

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13297 of 2019

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M/s Nagarmal Ramprakash Head Office- Naugachia, Bhagalpur, Branch Office- Durgapur Ward No. 33 Katihar through its proprietor Ram Prakash Rungta, S/o Late Nagarmal Rungta, R/o Village and P.O. and P.S.- Naugachia, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The Union of India through General Manager (G.M), North Frontier Railway, Maligaon.
2. The Principal Chief Engineer, North Frontier Railway, Maligaon.
3. The Divisional Railway Manager (W), North Frontier Railway, Katihar.
4. The Senior Divisional Engineer (Co.ord) North Frontier Railway, Katihar.
5. The Senior Divisional Engineer-1 North Frontier Railway, Katihar.
6. The Sr. Den (Cord) North Frontier Railway, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Sarita Bajaj, Advocate
For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

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(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.)

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2 02-12-2022 Petitioner has prayed for the following relief(s):-

- A.** For issuance of an appropriate writ/writs to set aside the Contract Termination Notice dated 12-06-2018 issued by the office of Divisional Railways Manager (W), Katihar through the Sr. Divisional Engineer-I, N.F Railway, Katihar vide W/362/18/ Multi Utility Vehicles/ADEN/KNE, BOE &



MLDT/IV/KIR/W-2 whereby and where-under the respondent authorities, mechanically without giving reasonable opportunity of hearing to the petitioner terminated the contract which was executed between the parties through tender acceptance letter dated 08-03-2018 against the Tender Notice No. KIR/Engg/01 of 2018 (item no. 01) dated 19-01-2018 and illegally forfeited the Earnest Money Deposit (EMD) of Rs. 1,80,620/- (one lac eighty thousand six hundred and twenty) and further debarred the petitioner from participating in re-tendering for the work.

- B.** For direction to the respondent authorities to return the Earnest Money Deposit (EMD) of Rs. 1,80,620/-(one lac eighty thousand six hundred and twenty) deposited by the petitioner through online Net Banking system vide transaction Id No. NE1884540/IK00MJTOE8 dated 21-02-2018 against Tender Notice No. KIR/ENGG./1 of 2018 (item no. 01) dated 19-01-2018 which is illegally forfeited in contravention of section 65 of the Indian Contract Act, 1872 which casts an obligation upon the respondent authorities to return the aforesaid EMD amount under void agreement or contract that becomes void.
- C.** For direction to the respondent authorities to allow the petitioner to participate in re-tendering for the works keeping in view that the contract against the Tender Notice No. KIR/ENGG./1 of 2018 (item no. 01) dated 19-01-2018 became void in view of 'doctrine of frustration' given U/s 56 of the Indian Contract Act, 1872 in which petitioner has not committed any fault on his part.
- D.** For any other relief/reliefs for which the petitioner is found to be entitled under the provision of law involved in the present 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, under instructions, seeks permission to withdraw the present petition reserving liberty to take appropriate action, in accordance with law, including invoking the Arbitration Clause in terms of the GCC.

Permission granted.

We are sure that as and when any such proceedings are initiated, before the appropriate forum, the same shall be considered and decided expeditiously, in accordance with law.

Needless to add, period for which the petitioner has been pursuing the matter before this Court, shall be excluded for the purpose of computing limitation.

It is made clear that we have not expressed any opinion on merits. All issues are left open.

The petition stands disposed of as withdrawn with the liberty aforesaid.

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

(Sanjay Karol, CJ)

(Partha Sarthy, J)

P.K.P./Amrendra

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