

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1204 of 2021

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Ajay Kumar Singh Son of Late (Capt.) Braj Bhushan Prasad Singh @ Braja Bhushan Singh, Resident of Village - Chapar (Jorawar), Post Office - Chapar, Police Station- Mohiuddin Nagar, District - Samastipur.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Government of India, Ministry of Road Transport and Highways, Transport Bhawan, Parliament Street, New Delhi - 110001.
2. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Development Commissioner, Government of Bihar, Patna.
5. The Principal Secretary, Finance Department, Government of Bihar, Patna.
6. The Principal Secretary, Revenue and Land Reforms, Government of Bihar, Patna.
7. The Zonal Chief Manager, State Bank of India, Zonal Office, J.C. Road Branch, Patna.
8. The Managing Director, Bihar State Road Development Corporation Ltd., Bihar, Patna.
9. The Chief General Manager, Bihar State Road Development Corporation Ltd., Bihar, Patna.
10. The Project Director, N.H.A.I., Darbhanga.
11. The District Magistrate, Patna.
12. District Magistrate, Samastipur.
13. The Director, Navayuga Jahnvi Toll Bridge Private Limited , H.No. 8-2-293/82/A/379 and 379/A, 2nd Floor, Plot No. 379, Road No. 10, Jubilee Hill, Hyderabad TG - 800033, Regional Office - Near Chand Hospital, House No. 171, Pataliputra Colony, Patna - 800013, Tele FAX - 0612-2274557.
14. The Chairman, Managing Director, Head Quarters, The IL4FS Financial Centre, Plot No. C22, G Block Bandra Kurla Complex, Bandra East Mumbai - 400051, 02226533038, 26533333232.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2255 of 2021

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M/s Navayuga Jahnvi Toll Bridge Private Ltd. Registered office at House No.8-2-293/82/A379/A, 2nd floor, Plot No.379, Road No.10, Jubilee Hills, Hyderabad through its Authorized Representative Yerra Gopi Srinivasa Babu,



Son of Shri Y.L.H. Kesavarao, Resident of Temple Street, Uppuluru, PS-Undi,
District-West Godavari, Andhara Pradesh

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Baily Road, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
3. The Bihar State Road Development Corporation Ltd. Through its Managing Director, Office at RCD Central Mechanical Workshop Campus, Sheikhpura, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 4640 of 2021

M/s. Navayuga Jahnvi Toll Bridge Pvt. Ltd., having its registered office at House No. 8-2-293/A379/A, 2nd Floor, Plot No. 379, Road No. 10, Jubilee Hills, Hyderabad through its Authorized Representative Yerra Gopi Srinivasa Babu, Male, aged about 39 yrs. S/o Shri Y.L.H. Kesavarao, Resident of Temple Street, Uppuluru, P.S.-Undi, Dist-West Godavari, Andhra Pradesh.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. The Development Commissioner, Government of Bihar, Main Secretariat, Patna.
3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Bihar State Road Development Corporation Limited through its Managing Director, office at RCD Central Mechanical Workshop Campus, Sheikhpura, Patna.
5. The Managing Director, Bihar State Road Development Corporation Limited, office at RCD Central Mechanical Workshop Campus, Sheikhpura, Patna.
6. The State Bank of India through its Deputy General Manager (on behalf of Consortium), Stressed Assets Management Branch-II, Hyderabad, Branch Code-18359, D. No. 3-4-1013/A, 1st Floor, CAC, TSRTC Bus Station, Kachiguda, Hyderabad-500027.
7. The Punjab National Bank through its Assistant General Manager, Large Corporate Branch at 8-2-672, Sufi Chambers, Road No. 1, Banjara Hills, Hyderabad-500034.
8. Regional Director Reserve Bank of India, Patna Region, Patna.
9. Regional Director Reserve Bank of India, Hyderabad Region, Hyderabad.
10. Dy. Governor Reserve Bank of India, Head Office, Mumbai (Maharashtra).



... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 1204 of 2021)

For the Petitioner/s : Mr. Surendra Kumar Mishra, Advocate
Mr. Amit Kashyap, Advocate

For the Respondent/s : Dr. K.N. Singh, ASG
Mr. Lalit Kishore, AG
Mr. Pawan Kumar, AC to AG
Mr. Kumar Priya Ranjan, Advocate

(In Civil Writ Jurisdiction Case No. 2255 of 2021)

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Advocate
Mr. Mohit Agarwal, Advocate
Ms. Parul Prasad, Advocate
Ms. Sushila Agrawal, Advocate

For the Respondent/s : Mr. Lalit Kishore, AG
Mr. Pawan Kumar, AC to AG
Dr. K.N. Singh, ASG
Mr. Kumar Priya Ranjan, Advocate

(In Civil Writ Jurisdiction Case No. 4640 of 2021)

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Advocate
Mr. Mohit Agarwal, Advocate
Ms. Parul Prasad, Advocate
Ms. Sushila Agrawal, Advocate

For the Respondent/s : Mr. Lalit Kishore, AG
Mr. R.B. Pd. Yadav, AAG-11
Mr. Manishdhari Singh, Advocate
Mr. Kumar Priya Ranjan, Advocate
Mr. Prabhakar Nath Rai, Advocate
Mr. Mritunjay Kumar, Advocate

For the S.B.I. : Mr. Y.B. Giri, Sr. Advocate
Mr. Sanjeev Kumar, Advocate

For the R.B.I. : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Amit Prakash, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-12-2022

Heard learned counsel for the parties.



In C.W.J.C No. 1204 of 2021, petitioner has prayed for the following relief(s):-

“That, the petitioner craves indulgence of this Hon'ble Court for issuance of an appropriate writ by way of Public Interest Litigation is beings filed on behalf of the petitioner in the nature of mandamus or any other appropriate writ / writs, order / orders, direction / directions, command / commands for directing the respondents to construct the Bakhtiyarpur Tanjpur & 4 lone green filed bridge, currently under construction will span the river Gangages connecting Bakhtiyarpur in Patna District and Tajpur in Samastipur District, State of Bihar, the bridge will provide an easy roadways link between the northern and southern parts of Bihar total length is 5.575 metres width is 15 meters, no. of lanes- 4 constriction started on June 2011 and completion year was fixed on 2016 but up till now only 47% works has been completed.

This bridge will reduce the land on Mahatma Gandhi Setu and also reduce the traffic in the capital city of Patna.

The bridge will also required construction of 45.33 of approach road on both ends of the bridge.

The total cost of project is estimated at Rs. 1602.74 Crore, out of which Rs. 100 Crores will be spent on acquired land. At first Rs. 917.74 Crore is to be invested by Navayuga (Engineering Company Limited (HECL) Navayuga Jahnavi Toll Bridge Pvt. Ltd.) as a viability gap fund on a PPP, Public Private Partnership Mode basis Rs. 277.50 Crore by the State Government Bihar would also bear the cost of



acquiring land NECL, a Headerabad based firm was selected through competitive bidding.”

In C.W.J.C. No. 2255 of 2021, petitioner has prayed for the following relief(s):-

“i) For holding and declaring that Section 3(3)(b) of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (hereinafter referred as the “the Bihar Tribunal Act” for the shake of brevity) is ultra virus to the provisions of the constitution as the eligibility criteria provided for being appointed as member of the Arbitral Tribunal under the Bihar Tribunal Act is in teeth of Section 12 of the Arbitration and Conciliation Act, 1996;

ii) For a declaration that the Bihar Tribunal Act since have no assent of the Hon'ble President of India, hence, in view of the repugnancy of Section 3(3)(b) with Section 12 of the Arbitration and Conciliation Act, 1996, the Bihar Tribunal Act has to give way to the Central Act i.e. the Arbitration and Conciliation Act, 1996;

iii) For a declaration that in the present case the provisions of the Arbitration and Conciliation Act, 1996 shall govern the disputes between the Petitioner and the Respondents in view of Section 12(5) of the Arbitration and Conciliation Act, 1996;

iv) For a declaration that the Concession Agreement in the present case in the form it has been entered into does not fall within the meaning of the Works Contract as defined in Section 2(k) of the Bihar Public Works Contracts Disputes Arbitration Tribunal



