh ceremony of his father which was to be held on 29.06.2019 but on receipt of e-mail he somehow sent an explanation on the same day but his explanations were never looked into much less considered and the impugned order dated 24.06.2019 has been passed in a routine and mechanical manner as if the 48 hours notice was an empty formality on the part of the respondents. Learned counsel for the petitioner has also termed it a malafide action on the part of the respondents because during the period when the petitioner was engaged in Shradh ceremony of his father these actions were taken in haste. As stated above, this Court has not gone into the facts of the case on merit to find as to who is at fault, however, the issues with regard to the notice are worth consideration.

Learned counsel for the Railways has defended the action as contained in Annexure '8' to the writ application but then in view of what is an admitted position in the supplementary counter affidavit of the respondents that the reply dated 21.06.2019 submitted by the petitioner was not considered, learned counsel for the Railways having failed to give a plausible explanation submits that he cannot improve



upon facts of the case that too what is apparent on the record. Learned counsel has, however, submitted that there is an arbitration clause under the agreement and all these issues may be looked into by the learned Arbitrator.

Having heard learned counsel for the petitioner and learned counsel representing the Railways as also on going through the records, this Court finds that despite a specific statement made in Paragraph '8' of the writ application that the petitioner had not received the seven days noticed dated 16.05.2019, neither in the counter affidavit nor in the supplementary counter affidavit the respondents have come forward to say as to how the said notice was dispatched and on which date. No care has been taken to explain that aspect of the matter in the two affidavits brought on behalf of the respondents.

In the supplementary counter affidavit, however, the respondents have come out with a stand with regard to the letter dated 21.06.2019 submitted by the petitioner in response to the e-mail received by him on 21.06.2019. Paragraph '6' of the supplementary counter affidavit admits to the extent that the said letter dated 21.06.2019 was not considered for which one of the reasons may be that the authority i.e. Deputy Chief



Electrical Engineer/Construction to whom the letter dated 21.06.2019 was addressed, was on the verge of transfer at the material point of time and he handed over the charge on 21.06.2019.

A plea has been raised that this letter dated 21.06.2019 was not addressed to the proper authority i.e. Chief Electrical Engineer/Construction. This is worth taking note of that when this Court called upon learned counsel for the Railways to peruse Annexure '5' to the writ application which is the 48 hours notice and to find out as to who is the authority to issue the said 48 hours notice, learned counsel for the Railways admits looking to the said document that it is the Deputy Chief Electrical Engineer/Construction who had issued the 48 hours notice and the e-mail was sent from the office of the Chief Electrical Engineer (Construction). Learned counsel for the Railways does not dispute that Deputy Chief Electrical Engineer/Construction was the competent authority to issue 48 hours notice in terms of Clause 62. He, however, submits that ultimately the file has to go to the Chief Electrical Engineer for final decision and it appears that the Deputy Chief Electrical Engineer to whom the reply was sent by the petitioner did not proceed further with the same because he was on the verge of



transfer.

This Court is, however, unable to accept the reasonings and rationals being provided by the Railways for admittedly not looking into the response of the petitioner sent on 21.06.2019. The plea which is being taken by the Railways that because the Deputy Chief Electrical Engineer was transferred, therefore, that may be one of the reasons for non consideration of the said letter cannot be accepted by any stretch of imagination. The fact remains that the Deputy Chief Electrical Engineer who had issued the 48 hours notice had received the explanation and was very much there in the office till 30th of June, 2019 because on their own saying the Deputy Chief Electrical Engineer handed over the charge only on 01.07.2019.

This Court, therefore, finds that at first instance there is no denial of the fact that seven days notice was not received by the petitioner and secondly as regards 48 hours notice, it is an admitted position that the envelope containing the hard copy of the notice dated 19.06.2019 was dispatched only in the afternoon on 21.06.2019 which was received by the petitioner on 26.06.2019 but before that an e-mail was sent to the petitioner on 21.06.2019 on which he had submitted his response to the Deputy Chief Electrical Engineer/Construction



on the same date but even that was not looked into and no consideration thereof has been given.

This being the position apparent from the record, this Court finds it a fit case for interference holding that it is an arbitrary exercise of power by the respondents rendering the two notices requirement under a statutory contract a mere empty formality, thus, the entire decision making process of the respondents stood vitiated for non observance of the mandatory provisions of the contract which is in the nature of statutory contract as contained in Clause 62 of the Standard Conditions of the Contract. Article 14 of the Constitution would, therefore, come into play and following the principles laid down by the Hon'ble Supreme Court in the case of **ABL International Ltd. and another vs. Export Credit Guarantee Corporation of India Ltd. and others** reported in **(2004) 3 SCC 553**, this Court would hold that the action of the respondents being wholly arbitrary and unreasonable it is liable to be quashed.

Learned counsel for the petitioner has relied upon an another judgment of the Hon'ble Supreme Court in the case of **Union of India and others vs. Tantiya Construction Private Limited** reported in **(2011) 5 SCC 697** wherein the Hon'ble Supreme Court had been pleased to consider the objection based



on principle of alternative remedy and held in Paragraph 33 of the said judgment which is as follows :-

“33. Apart from the above, even on the question of maintainability of the writ petition on account of the arbitration clause included in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.”

For all these reasons mentioned hereinabove the impugned order as contained in Annexure ‘8’ is hereby quashed.

Consequential action shall follow. Quashing of Annexure ‘8’ would, however, not come in the way of Railways in proceeding afresh in accordance with the conditions of the contract and in accordance with law.

The writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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