

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21236 of 2019

M/s Sahil Projects - Prachi (JV), a partnership firm registered under the Indian Partnership Act, 1932 having its registered office at 104, Sachhi Palace, Sahdeo Mahto Marg, Boring Road, Patna, Bihar through its authorized representative Shri Brajesh Mishra, son of Jangbahadur Mishra, aged about 46 years, Gender - Male, resident of 104, Sachhi Palace, Sahdeo Mahto Marg, Boring Road, Patna, Bihar.

... .. Petitioner

Versus

1. The Union of India through the General Manager, East Central Railway, having its office at Mahendru Ghat, 1st Floor, Patna - 800004.
2. The Chief Administration Officer (Con), Mahendru Ghat, 1st Floor, Patna 800004.
3. The Chief Engineer (Con)/ North, East Central Railway (Construction Organisation), Mahendru Ghat, 1st Floor, Patna- 800004.
4. The Deputy Chief Engineer (Con/1), East Central Railway (Construction Organisation), Samastipur.
5. The Executive Engineer (Con), Saharsa.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Nikhil Kumar Agrawal, Advocate
For the Railway	:	Mr.Siddharth Prasad, Advocate
		Mr.Om Prakash Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 19-11-2019 Petitioner in the present case is seeking the following
reliefs :-

- “i. To issue an appropriate writ(s)/ order(s)/ direction(s) in the nature of Certiorari quashing the advertisement dated 06.10.2019 (**Anx-6**), whereby and whereunder tenders have been invited for the remaining works after termination of the contract of the petitioner;
- ii. To issue an appropriate writ(s)/ order(s) / direction(s) in the nature of Certiorari quashing the letter no. W/Con/247/SPJ/I/CA-27/123 dated 02.09.2019 (**Anx-5**), whereby and whereunder the Respondents have malafidely and arbitrarily



terminated the Contract Agreement No. ECR/CAO/Con/WT/AGT/27 dated 09.03.2017;

iii. To issue an appropriate writ/order/direction in the nature of Mandamus directing the Respondents to immediately restore the Contract Agreement No. ECR/CAO/Con/WT/AGT/27 dated 09.03.2017 on the same terms and conditions and grant extension of time to the petitioner;

iv. To issue an appropriate writ/order/direction in the nature of Mandamus directing the Respondents to immediately restore the Security deposit and bank guarantee that has been encashed by the Respondent upon termination of the contract;

v. To issue an appropriate writ/order/direction in the nature of Mandamus directing the Respondents not to take any coercive action against the Petitioner;

vi. To stay the operation of the termination letter no. W/Con/247/SPJ/I/CA-27/123 dated 02.09.2019 (**Anx-5**) till the final disposal of the present writ petition;

vii. To stay the operation of the advertisement dated 06.10.2019 (**Anx-6**) till the final disposal of the present writ petition;

viii. To any other relief(s) that the Petitioner is entitled to in the facts and circumstances of the case.”

Earlier after hearing learned counsel for the petitioner and learned counsel representing the Railways, this Court while taking note of the contention of learned counsel for the petitioner that the petitioner is ready and willing to complete the work in question by 31st March, 2019 and that by awarding the work to any other firm/contractor, the Railways would be ultimately paying an excess sum of Rs. 8-9 Crores, this Court directed the Railways to take an appropriate view of the matter



and file a counter affidavit. It would be evident from the order dated 23.10.2019 passed by this Court.

Now a counter affidavit has been filed on behalf of the Railways. It is submitted in the counter affidavit that all disputes and differences arising out of the contract in question whether during the progress of the work and after its completion may be referred to the Arbitral Tribunal in terms of the arbitration clause contained in the contract itself. The Railways has taken an objection saying that on the face of there being an adequate alternative remedy of Arbitration, the present writ application need not be entertained.

In course of hearing, learned counsel for the Railways has drawn the attention of this Court towards the statement made in Paragraph 22, 23, 24, 25, 26 and 27 of the counter affidavit. It is submitted that the contract was awarded on 29.09.2016 and it was required to be completed within 12 months but the petitioner has grossly failed to complete even 50% of the contract despite a lapse of over 36 months. It has also been stated that the Railways had taken termination action on 15.09.2017 but on the request and commitment given by the petitioner that the work will be completed by 20.02.2018, the said termination was revoked on 28.11.2017 and another



opportunity was granted to the petitioner to complete the work. When the said commitment failed the petitioner was once again served with 7 days notice on three occasions to show adequate progress but no progress could be shown at the site. It is their stand that since the petitioner had not taken any sincere effort to complete the work, the Railways had no option but to terminate the agreement. It has also been shown that because of the delay in completion of work the train service between Barharakothi to Bihariganj could not be started.

Learned counsel for the Railways has, thus, submitted that because of the aforesaid reasons now the Railways is not willing to be swayed away with the offer made by the petitioner and according to the Railways no opportunity need be granted to the petitioner in this case where the petitioner has miserably failed to complete the work despite an opportunity granted to him earlier in the year 2017.

Learned counsel has also placed before this Court the judgment of Hon'ble Division Bench of this Court in the case of **The State of Bihar through the Principal Secretary, Water Resources Department and Ors Vs. M/s Baba Hans Construction Pvt. Ltd and Anr** reported in **2018 (4) PLJR 688 (HC)** to submit that the learned writ court judgment dated



23.08.2018 passed in C.W.J.C. No. 15400 of 2018 on which learned counsel for the petitioner had earlier placed reliance has been set aside by the Hon'ble Division Bench.

Having heard learned counsel for the petitioner and learned counsel representing the Railways as also after carefully perusing the record, this Court is of the considered opinion that in the counter affidavit the Railways has been able to make out a case to persuade this Court that sitting in its writ jurisdiction under Article 226 of the Constitution of India, this Court need not interfere with the impugned orders and the matter be left to be considered in a duly constituted arbitration proceeding. Since this Court is of the considered opinion that the Railways has been able to make out a case for not entertaining the writ application and the petitioner be relegated to the alternative remedy of arbitration under the contract, this Court is refraining from recording its views on the issues raised in the writ application as even prima-facie comment on the issues may prejudice the case of the parties. Sufficient is to say that this Court does not find it fit to go into the disputed question of fact as to who is at fault ?

The writ application is, therefore, disposed off with liberty to the petitioner to seek its remedy before the Arbitration



Tribunal in terms of the arbitration clause contained in the contract. All contentions are left open to the parties.

(Rajeev Ranjan Prasad, J)

vats/ved

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