Act, 2008, hence the dispute can not be resolved under the said Act;

v) For a declaration that with respect to the disputes between the parties which have arisen out of the Concession Agreement entered between the parties dated 8.10.2010 for the development of Greenfield Bridge across river Ganges and its approaches connecting Bakhtiyarpur Bypass of NH-31 near Village- Karjan and NH-28 at Tajpur in the State of Bihar on Design, Build, Finance, Operate and Toll ("DBFOT") basis and in effect a license for the work is not covered in the definition of the work contract hence the arbitration can be held under the provisions of Arbitration and Conciliation Act, 1996 and not under the Bihar Tribunal Act;

vi) For quashing of decision of the Respondent Bihar State Road Development Corporation Ltd. communicated through letter no. 4391 dt. 21.10.2020 by which this Respondent has intimated that they are approaching to the Bihar Works Contracts Arbitration Tribunal under Section 9 r/w Section 22 of the Bihar Tribunal Act, 2008 and/or for any other relief(s) for which the Petitioner may be found entitled to in the facts and circumstances of the present case.”

In C.W.J.C. No. 4640 of 2021, petitioner has prayed for the following relief(s):-

“i) For issuance of direction upon the Respondents to release the Termination Payment



amounting to Rs. 1380.55 Crores under Clause 37.3 of the Concession Agreement (CA) entered between the parties dated 8.10.2010 for the development of the Greenfield Bridge across the river Ganges and its approaches connecting Bakhtiyarpur Bypass of NH-31 near Village Karjan and NH-28 at Tajpur in the State of Bihar on Design, Build, Finance, Operate and Toll ("DBFOT") basis as the said payment is an admitted liability of the respondent Bihar State Road Development Corporation Ltd.;

ii) For a direction to the respondents to immediately make termination payment to the petitioner being the admitted liability of the respondents Bihar State Road Development Corporation Ltd. for repaying the loan liability (debt liability) to the Bankers of the petitioner who had lend money for this project and are entitled to get back their money without any delay;

iii) For issuance of a direction upon the Respondent to pay the Compensation of Rs. 1261.13 Crores to the Petitioner under Clause 35.2 and 35.4 of the Concession Agreement dated 08.10.2010 for the development of the Greenfield Bridge across the river Ganges and its approaches connecting Bakhtiyarpur Bypass of NH-31 near Village Karjan and NH-28 at Tajpur in the State of Bihar on Design, Build, Finance, Operate and Toll ("DBFOT") basis;

iv) For a direction to the Respondent Bank not to declare the accounts maintained by the Petitioner or its Promoter companies as Non-Performing Asset;

v) For a direction to the Respondent Banks to adjust the amount received as Termination Payment



from Respondent No. 1, against the accounts maintained by the Petitioner;

vi) For issuance of an appropriate writ commanding the Respondents to discharge its obligation under Law and contract which the Respondents have failed which has prejudicially affected the Petitioner apart from adversely effecting the project for the development of the Greenfield Bridge across the river Ganges and its approaches connecting Bakhtiyarpur Bypass of NH-31 near Village Karjan and NH-28 at Tajipur in the State of Bihar on Design, Build, Finance, Operate and Toll (DBFOT") basis; for any other relief(s) for which the Petitioner may be found entitled to in the facts and circumstances of the present case.”

We are dealing with the project termed as “Tajpur-Bakhtiyarpur Road-cum- Bridge over River Ganges connecting Bakhtiyarpur in district Patna with Tajpur in district Samastipur at Bihar.

Pursuant to several orders passed by this Court from time to time, parties have been interacting with an endeavour of resolving the dispute.

