

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.848 of 2018
In
Civil Writ Jurisdiction Case No.11405 of 2013

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Rural Development Department, Government of Bihar, Viswasariya Bhawan, Patna
3. The Engineer In -Chief -Cum- Special Secretary -Cum- Authorised Officer, Rural Road Development Agency, Rural Works Department, Government of Bihar, Viswasariya Bhawan, Patna
4. The Chief Engineer- 3, Rural Works Department, Viswasariya Bhawan, Patna.
5. The Superintending Engineer, Rural Works Department, Chapra Circle, Chapra.
6. The Executive Engineer, Rural Works Department, Work Division I, Chapra.

... .. Appellant/s

Versus

1. Nikhar Construction Pvt. Ltd., through its Managing Director Suvash Kumar.
2. Suvash Kumar Son of Late Awadhesh Kumar Mishra, Managing Director, Nikhar Construction Pvt. Ltd., Resident of Mohallah- North Dahiyawan Tola, P.O.- Chapra, P.S.- Chapra Town, District- Saran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Aditi Hansaria AC to GA- 01 Mr. Vikash Kumar, SC-11
For the Respondent/s	:	Mr. Praveen Prabhakar, Advocate Mr. Ved Prakash Shrivastava, Advocate Mr. Sanjay Kumar Jha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs



**joined the proceedings through Video Conferencing
from their residences/offices.)**

Date : 21-08-2021

The instant Letters Patent Appeal has been preferred against the order dated 6th of October, 2017, passed by a learned Single Judge of this Court in **CWJC No. 11405 of 2013**, titled as **Nikhar Construction Pvt. Ltd. and Anr. Vs. the State of Bihar and Ors.**

In terms of the impugned order, the learned Single Judge has directed the State/appellant to pay to the writ-petitioner/respondent herein, all dues arising out of a works contract. The total amount claimed by the writ-petitioner is more than Rs. 28 lacs.

According to the writ-petitioner, the said amount stands admitted by the Executive Engineer, and as such, the writ petition was maintainable.

In our considered view, the learned Single Judge seriously erred in directing the appellant/State to pay the amount for the following reasons:-

(a) The claim arises out of a works contract agreement, *inter alia*, containing a clause for adjudication of dispute through the process of arbitration, which the writ-



petitioner did not invoke;

(b) The writ-petitioner, today has an equally alternative efficacious remedy of filing an appropriate petition, before the Bihar Public Works Contracts Disputes Arbitration Tribunal, constituted to adjudicate such claims arising out of a works contract;

(c) In any event, mere admission on the part of the Executive Engineer, more so in view of the disputed questions of fact and denial of the writ-petitioner's claim by the State in the counter affidavit, could not have been adjudicated in a writ proceedings;

(d) Serious disputed questions of fact ought to have been left to be determined by the Appropriate Authority/Body, constituted under the Statute or the one which the parties may have chosen under the contract.

We also notice that the learned Single Judge has passed the impugned order without going into the merits of the case, pre-supposing the State to have unequivocally admitted the amount payable to the writ-petitioner, which is not the fact, as we notice from the file. Mere recommendation by an employee of the State for payment of dues, *ipso facto* would not tantamount to admission of claims necessitating passing of an



order in exercise of the Court's writ jurisdiction.

The perversity and illegality is writ large.

As such, we quash and set aside the impugned order dated 6th of October, 2017, passed by a learned Single Judge of this Court in CWJC No. 11405 of 2013, titled as Nikhar Construction Pvt. Ltd. and Anr. Vs. the State of Bihar and Ors.

The Letters Patent Appeal stands allowed and the writ petition stands dismissed reserving liberty to the writ-petitioner to initiate appropriate proceedings, in accordance with law, either before the Tribunal or by way of contractual/civil remedies.

Needless to add, if such proceedings are initiated within next three months, the issue of limitation shall not come in the way of the writ-petitioner.

Shri Vikash Kumar, learned Standing Counsel No. 11 concurs with the same.

Needless to add, as and when any such proceedings are initiated, the same would be considered and decided expeditiously, and preferably within a period of 9-12 months therefrom.

The Letters Patent Appeal stands disposed of in the aforesaid terms.



Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	27.08.2021
Transmission Date	

