

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2308 of 2020

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Narayan Construction, Proprietor, Anju Kumari, Wife of Arunjay Kumar Singh, Resident of - Bahuara Bhuiya Vigha, Ledhaanchal, P.S. Deo, District- Aurangabad, Presently residing at- Sainik Colony, Near ITI School, Dumardaga, P.S. Khelgaun, P.O. Soognu, District and Town- Ranchi, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Visheshraiya Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief, Rural Works Department, Visheshraiya Bhawan, Bailey Road, Patna.
3. The Chief Engineer-2, Rural Works Department, Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Work Circle, Madhepura.
5. The Executive Engineer, Rural Works Department, Works Division, Triveniganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Lal Babu Singh, Advocate
For the Respondent/s : Mr.Kameshwar Prasad Gupta (Gp10)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-09-2022

Heard learned counsel for the parties.

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

(i) For quashing of the office order No.08 dated 28.12.2019 contained in Memo No.2491 whereby and whereunder the Respondent Executive Engineer, Rural Works Department, Road Division, Triveniganj has rescinded the agreement vide Agreement No.88 SBD/MMGSY/ 2018-19 and forfeited the earnest money and security deposit in connection with "Construction of the road from Jadiya Balua Path SHW se East Sub-Health Centre PO se East Madhopur

Panchyat Sima Tak” and directed the petitioner to present at the work site for final measurement.

(ii) For a direction to the respondents to allow the petitioner to execute and complete the remaining work after granting extension of time in the facts and circumstances of this case.

(iii) For a further direction to the respondents to make payment of Rupees about Ninety Lakhs (Rs.90,00,000/-) for the work already executed by the petitioner.

(iv) For appropriate declaration that:-

a) The impugned order of forfeiture of earnest money and security deposit is violative of principles of natural justice and fair play as there was no prior notice to the petitioner as to forfeiture of earnest money and security deposit.

b) The impugned order of rescinding the agreement is also violative of principles of natural justice and fair play as the respondent Executive Engineer while passing the impugned order has not considered the detail reply of show cause except saying that the reply of the petitioner is rejected.

c) The impugned order of rescinding the agreement and forfeiture of earnest money and security deposit is premature as the detail enquiry with regard to the allegation of submission of alleged forged BG at the time of tender in connection with the present work is being conducted by the committee constituted by the order of the respondent Principal Secretary and the respondent Executive Engineer should have waited the outcome of the enquiry.

d) The action of rescinding of the agreement and forfeiture of earnest money and security deposit is without jurisdiction as no clause of the agreement does authorize the Executive Engineer to do so.

e) The allegation of submission of alleged

forged BG at the time of tender at the belated stage is irrelevant as the work is being executed after agreement and the BG submitted at the time of tender has already been replaced by submission of fresh BG and there is no allegation that fresh BG is forged.

f) The action of rescinding the agreement and forfeiture of earnest money and security deposit is arbitrary and malafide as prior to the rescinding the agreement the respondent Executive Engineer had already en-cashed the BG deposited by the petitioner as earnest money and security deposit from the bank concerned.

V) For any other relief(s) or consequential relief(s) to which the petitioner may be found entitled to in the facts and circumstances of this case.”

After the matter was heard for some time, finding the Court not to be in favour with the submissions made across the Bar, learned counsel for the petitioner, more so in view of the disputed question of fact, fairly states that petitioner be permitted to withdraw the present petition reserving liberty to invoke the arbitration clause, and/or take recourse to such alternative remedies as are available in accordance with law.

Permission granted.

Petition stands disposed of in the aforesaid terms. We clarify that we have not adjudicated the dispute on merits. All questions of fact and law are left open to be agitated and adjudicated before the appropriate forum in

appropriate proceedings.

Petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-Ranjan

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.09.2022
Transmission Date	NA