On 12.09.2022 (Order No. 12), we had indicated that even though the Contractor/Concessionaire had commenced the work to be completed within the stipulated time i.e. 2016, the work was stopped, *inter alia*, on account of financial issues.



The learned Advocate General repeatedly has been highlighting the importance of the project and the desire and endeavour of the State of having the same completed at the earliest.

It is with this endeavour that a meeting of high level officials was convened in the office of the Chief Secretary, Government of Bihar.

Several affidavits stand filed by all the stakeholders, including the State Bank of India, the lead manager of the consortium of the Banks.

On 13.10.2022, we had passed the following order:-

“Deputy General Manager (Tech), B.S.R.D.C.L. has filed his affidavit inter alia pleading as under:

“06. That in Revised AA, following Waterfall Mechanism has been proposed for repayment of One Time Fund Infused by BSRDCL and Lenders’ debt:-

- a. all taxes due and payable by the Concessionaire.
- b. all payments relating to construction of the Project Highway, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements.
- c. O & M Expenses, subject to the ceiling, if any, set forth in the Financing Agreement.
- d. O & M Expenses incurred by the



Authority, provided it certifies to the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire.

e. Concessionaire Fee due and payable to the Authority.

f. Interest due and accrued on the outstanding principal amounts of BSRDCL OTFI Facility and lenders debt in proportion (pari passu) of respective principal amount of Authority and lenders as arrived in para 5(ii).

g. Principal outstanding under the BSRDCL OTFI Facility and principal outstanding under lenders debt in proportionate (pari passu) basis. It is clarified that the servicing of the principal amount of BSRDCL OTFI Facility as well as principal amount of lenders debt shall not commence till COD.

h. Debt service payments in respect of Subordinated Debt.

i. Concessionaire's equity and other investments will be recovered only after the entire interest and Principal component of BSRDCL OTFIS Facility and Lender's debt with interest is recovered completely.

07. That as per above Waterfall Mechanizm, BSRDCL and the Lenders both have first charge on proceeds of toll collection left after meeting the expenses explained in para 6(a) to 6(e) on pari passu basis.

08. That the above conditions and Waterfall Mechanism mentioned in revival proposal has been approved by Council of Ministers, Govt.



of Bihar.

09. That any change in the above Waterfall Mechanism approved by Council of Ministers will need approval from the Council of Ministers again.

10. That information in this regard has been given to Road Construction Department (RCD), Govt. of Bihar vide letter dated 30.09.2022.

11. That in the light of order passed on 27.09.2022, State will take necessary steps for following the bankers to have the first charge on the proceeds of toll collection after expenses explained in para 6(a) to 6(e) subject to unconditional acceptance by the Lenders to issue NOC.

12. That accordingly, the Respondent No.4 will put a proposal in this regard before BSRDCL Board of directors for approval at the earliest.”

It is also brought to our notice that now the State of Bihar is going to arrange funds of its own for completion of the remaining work. However, what is required is issuance of No Objection Certificate (for short N.O.C.) from the consortium of bankers, respondents herein.

Learned Advocate General states that there should be no difficulty in the Cabinet approving the Waterfall Mechanism evolved for revival of the proposal which, in principle, has the approval of the Government. Further, the first charge of the proceed from the collection of toll, after deducting expenses as set out in para-6 reproduced (supra), would be disbursed to the bankers/consortium of lender banks



as a first charge.

Shri Y.V. Giri, learned Senior Advocate for the respondent Bank, under instructions, states that upon receipt of request for issuance of N.O.C., the same will be issued within one week, which would be subject to the approval of the proposal by the Cabinet.

Shri S.D. Sanjay, learned Senior Advocate for the petitioner, states that tomorrow itself, petitioner would approach the bankers for issuance of N.O.C.

We direct that needful be done as recorded supra.

Further, with the issuance of N.O.C., the proposal be immediately placed before the Cabinet for necessary action.

List on 14.11.2022.”

The Bank has filed its affidavit dated 10.11.2022.

We notice that the State has also filed its affidavit dated 12.11.2022 indicating its intent of ensuring early completion of the project.

