

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4750 of 2023

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M/s Maa Vaishnavi Construction and Supplier, Prop. Rajesh Kumar Choudhary aged about 29 Years (male) Son of Sri Manohar Chaudhary, Resident of Village-Bishunpur, Police Station-Ashok Paper Mill, District-Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Bihar.
2. The Secretary, Rural Works Department, Bihar.
3. The Engineer-in-Chief, Rural Works Department, Bihar. Patna.
4. The Chief Engineer-3, Madhubani Division, Rural Works Department, Bihar, Patna.
5. The Executive Engineer, Jainagar Division, Rural Works Department, Madhubani.
6. The Superintending Engineer, Jainagar Division, Madhubani, Rural Works Department, Bihar.
7. The Junior Engineer, Jainagar, Madhubani Division, Rural Works Department, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Kumar Dubey, Advocate Mr. Lakshmanlal Pandey, Advocate
For the State	:	Mr. Ajay Behari Sinha, GA 8 Mr. Upendra Kumar Singh, AC to GA 8

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 19-04-2023

Heard the parties.

1. The petitioner by way of this writ petition has prayed has under:-

“1. That the present application is being filed for issuance of an appropriate writ/writs, order/orders, direction/ directions towards payment of amount against the work done under Agreement No. 39MMGSY/2021-22 for the construction of Rural Road (Sampark Road) from Koshi Canal, the House of Bihikhari Yadav to PMGSY Road, the House of Amar Thakur, which was inspected by the concerned Junior Engineer, Assistant Engineer and the Executive Engineer and subsequently the Executive Engineer, Jainagar Works Division, Rural Works



Department vide his letter No. 274 dated 02.03.2022 enclosing the Utilisation Certificate written to the Additional Chief Executive Officer, Rural Works Department, Vishveshwariya Bhawan, Patna for the disbursement of allotment and consequently the allotment was disbursed vide letter no. 326 dated 21.07.2022 but till date payment could not be made to the petitioner by the Executive Engineer, Jainagar Division nor any heed was paid by him even after a number of time requesting him for the same. Further for grant of any other relief/reliefs for which the petitioner is entitle under the facts and circumstances of the Case.”

2. The **Commercial Courts Act, 2015** came into force w.e.f. 31.12.2015. As per **Section-2 (C)** of the Commercial Courts Act, the commercial disputes is defined as under:

“2 (c) "commercial dispute" means a dispute arising out of--

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

(iii) issues relating to admiralty and maritime law;

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) carriage of goods;

(vi) construction and infrastructure contracts, including tenders;

(vii) agreements relating to immovable property used exclusively in trade or commerce;

(viii) franchising agreements;

(ix) distribution and licensing agreements;



- (x) management and consultancy agreements;*
- (xi) joint venture agreements;*
- (xii) shareholders agreements; “2 (c) "commercial dispute" means a dispute arising out of--*
- (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;*
- (ii) export or import of merchandise or services;*
- (iii) issues relating to admiralty and maritime law;*
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;*
- (v) carriage of goods;*
- (vi) construction and infrastructure contracts, including tenders;*
- (vii) agreements relating to immovable property used exclusively in trade or commerce;*
- (viii) franchising agreements;*
- (ix) distribution and licensing agreements;*
- (x) management and consultancy agreements;*
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;*
- (xiv) mercantile agency and mercantile usage;*
- (xv) partnership agreements;*
- (xvi) technology development agreements;*
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;*
- (xviii) agreements for sale of goods or provision of services;*
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;*
- (xx) insurance and re-insurance;*



(xxi) contracts of agency relating to any of the above; and
(xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.-- A commercial dispute shall not cease to be a commercial dispute merely because--

(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;

(d) "Commercial Division" means the Commercial Division in a High Court constituted under sub-section (1) of section 4;

(e) "District Judge" shall have the same meaning as assigned to it in clause (a) of article 236 of the Constitution of India;

(f) "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or electronic means, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;

(g) "notification" means a notification published in the Official Gazette and the expression "notify" with its cognate meanings and grammatical variations shall be construed accordingly;

(h) "Schedule" means the Schedule appended to the Act;
and

(i) Specified Value, in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 12³[which shall not be less than three lakh rupees] or such higher value, as may be notified by the Central Government."



3. In view of above, all disputes of any nature arising out of any agreement entered between a private party and the State could be taken up before the concerned Commercial Court in terms of the valuation of the suit.

4. The Commercial Courts Act, 2015, in terms of Chapter-III(A) of the Act provides for pre-institution mediation and settlement. **Commercial Courts (Pre-Institution Mediation And Settlement Rules), 2018** have already been brought into force. Thus, it is necessary that before even taking up matters before the Commercial Court, exercise for mediation and settlement in terms of the aforesaid Rules of 2018 and provisions of the Act must be followed.

5. This Court, however, finds that the contractual parties are recklessly filing writ petitions before this Court claiming amounts due from the State on the basis of the work orders granted to it or contracts entered between the parties. Disputes regarding black-listing arising out of the non-performance of contracts are also being taken up. Such matters can best be taken up for mediation and settlement at the initial stage, whereafter, if there is no redressal, suits before the concerned Commercial Court can be filed.

6. The writ petition would be maintainable only



when the challenge is to a decision of the authorities or the process adopted by them suffers from malice or wrongful intention or favouritism. The Courts may also entertain a writ petition if the decision is such which does not conform to the Wednesbury's Principle and this Court would entertain the writ petition also where interest of public at large is affected. However, individual claims would not come under the aforesaid ambits. Recently, the Apex Court in **National High Speed Rail Corporation Limited Vs. Montecarlo Limited & Anr**, reported in (2022) 6 SCC 401, following law laid down in **Tata Cellular Vrs. Union of India**, reported in (1994) 6 SCC 651, **Raunaq International Ltd. Vrs. I.V.R. Construction Ltd.**, reported in (1999) 1 SCC 492, **Jagdish Mandal Vs. State of Orissa & Ors.**, reported in (2007) 14 SCC 517 and **Maa Binda Express Carrier & Anr. Vs. North-East Frontier Railway & Ors.**, reported in (2014) 3 SCC 760, has laid down the aforesaid principles. In **M.P. Power Management Company Limited, Jabalpur Vrs. Sky Power Southeast Solar India Private Limited & Ors.** reported in (2023) 2 SCC 703, aforesaid principles were reiterated.

7. Lately, the Apex Court in the case of **South Indian Bank Ltd. & Ors. Vs. Naveen Mathew Philip & Anr.**



as reported in **2023 SCC Online SC 435** has held as under:-

“18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.”

8. In view of above, this Court would be slow in entertaining writ petitions for the prayers as noted above and would, thus, relegate the petitioner to the concerned Commercial Court for mediation, settlement and adjudication as above.

9. Accordingly, the writ petition is dismissed with aforesaid liberty.

(Sanjeev Prakash Sharma, J)

Sachin/-
Item No. 32

AFR/NAFR	
CAV DATE	
Uploading Date	25.04.2023
Transmission Date	

