

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21405 of 2018

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Shree Tirupati Balaji Enterprizes, through its Priorietor namely Yogendra Sharma, S/o Late Thakur Sharma, Maa Sharma Market, Nearly Bank Of Baroda, K.F. Road, Gandhi Nagar, P.S.- Kankarbagh, District- Patna, Bihar, Permanet Resident of Village- Newari, P.O. P.S.- Makhdupur, District- Jehanabad.

... .. Petitioner

Versus

1. The Union of India through Secretary, Ministry of Rail, Rail Bhawan, New Delhi.
2. The General Manager, East Central Raiway, Hajipur.
3. The Senior Divisional Rail Manager/ Engg. Sonpur.
4. The Senior Divisional Engineer-I, D.R.M. office, Sonpur.
5. The Senior Section Engineer (Works) Shahpurpatori, Samastipur.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar, Advocate
For the Respondent/s : Mr.Amresh Kr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 14-08-2019 Heard learned counsel for the petitioner and

learned counsel representing the Railways.

Petitioner in the present case has moved this court

for the following reliefs:-

(i) For issuance of an appropriate writ/s, order/s, direction/s for quashing letter dated 20/8/2018 issued by the respondent no. 4 contained in letter no. W/362/LHS/HJP-BCA/3 nos./W-1/2039 whereby and where under the contract awarded to the petitioner for construction of (1) Hajipur-Bachhwara Section. Provision of L.H.S. in lieu of L.C. No. 39C class (U/M) bet, Chaksikandar-Desri at km. 249/1-2. (2) LC No. 40C class (U/M) bet.



Chaksikandar-Akshaywat Rai Nagar at km. 250/9-10 (3) LCV No. 41 C class (M) at Chaksikandar at km. 251/9-10; and the petitioner has been debarred in participating in the tender to be published for the balance quantity of the work.

(ii) For issuance of an appropriate writ/s, order/s, direction/s to the respondent to permit the petitioner to execute the work as per acceptance letter no. W/362/LHS/HJP-BCA/3 nos./TC/1986 dt. 04.10.17.

(iii) To pass such other order/s as your lordship may deem fit and proper in the facts and circumstances of the case.”

Mr. Sanjay Kumar, learned counsel representing the petitioner has submitted before this court that in fact after the letter of acceptance was issued to the petitioner, the petitioner had submitted the security deposit with 20 days of delay which was accepted by the Railways on payment of interest thereon. It is submitted that the Railways did not make available the copy of agreement for signing and the request of the petitioner made in this regard vide letter dated 24.04.2018, as contained in Annexure ‘3’ to the writ application, did not yield any result.

It is submitted that by its letter dated 24.04.2018 addressed to the Assistant Divisional Engineer, Sonpur, the



petitioner had submitted that till date he was not made available agreement and design. He had himself requested the concerned authority to make available the agreement and design as soon as possible so that he can start the work before the start of rainy season.

Learned counsel submits that the agreement was executed only on 01.06.2018 when it was made available to the petitioner by the Railways, but immediately thereafter, the action for termination of the agreement has been taken by serving a 7 days followed by 48 hours notice in terms of contract. Learned counsel submits that the decision of the Railway Authorities is highly arbitrary, unjust and improper, hence, the present writ application has been preferred.

On the other hand, learned counsel for the Railways submits that it was the petitioner who had delayed the execution of the agreement and even after delayed execution of the agreement he did not take steps to start the work as a result thereof the Railways had to take action for termination of the agreement. Learned counsel submits that so far as order of debarment is concerned, it is limited to the participation of the petitioner in the re-tender of the work.



Learned counsel for the Railways has further submitted with reference to the statements made in paragraph '2' of the counter affidavit that there is an arbitration clause under the agreement and in case the petitioner is aggrieved by the impugned decisions of the Railways, they can invoke the arbitration clause under the agreement where both the parties can adduce their respective evidences and the claim of the petitioner may be adjudicated.

Having heard learned counsel for the petitioner and the Railways, this court is of the considered opinion that the case requires an adjudication on facts inter-alia as to who is at fault in either not executing the agreement in time or completion of work. Such issues on facts cannot be decided on the basis of an affidavit against affidavit. This court also finds that there is an arbitration clause under the agreement and the arbitration being alternative efficacious remedy, the petitioner may invoke the same for redressal of his grievance. Even otherwise under the Arbitration and Conciliation Act, 1996 (as amended up to date) a duty has been imposed upon the courts to refer the matter for



arbitration if it is found that the agreement between the parties contain an arbitration clause. Under such circumstances, this court is not willing to exercise it's discretionary power of writ jurisdiction under Article 226 of the Constitution of India.

The writ application is being disposed of with liberty to the petitioner to seek it's remedy in terms of Clause 63 & 64 of the General Conditions of Contract on which reliance has been placed on behalf of the Railways.

(Rajeev Ranjan Prasad, J)

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