On 07.12.2022, we had passed the following order:-

“Inviting attention of paragraph no. 17 of affidavit dated 11.11.2022, which is extracted hereinunder, Sri S.D. Sanjay, learned senior counsel for the petitioners, states that insofar as condition nos.



a and c are concerned, there is no issue *inter se* the petitioners and the State Government. However, insofar as the issue b is concerned, the cap of 6% as agreed upon by the State, perhaps, needs to be re-visited. Paragraph no. 17 of affidavit dated 11.11.2022 reads as follows:-

“That in order to address this issue objectively, it is requested to the State Government for inserting a clause in the supplementary agreement as follows:

a. GST impact on cost of construction to be compensated under change in law provisions of the Concession Agreement;

b. Revising the cost within six months from Supplementary Agreement date taking SOR rates of the current year and prevailing market rates for items whose market rates have been taken in the present cost analysis.

c. The price variation in cost to be compensated and paid by BSRDC/State Government as claim not exceeding 6 months from Supplementary Agreement Date or reduce from OTFI in case of reduction.”

Well, the Courts cannot re-write contracts *inter se* between the parties. However, if the petitioners desire to approach the State Government seeking modification thereof, it is always open for the



petitioners to do so and the respondent State to independently take a decision thereupon.

As prayed for by Sri S.D. Sanjay, learned senior counsel for the petitioners, matter is adjourned.

List on 14.12.2022.

We clarify that no further adjournment shall be granted for such purpose.”

Today, learned Advocate General invites our attention to two affidavits, both dated 13.12.2022. The subsequent affidavit, revising the averments made in the first affidavit, reads as under:-

“03. That in light of order passed by the Hon'ble High Court on 07.12.2022 in this regard, the petitioner has approached BSRDCL (Authority) vide its letter dated 08.12.2022 to consider the price adjustment as per the formula adopted in the EPC contract by keeping the base indices as in November 2021 and accordingly make adequate provision of OTFI so that the project can be revived, completed and put for public use to realize the investment made by each stakeholders.

04. That I have gone through the averments made in the aforesaid letter under reply and understood the same.

05. That the present supplementary affidavit is being filed by the answering respondent no. 4 in light order passed by the Hon'ble High Court on 07.12.2022 and the aforesaid letter of request.

06. That in reply to the aforesaid letter, it is to



say that process for getting approval of change in Waterfall Mechanism only as per earlier order of Hon'ble Court, has already been initiated.

07. That regarding GST impact on cost of construction, it is to say that the same will be compensated as per the relevant provision made in Article-41 of Concession Agreement.

08. That regarding price escalation, it is to say that rates taken for calculating the cost of construction for OTFI are based on SOR effective on November 2021 excluding Contractor's profit as proposed by the petitioner. There is a provision of 6% price escalation in cost estimate of balance work. For the price adjustment, a methodology/ formula adopted in EPC Contracts for calculating the price escalation will be incorporated in Supplementary Agreement with taking base indices in November 2021, i.e. in the month of preparation of cost estimate of balance work. The cost impact due to GST & Price Adjustment will be taken care of by this provision of 6% price escalation made in cost estimate of balance work.

09. That it is further to say that in case the provision of 6% price escalation made in cost estimate of balance work will become insufficient to meet the cost impact due to GST & Price Adjustment, approval of revised cost of balance work will be taken from the Competent Authority.

10. That the answering respondent further humbly pray before this Hon'ble Court that to take follow-up action and monitor the progress of this Project of public importance.”



The statement of the parties and the commitments made in terms of the affidavit, referred to supra, are accepted and shall be adhered to.

Ordered accordingly.

At this stage, Shri S.D. Sanjay, learned Senior Counsel states that there may be short fall in the finance/collection which may impede the execution of the work.

Well, all these issues we need not dilute any further, for we have already expressed our view and leave it to the parties to resolve themselves.

The petitions stand disposed of.

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

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	16.12.2022
Transmission Date	

