

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.639 of 2022

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Ravindra Kumar Singh S/o Harendra Kishore Singh, Vill-Paharpur, Post-Jahangirpur, P.S.-Shyampur Bhatha, Dist-Sheohar-843329.

... .. Petitioner/s

Versus

1. The State of Bihar through the Add. Chief Secretary, Road Construction Department, Govt. of Bihar, Bishwashraiya Bhawan, Bailey Road, Patna.
2. The Engineer in Charge, R.C.D. Bihar, Patna, Bishwashraiya Bhavan, Bailey Road, Patna.
3. The Chief Engineer, North, RCD. Bihar, Patna, Bishwashraiya Bhavan, Bailey Road, Patna.
4. The Superintendent Engineer, RCD, North Road Circle, Muzaffarpur.
5. The Executive Engineer, RCD, Road Division-Sheohar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Usha Kumari, Advocate
For the Respondent/s	:	Mr.Uday Shankar Sharan Singh (G.P.19)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 18-02-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“For quashing the impugned penalty order for recovery of Rs. 33,63,925.00 vide letter no. 457 dt. 21.09.2021 issued by the Ex. Engineer, RCD, Road Division-Sheohar as per letter no. 2478(E) 18.03.2021 and 4241(E) dt. 08.07.2021 and for deposit of L.D 10% of tender value issued by Eng, In Chief (Work Management) RCD, Bihar, Patna along with by the order of Departmental Tender Committee and direction may be given to the respondents to pay the

deducted amount of penalty as EOT (@ 10% Penalty/Fine) and Security deposit amount etc. The petitioner is absolutely innocent because the cause of delayed the work completion due to Naxali threat & local hindrance and heavy flood, the works had been stopped despite of that the petitioner completed the work. The petitioner was asked show cause which was replied properly with proof thereafter the petitioner filed application for the sanction of time extension with best & facts based recommendation of the J.Eng./A.Eng./Ex.Eng. and Superintendent Engineer to the Chief Engineer, North, RCD, Bihar, Patna which was sanctioned with condition which was not good. The petitioner's registration No. 1160005 was suspended for two years for delay completion of work which was challenged and appeal filed before the Secretary, RCD, Bihar Patna and the impugned debarment order was remanded to the tender committee and the tender committee considered the facts and withdrawn. In this way double punishment is not maintainable in the eye of law. During the debarment period the petitioner could not participate in the tender and got loss of business.

ii. For restraining the respondents to recover the penalty @ 10% of tender value Rs. 33,63,925.00 from the petitioner for which petitioner is not guilty because the respondents had to provide hindrance free site/police protection which was not made available by the respondents during the working period.

iii. For directing the respondents to pay the security deposit amount and Earnest money deposited at the time of tender submitting and others payment due with respondents which had been deducted from the gross bill of petitioner.

iv. For grant any other relief/relief to the petitioner under law for which petitioner is entitled.”

We find the petitioner has an alternative statutory efficacious remedy, both in terms of the agreement as also the

statute. Disputed question of fact cannot be adjudicated in the present petition, more so in a petition filed under Section 226 of the Constitution of India. It is a Work Contract and the agreement contains an arbitration clause. Also, there is a Tribunal constituted to adjudicate such disputes.

As such, we dispose of the present petition reserving liberty to the petitioner to take recourse to such remedies as are otherwise available in accordance with law.

As and when such proceedings are taken, we are hopeful that the same shall be considered and decided expeditiously in accordance with law.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	