

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15739 of 2021

=====

M/s Arjun Engincon Pvt. Ltd. Represented By Mr. Rabi Bhushan, Director,
age-47 Years, S/o Sri Arjun Singh J-117, P.C. Colony, Kankarbagh, Patna-
800020

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bihar, Bishweshraiya Bhavan, Baily Road, Patna.
2. The Engineer-IN-Chief, Cum Add. Commissioner Cum Special Secretary Road Construction Deptt. Bishweshraiya Bhavan, Baily Road, Patna.
3. The Chief Engineer, South Bihar, Road Construction Dept. at Patna.
4. The Executive Engineer, R.C.D. Road Division, Sheikhpura.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Singh, Advocate Ms.Usha Kumari, Advocate
For the Respondent/s	:	Mr. Manoj Kumar Ambastha, SC 26 Mr. Manoj Kumar, 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 : 20-01-2022

Heard learned counsel for the parties.

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



2. i. For issuance of a writ in the nature of mandamus commanding the respondents to pay the balance price escalation bill amount of Rs. 58,10,170.00 and pass the balance bill of escalation of Rs.58,10,170/- as per Clause 10 CC of SBD and pay the same along with simple interest @ 10 % since 16.04.2015 which stipulates to pay the escalated rate of all components, as overlooking the said clause of 10 cc of SBD the Respondent No.4 is not paying the aforesaid balance amount and sitting tight over the bills till date which is causing huge loss to the petitioner and further a direction may be issued to pay the balance bill amount of escalation along with interest which has already been submitted by the Petitioner on 16.04.2015 and forthwith credit the same in the account of the petitioner with respect to the agreement No. 11 SBD of 2006-07 (28.03.2007) executed for work value Rs. 6,18,63,680.00 revised Value Rs. 8,38,77,300.00 for construction of road from Sheikhpura to Araha Km. 0 to 20 And further granting any other relief/reliefs for which the petitioner be found entitled in law, as the petitioner has completed the work in question by arranging the fund from the Bank and market at commercial rate of interest (Compounding) @ 14.5 %, and on the other hand the aforesaid bill of escalation of Rs. 1,67,99,026.00 but respondents paid only Rs. 1,09,88,856/- and balance amount Rs. 58,10,170.00 was not paid which has been due since 16.04.2015. The price of all the goods have been mounted up to three to four times till date, hence the petitioner may be justifiably required to be paid escalated cost of all materials under clause 10 CC of SBD with statutory interest, because even after so many requests they did not amend their error and paid the same, for which they are legally obliged as the SBD clauses 10 CC is binding on the parties. However the respondents may not escape from their obligations to pay the petitioner with interest over such delayed payments of escalation of bill and pay the same within a fortnight from the date of filing of the writ application.

After the matter was heard for some time, learned



counsel for the petitioner seeks permission to withdraw the present petition reserving liberty to take recourse to such remedies as are otherwise stipulated in the agreement and are available in accordance with law.

We notice that petitioner has raised dispute with regard to non-payment of amount arising out of works contract, which stipulates mechanism of resolution of disputes through the process of conciliation and arbitration.

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

We are sure that as and when any such proceedings is initiated, the same shall be adjudicated expeditiously in accordance with law.

Without expressing any opinion on merits, leaving all questions of fact and law open, the present application is disposed of as withdrawn with the liberty aforesaid.

It is made clear that we have not expressed any opinion on merits. All questions of fact and law are left open.

Needless to say that while considering such request, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties.



If aggrieved by the said order, the petitioner shall have liberty to approach this Court by way of separate petition(s), if so required and desired.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	22.01.2022
Transmission Date	

