

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3833 of 2019

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Prahalad Rai, through its Partner Mr. Sunil Kumar Rijhwani, S/o Late Prahlad Rai through its Partner Mr. Sunil Kumar Rijhwani, Gender, Male, R/o Amlatola, Katihar, P.o. and Distt.- Katihar-854105, Bihar

... .. Petitioner/s

Versus

1. The Union Of India through General Manager (W), N.F. Railway, Age and Gender- Not Known to this Petitioner, Maligaon, Gauhati, Assam
2. The D. R. M. (Works), DRM Office Katihar, P.o.- Katihar, Distt.- Katihar
3. The Senior DEN-IV Age and Gender - Not known to the Petitioner, N.F. Railway, DRM Office, Katihar, Distt.- Katihar
4. The A.D.E.N.-II Age and Gender - Not known to the Petitioner, N.F. Railway, DRM Office, Katihar, Distt.- Katihar
5. The S.S.E. (Works) East Age and Gender - Not known to the Petitioner, N.F. Railway, DRM Office, Katihar, Distt.- Katihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anshuman Jaipuriyar, Advocate Ms. Anukriti Jaipuriyar, Advocate
For the Respondent/s	:	Mr. Anil Kumar Sinha Ms. Chaya Mishra Mr. Anil Singh

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-04-2023

In the instant petition, petitioner has prayed for the following relief/reliefs:

“(i) For issuance of writ in the nature of Certiorari quashing the Contract Termination Notice No. W/362/15/Recycling plant/KIR/IV/W-2 dated 23.01.2019 issued by Sr.DEN/C/Katihar, N.F. Railway, (hereinafter referred as "Impugned Letter") whereby and whereunder the Contract Agreement No.08/KIR/C/IV/W-2 dated 01.03.2016 - with regard to "At KIR Recycling Plant of Capacity 4 Lakhs



litre per day at Gaushala" has been arbitrarily terminated without issuing any proper notice in terms of General Clause of Contract (hereinafter referred as "GCC") or granting any further extension for execution of work to the Petitioner despite being aware of the default on the part of the Respondent Railway authorities to hand over detailed drawings for over head tank which is necessary to complete the project in time.

(ii) For issuance of writ in the nature of Mandamus directing and commanding the Respondent authorities to grant extension of one year after handing over detailed approved drawings for over head tank - so that the work can be completed within the extended period.

(iii) For issuance of writ in the nature of Mandamus directing and commanding the Respondent authorities to release the legitimate payment dues for drawings of Sewerage Treatment Plant/Recycling Plant and also for the work done by the Petitioner till date which is Rs. 15 Lakhs approximately

(iv) To direct the Respondents to withdraw all Liquidated damages to the tune of Rs.8,83,389/- wrongfully imposed on the Petitioner.

(v) To hold that the Contract Termination Notice No. W/362/15/Recycling plant/KIR/IV/W-2 dated 23.01.2019 issued by Sr.DEN/C/Katihar, N.F. Railway, whereby and whereunder the Contract Agreement No.08/KIR/C/IV/W-2 dated 01.03.2016 - with regard to "At KIR - Recycling Plant of Capacity 4 Lakhs litre per day at Gaushala" has been terminated is bad, illegal and is fit to be set-aside.

(vi) To restrain the Respondent authorities from taking any adverse/coercive steps pursuant to the Termination Notice No. W/362/15/Recycling plant/KIR/IV/W-2 dated 23.01.2019 issued by Sr.DEN/C/Katihar, N.F. Railway, (hereinafter referred as "Impugned Letter") whereby and whereunder the Contract Agreement No.08/KIR/C/IV/W-2 dated 01.03.2016 - with regard to "At KIR - Recycling Plant of Capacity 4 Lakhs litre per day at Gaushala" has been arbitrarily terminated without issuing any proper notice and further to restrain the Respondents from floating any tender for re-allotment of work contract till the disposal of this case in order to save the interest of the Petitioner.

(vii) To Pass any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case."

2. On 12.03.2019, following order was passed:



“Considering the scope and ambit of the writ jurisdiction to interfere in the matters where there is an arbitration clause under the agreement, when this court called upon learned counsel for the petitioner to demonstrate as to why the writ application be entertained at first instance, learned counsel for the petitioner has made a limited submission to the extent that in this case there is a violation of the provisions of statutory notice.

It is submitted that prior to termination of the agreement of the petitioner vide Annexure-14 to the writ application no notice whatsoever was given to him. It has also been shown from Annexure-11 & 12 to the writ application that much before the expiry of the extended period of contract the petitioner had made an application for extension of time on 25.10.2018 itself. A copy of which is enclosed as Annexure-11 to the writ application. In response thereto the Senior Section Engineer of the North Frontier Railway, Katihar had informed the petitioner to deploy sufficient man power and machinaries to complete the work within the targeted date. It is the contention of learned counsel for the petitioner that the target date as shown in the Bar Chart enclosed with Annexure-11 is March, 2019.

It is submitted that in this condition it cannot be said that the contract has already expired in the year 2016 and no notice was required to be issued before passing of the order as contained in Annexure-14 to the writ application.

Mr. Sinha, learned counsel representing the railways has taken a stand that in fact the petitioner was required to complete the work by 19.10.2016 itself but the period was extended lastly up to 31.10.2018 only. It is submitted that there was no extension after 31.10.2018, the agreement has expired by efflux of time, hence, in such circumstance, the petitioner would not be entitled to get a notice before the termination.



In the given facts and circumstance, let the railways submit its reply on affidavit within a period of two weeks from today.

List this matter under the same heading on 27th March, 2019.

In the meantime, no coercive action for realization of any penalty amount shall be taken.”

3. Question for consideration is whether petitioner is entitled to extension of time to execute work pursuant to the agreement or not? The official respondents have extended time up to 31.10.2018 and thereafter there is no extension and so also petitioner has not completely executed the work.

4. Learned counsel for the petitioner submitted that the official respondents have not discharged their duties in providing certain material information like design and other issues. These are all the disputed issues which cannot be adjudicated under Article 226 of the Constitution. Moreover, Clause No. 29.0 of the agreement reads as under:

“29.0 JURISDICTION OF COURT:

The courts of the place from where the acceptance of tender has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of contract. The successful tenderers shall have to sign the contract agreement only at the office from where the acceptance letter has been issued.”



5. In the light of the aforementioned Clause, the petitioner has a remedy of filing litigation before the Jurisdictional Court. Therefore, the present writ petition itself is not maintainable.

6. Accordingly, writ petition stands dismissed reserving liberty to the petitioner to invoke remedy before appropriate forum.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.04.2023
Transmission Date	NA

