

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15294 of 2015

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K E M S Services Private Limited through its Managing Director Mr. Mohan Kumar Khandelwal, Son of Sri Durga Prasad Khandelwal, 76 B1/B Maurya Lok Complex, Dak Bungalow Road, P.S. Kotwali, Patna-800001 Bihar.

... .. Petitioner/s

Versus

1. The Union of India through General Manger, East Central Railways, Hajipur.
2. The Chief Administration Officer/Construction/North, East Central Railway, Mahendrughat, Patna-04.
3. The Chief Engineer/Con/NW, East Central Railway, Mahendrughat, Patna-04.
4. The Dy. Chief Engineer/Con/1, East Central Railway, Samastipur.
5. The Sr. Divisional Engineer/Con, East Central Railway, Samastipur.
6. The Assistant Engineer in short AEN/Con/SPJ, East Central Railway, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manish Sahay, Advocate Mr. Anil Kumar Sinha, Advocate Mr. Siddhartha Aditya, Advocate
For the Respondent/s	:	Mr. Anshuman Singh, CGC

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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 : 05-05-2023

Matter is of the year 2015.

2. Respondents have failed to file their counter affidavit, even after lapse of 8 years.

3. In the instant petition, petitioner, has prayed for the



following relief(s):-

*“1. (I) **For quashing** of order regarding termination of contract of petitioner, issued vide letter nos. W/Con/247/SPJ/1/CA-14/125 dated 08-07-2015, under the signature of Dy. Chief Engineer/Con/1 (i.e. Respondent No.4) as contained in Annexure-6, whereby and where under the said authority has been terminated the contract bearing its no. ECR/CAO/Con/WT/Agt./14 dated 08-11-2012 of the petitioner in most arbitrary manner and having ulterior motive against the petitioner.*

*(II) **For direction** upon the concerned respondent **either allow the petitioner to complete the balance works** at the old rate, within 12 months next (from the date of allow the same). **Or direct the concerned authority to pay/refund all lawful amount including entire Earnest Money & Security Deposit amount** relates to said contract of the petitioner immediately. If the Employer allows the petitioner to complete the said work then they will not suffer any loss.*

*(III) **For declaring** that the order of termination dated **08-07-2015** as contained in **Annexure-6**, is totally arbitrary, malafidy and contrary to the provision of the agreement as well as bad in law.*

*(IV) **For passing** such an order or orders for which the petitioner is entitled under the law in the facts and circumstances of this case.”*

4. The petitioner's contract has been terminated with retrospective that is w.e.f. 31.05.2015 on 08.07.2015 vide Annexure-6.

5. Annexure-6 dated 08.07.2015 reads as under:-



ANNEXURE-6

(without Prejudice)
(Registered Post A.D)

East Central Railway
(Construction Organisation)
CONTRACT TERMINATION NOTICE

**Office of the Dy. Chief
Engineer / Con/1/Samastipur**

No. W/Con/247/SPJ/1/CA-14/235

Dated 08-07-2015

To,

**KEMS Services Pvt. Ltd
76 B/1B, Maurya Lok Complex,
Dakbunglow Road, Patna-1**

**Sub:- C.A No. ECR/CAO/Con/WT/Agt./14 dated 08-11-12
LOA No. ECR/CAO/Con/WT/85/North dated 11-07-2012**

In connection with the work of "Earth work in filling of borrow pits within (H+3) of toe of embankment, cess repairing, approach road, circulating area etc. and boulder pitching or slope of newly constructed embankment near approaches of bridges, left over work and other miscellaneous work from Biraul (incl.) Sakari (Excl.) in connection with the construction of New Line between Sakari-Hasanpur Road.

Dear Sir,

It is intimated that the validity of above CA has already been expired since long i.e. 31-05-2015, but neither you have submitted application for extension of DOC with genuine reason acceptable to the Railway Administration along with realistic bar chart nor completed the work within stipulated period.

1. In term of the conditions of contract agreement No. ECR/CAO/Con/WT/Agt./14 dated 08-11-12 governing the execution of the above work, it was required to be completed by the stipulated date of completion/mutually extended date of completion, viz 31-05-2015. You have failed to complete the work by the agreed date of completion. You have also failed to apply for further extension of period of completion obligations,



the contract stands terminated with effect from date of completion of the contract i.e. 31-05-2015.

2. Please note that for non-fulfilment of the contract the Railway reserve the right to claim damages under clause 62 of the General Conditions of contract in addition to any other rights available to it under the law.

3. Final measurement of the work done by you shall be recorded on 20-07-2015. Please arrange to be present at site to witness and to sign the measurement, failing which the work will be measured in your absence and such measurements as per provisions of the contract agreement shall, notwithstanding such absence, be binding upon you whether or not you shall have signed the measurement book.

Your faithfully
Sign Invisible
Dy. Chief Engineer/Con/1
E.C. Railway, Samastipur
For & on behalf of the President of India.

Copy to:

1. CE/Con/N- for kind information please.
2. FA & CAO/Con/MHX- for kind information and necessary action please.
3. AEN/Con/SPJ- for information and necessary action.
4. Sri Pintoo Kumar, JE/Works/Con/SPJ- for information and necessary action.

Dy. Chief Engineer/Con/1
E.C. Railway, Samastipur

6. Perusal of the aforementioned document relating to termination of contract w.e.f. 31.05.2015, it is evident that there is no reference of specific notice of termination and reply of the



petitioner, in the event of issuing such specific notice and reply received by the concerned authority, namely, Deputy Chief Engineer – author of Annexure-6 dated 08.07.2015. On this short ground, the petitioner has made out a case, accordingly, Annexure-6 dated 08.07.2015 stands set aside, writ petition stands allowed, reserving liberty to the concerned respondent to proceed in accordance with law.

7. The Deputy Chief Engineer is hereby directed to take note of Apex Court’s decisions issued from time to time, namely, *UMC Technologies Pvt. Ltd. v. Food Corporation of India and Anr.*, reported in *(2021) 2 SCC 551* and *Isolators and Isolators through its Proprietor Mrs. Sandhya Mishra Vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. & Anr.* reported in *2023 Livelaw (SC) 330 (para-34)*, before taking further action in the matter.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.05.2023
Transmission Date	NA

